CITY OF MORGAN HILL

Regular Meeting Agenda

Planning Commission

Juan Miguel Munoz-Morris - Chairman
Mohammad Habib - Vice Chairman
Joseph Mueller - Planning Commissioner
Wayne Tanda - Planning Commissioner
Laura Gonzalez-Escoto - Planning Commissioner
Malisha Kumar - Planning Commissioner
Liam Downey - Planning Commissioner

Tuesday, November 12, 2019 7:00 pm

Council Chamber
17555 Peak Avenue, Morgan Hill, CA 95037

CALL TO ORDER

ROLL CALL ATTENDANCE

DECLARATION OF POSTING AGENDA

Pursuant to Government Code Section 54954.2

PLEDGE OF ALLEGIANCE

OPEN PUBLIC COMMENT PERIOD

Members of the public are entitled to address the Planning Commission concerning any item within the Morgan Hill Planning Commission's subject matter jurisdiction. Public comments are limited to no more than three minutes. Except for certain specific exceptions, the Planning Commission is prohibited from discussing or taking action on any item not appearing on the posted agenda. (See additional noticing at the end of this agenda)

ORDERS OF THE DAY

CONTINUED PUBLIC HEARING

1. **ZA2019-0013- ZONING TEXT AMENDMENT AMENDING SECTION 18.92.030 OF CHAPTER 18.92 SUPPLEMENTAL STANDARDS OF TITLE 18 ZONING OF THE MUNICIPAL CODE OF THE CITY OF MORGAN HILL REGARDING THE SEPARATION BETWEEN CONVENIENCE MARKETS.**

   Recommendation:

   1. Open/close the continued public hearing; and
   2. Adopt Resolution recommending City Council approval of the Zoning Amendment.

PUBLIC HEARINGS

2. **SIGNS019-0024: E. MAIN-THE RANCH: AMENDMENT TO UNIFORM SIGN PROGRAM TO ADD A SECOND MONUMENT SIGN. THE PROPERTY, IDENTIFIED BY ASSESSOR PARCEL NUMBER 726-22-054, IS LOCATED ON THE NORTHWEST CORNER OF THE INTERSECTION OF EAST MAIN AVENUE AND BUTTERFIELD BOULEVARD.**

   Recommendation:

   1. Open/close public hearing; and,
   2. Approve resolution amending the Master Sign Program for The Ranch.

3. **AAE2019009 (DAA 09-05): COCHRANE-TOLL BROTHERS- DEVELOPMENT AGREEMENT AMENDMENT TO INCORPORATE 25 ONGOING RESIDENTIAL BUILDING ALLOTMENTS AWARDED FROM THE 2018 RESIDENTIAL DEVELOPMENT CONTROL SYSTEM COMPETITION**

   Recommendation:

   1. Open/close public hearing; and,
   2. Adopt a Resolution approving an amendment to a Development Agreement.

4. **E. DUNNE-YOUNG DEVELOPMENT AGREEMENT AMENDMENT TO INCORPORATE 26 BUILDING ALLOTMENTS FOR FISCAL YEAR 2020/2021 AWARDED FROM THE 2018 RESIDENTIAL DEVELOPMENT CONTROL SYSTEM AND TRANSFERRED FROM THE MONTEREY-LUCKY SHING PROJECT FOR THE EAST DUNNE-YOUNG PROJECT (ALSO KNOWN AS ANDALUSIA) AAE2019-0010(DAA2018-0002)**

   Recommendation:

   1. Open/close public hearing; and,
   2. Adopt a Resolution recommending City Council approval of an amendment to a Development Agreement (DA 2018-0002) and a transfer of allotments from the Monterey-Lucky-Shing project.

WORKSHOP

5. **WORKSHOP: DISCUSSION OF THE CITY OF MORGAN HILL RESIDENTIAL DEVELOPMENT DESIGN AND DEVELOPMENT STANDARDS**

   Recommendation:

   Planning Commission to discuss and provide comments on the draft Residential Development Design and Development Standards.

DIRECTOR'S REPORT/ANNOUNCEMENTS

ADJOURNMENT

NOTICE

All public records relating to an open session item on this agenda, which are not exempt from disclosure pursuant to the California Public Records Act that are distributed to a majority of the legislative body less than 72 hours prior to an open session, will be made available for public inspection at the Office of the City Clerk at Morgan Hill City Hall located at 17575 Peak Avenue, Morgan Hill, CA, 95037 at the same time that the public records are distributed or made available to the legislative body. (Pursuant to Government Code 54957.5)

PUBLIC COMMENT

Members of the Public are entitled to directly address the Commission concerning any item that is described in the notice of this meeting, before or during consideration of that item. If you wish to address the Commission on any issue that is on this agenda, please complete a speaker request card located in the foyer of the Commission Chambers, and deliver it to the Minutes Clerk prior to discussion of the item. You are not required to give your name on the speaker card in order to speak to the Commission, but it is very helpful. When you are called, proceed to the podium and the Mayor will recognize you. If you wish to address the Commission on any other item of interest to the public, you may do so during the public comment portion of the meeting following the same procedure described above. Please limit your comments to three (3) minutes or less.

Please submit written correspondence to the Minutes Clerk, who will distribute correspondence to the Commission.

Persons interested in proposing an item for the Commission agenda should contact a member of the Commission who may plan an item on the agenda for a future Commission meeting. Should your comments require Commission action, your request may be placed on the next appropriate agenda. Commission discussion or action may not be taken until your item appears on an agenda. This procedure is in compliance with the California Public Meeting Law (Brown Act) Government Code §54950.

City Council Policies and Procedures (CP 03-01) outlines the procedure for the conduct of public hearings. Notice is given, pursuant to Government Code Section 65009, that any challenge of Public Hearing Agenda items in court, may be limited to raising only those issues raised by you or on your behalf at the Public Hearing described in this notice, or in written correspondence delivered to the Commission at, or prior to the Public Hearing on these matters.

The time within which judicial review must be sought of the action by the Commission, which acted upon any matter appearing on this agenda is governed by the provisions of Section 1094.6 of the California Code of Civil Procedure.

For a copy of Commission Policies and Procedures CP 97-01, please contact the City Clerk's office (408) 779-7259, (408) 779-3117 (fax) or by email cityclerk@morganhill.ca.gov.

AMERICANS WITH DISABILITIES ACT (ADA)

In compliance with the Americans with Disabilities Act, if you are a disabled person and you need a disability-related modification or accommodation to participate in this meeting, please contact the City Clerk's Office at (408)779-7259, (408)779-3117 (fax) or by email cityclerk@morganhill.ca.gov. Requests must be made as early as possible and at least two-full business days before the start of the meeting.

CITY OF MORGAN HILL

PLANNING COMMISSION STAFF REPORT
MEETING DATE: November 12, 2019

PREPARED BY: Scott Nelson,
APPROVED BY: Jennifer Carman, Community Development Director

ZA2019-0013- ZONING TEXT AMENDMENT AMENDING SECTION 18.92.030 OF CHAPTER 18.92 SUPPLEMENTAL STANDARDS OF TITLE 18 ZONING OF THE MUNICIPAL CODE OF THE CITY OF MORGAN HILL REGARDING THE SEPARATION BETWEEN CONVENIENCE MARKETS.

RECOMMENDATION(S)

1. Open/close the continued public hearing; and
2. Adopt Resolution recommending City Council approval of the Zoning Amendment.

POLICY CONSIDERATIONS:

Should the City of Morgan Hill regulate convenience markets with the same standards as liquor stores? Should the City regulate the concentration of any of these uses?

BACKGROUND:

On October 8, 2019, the public hearing was continued to this date to allow time for staff to finalize the draft ordinance language.

Over the past eighteen months, City staff have received several inquiries from owners of convenience markets and fuel and service station uses wanting to expand the footprints of their convenience store operations. In some cases, fuel operators have researched purchasing older gas stations and learned that current regulations prohibit expansion of the convenience market component. Most recently, the owner of the Chevron Gas Station at the Vineyard Shopping Center requested to expand the retail sales area within the existing building, however, current regulations prohibit the expansion.

Title 18, Division 1, Chapter 18.92.030 (Convenience Markets) establishes supplemental standards for convenience markets and Chapter 18.124.040 establishes the definition of a convenience market. The definition reads as follows:

> "A retail establishment which contains less than five thousand square feet of gross floor area allocated for the sale of groceries, staples, dairy products, sundry items, tobacco products and/or alcoholic beverages. Includes liquor stores where all or the majority of the floor area for retail sales is allocated for the

sale of alcoholic beverages. Excludes full-service grocery stores containing less than five thousand square feet of gross floor area where at least ten percent of the floor area is allocated for the sale of fresh meat, seafood and fresh produce products."

As defined, a liquor store use is also included within the definition. Currently, a new convenience market is required to be located a minimum of 1,000 feet from an existing or approved convenience market. Exceptions to the separation requirement may be allowed if the convenience market is on property that is adjacent to U.S. Highway 101 and Dunne Avenue, Tennant Avenue and Cochrane Road or has less than three hundred square feet of area devoted to sales and display.

Today, the business model for convenience markets and fuel and service station use has changed. Consumers want more amenities, clean, well-lit areas, and expansive sales area. Fuel and service stations are often accompanied by a quick serve restaurant and a car wash. Based on recent conversations with convenience market owners, the industry standard for the size of a new convenience market is between 2,500 to 5,000 square feet. This new model has proven to be successful; therefore, owners of older facilities would like to upgrade to include similar amenities to remain competitive.

Many existing service stations that included convenience markets were grandfathered pursuant to Ordinance No. 1307 adopted in 1996 and are considered legal non-conforming. The City's existing zoning regulations limit the ability for these facilities to increase their sales areas. In some cases, business owners have lost the opportunity for significant reinvestment in these aging buildings due to these regulations thereby not maximizing sales tax revenue.

On April 9, 2019, Economic Development Director Edith Ramirez and Economic Development Manager John Lang conducted a workshop with the Planning Commission regarding the Convenience Market Ordinance. Input was also received from current business owners, members of the public, and the Morgan Hill Chamber of Commerce. The Planning Commission directed staff to develop amendments to the Municipal Code that regulates convenience markets with the intention to individually define liquor store and convenience market uses.

Staff has reached out to other Cities in Santa Clara County to understand best practices. Additionally, staff has reached out to the Mothers Against Drunk Drivers (MADD), the Police Department, the Chamber of Commerce and Alcoholic Beverage Control (ABC). The Police Department's main concern was that this proposed amendment does not relax the separation requirements for liquor stores, and that the crime prevention measures remain for convenience markets. The Chamber of Commerce was supportive of this proposed amendment. MADD has been contacted regarding this proposed amendment and has not provided any feedback. ABC provided information that Morgan Hill is no longer a "moratorium city" for type 20 licenses. However, they did not provide a statement of support or opposition for this proposed amendment.

PROJECT DESCRIPTION

Staff has proposed text amendments to the Morgan Hill Municipal Code intended to:

1. Create distinct definitions and standards for:
   a. Standalone convenience markets,
   b. Convenience markets with fueling stations, and
   c. Liquor stores
2. Limit concentration policies to liquor stores only, allowing convenience markets to compete freely based on market demand
3. Continue to protect sensitive receptors such as schools from proximity of venues that sell alcohol and tobacco products
4. Create opportunities that remove barriers for older, grandfathered stations to reinvest in their facilities by providing the Planning Commission with discretion over parking requirement considerations (See sections section 18.72.030.A and section 18.72.030.B for parking requirements and section 18.72.060.K that authorizes the planning commission to consider a reduction in on-site)

To achieve these goals, the draft ordinance (Attachment 2) contains the following proposed use definitions and standards:

Proposed Definitions:

Convenience Markets (18.124.040.P.2) A retail establishment which contains less than five thousand square feet of gross floor area allocated for the sale of groceries, staples, dairy products, sundry items, tobacco products and/or alcoholic beverages. Excludes full-service grocery stores containing less than five thousand square feet of gross floor area where at least ten percent of the floor area is allocated for the sale of fresh meat, seafood and fresh produce products.

Liquor Store (18.124.040.P.8) A retail establishment where all or the majority of the floor area for retail sales is allocated for the sale of alcoholic beverages (which includes beer, wine, and distilled spirits) for off-premises consumption.

Convenience Market with Fuel and Service Station (18.124.040.P.3) A retail business establishment that meets the combined definitions of Convenience Markets (See section 18.124.040 P. 2.) and Fuel and Service Stations (See 18.124.040 Q. 1.)

Supplemental Standards to be retained or amended:

Convenience Markets (Standalone)

- Separation from Schools
- Loiter Control
- Crime Prevention Measures
- Control of Alcoholic Beverage Sales

Liquor Stores

- Separation between liquor stores
- Separation from Schools
- Loiter Control
- Crime Prevention Measures

Convenience Markets with Fuel and Service Stations
- Separation from Schools
- Provision for Restrooms
- Loiter Control
- Crime Prevention Measures
- Restrictions on concurrent Sale of Alcoholic Beverages and Automotive Fuels

Update Land Use Regulations Table 18.24-1

In Santa Clara County, only the City of San Jose has a separation restriction related to convenience markets. San Jose's separation requirement only applies to establishments that provide alcoholic beverages for off-site consumption. San Jose's Municipal Code allows for up to four convenience markets within a 1,000-foot radius. No other city in Santa Clara County has any type of separation restriction for convenience markets or establishments with off-site alcoholic beverage sales.

The most consistent best practice for convenience market and off-site alcoholic beverage sales establishments is the requirement of a Conditional Use Permit (CUP) issued by a Planning Commission. Keeping in line with best practices, the Morgan Hill Municipal Code requires a CUP for convenience markets, as set forth in Section 18.24.020 - Land use regulations.

If the proposed Supplemental Standard and Definition amendments are recommended by the Planning Commission, and adopted by the City Council, several safeguards will remain to ensure there is no detriment to the public interest, health, or safety.

- A CUP would be required for liquor store and convenience market with fuel and service station uses
- A 1000-foot separation boundary from existing school or a proposed school sites would be retained
- Liquor stores will continue to be limited from locating within 1,000 feet from another existing or approved liquor store, with the exception of major freeway interchanges
- Liquor stores and convenience markets will have to continue to comply with loiter control measures
- Compliance with Crime Prevention Measures will be required
- Alcoholic Beverage Control (ABC) licensing requirements must be met for all facilities

	Standalone Convenience	Convenience Markets with Fuel	Liquor Stores

	Markets	&Service Stations	
CUP	✓	✓	✓
School Proximity Restriction	✓	✓	✓
Concentration Restriction	-	-	✓

ANALYSIS:

The proposed Zoning Amendment has been analyzed with respect to consistency with the: 1) General Plan; 2) Zoning Ordinance; and, 3) California Environmental Quality Act.

1. **General Plan**

The proposed amendments are consistent with the General Plan, specifically policies in the Land Use Element, including Policy CNF-2.1 (Orderly Development), which promotes sensible, orderly growth that will promote the local economy.

2. **Zoning Ordinance**

The purpose of the Zoning Code is to implement the General Plan and to protect the public health, safety, and welfare. The City may approve a Zoning Amendment only if the following findings are made:

a. The proposed amendment is consistent with the General Plan and any applicable specific plan as provided by Government Code Section 65860.

Consistent
The proposed zoning text amendment for convenience markets is consistent with the General Plan in that it follows current land use development standards for commercial uses.

b. The proposed amendment will not be detrimental to the public interest, health, safety, convenience, or welfare of the City.

Consistent
A land use program for convenience markets that includes a CUP for each use allows the approval bodies to evaluate each use to ensure they will not be detrimental to the City.

c. The proposed amendment is internally consistent with other applicable provisions of the zoning code.

Consistent
The proposed revisions for convenience market uses are internally consistent with the overall zoning code. The land use changes require a CUP for each use and overall

development standards consistent with the zone district each business would be located within.

3. **California Environmental Quality Act (CEQA):**

This ordinance is categorically exempt from environmental review pursuant to Section 15061(b)(3) of the California Environmental Quality Act (CEQA) Guidelines, the proposed text amendment to the Morgan Hill Zoning Code is not a project with potential for causing a significant effect on the environment requiring California Environmental Quality Act (CEQA) analysis, and further is categorically exempt to the extent it would authorize only minor alterations to the use of existing facilities and public and private structures already zoned for such uses pursuant to existing zoning regulations. Additionally, pursuant to Business and Professions Code Section 26055(h), CEQA does not apply to the adoption of an ordinance, rule, or regulation by a local jurisdiction that requires discretionary review and approval of permits, licenses, or other authorizations to engage in convenience store activity; this section is applicable because each application in the City will require the discretionary approval of a CUP.

COMMUNITY ENGAGEMENT:
A 10-day public hearing notice was published in the Friday, October 11, 2019 edition of the Morgan Hill Times pursuant to Government Code Sections 65090-65096. Notice was also provided on the City of Morgan Hill website and via social media.

LINKS/ATTACHMENTS:
1. ZA2019-0013_PC_DraftResolution
2. Proposed Ordinance
3. Current Ordinance 18.92.030

RESOLUTION NO.

A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF MORGAN HILL RECOMMENDING APPROVAL OF AMENDMENT (ZA2019-0013: CONVENIENCE MARKET TEXT) TO TITLE 18, ZONING CODE TO AMEND TABLE 18.24-1 IN SECTION 18.24.020 "LAND USE REGULATIONS", AMEND CHAPTER 18.92 "SUPPLEMENTAL STANDARDS", AND CHAPTER 18.124 "LAND USE DEFINITIONS" OF THE MORGAN HILL MUNICIPAL CODE REGULATING CONVENIENCE MARKETS, FUEL AND SERVICE STATIONS, AND LIQUOR STORES.

WHEREAS, this proposed Ordinance (Zoning Amendment ZA2019-0013) was considered by the Planning Commission of the City of Morgan Hill at its regular meeting of November 12, 2019; and

WHEREAS, the Planning Commission has reviewed recommendations contained in the November 12, 2019, staff report on this item; and

WHEREAS, testimony received at a duly noticed public hearing, along with other materials have been considered in the review process.

NOW, THEREFORE, BE IT RESOLVED BY THE PLANNING COMMISSION OF THE CITY OF MORGAN HILL THAT:

SECTION 1. The Planning Commission hereby finds that the proposed amendments to the Zoning Code established by this ordinance herein described are compatible with the goals, objectives and policies of the General Plan of the City of Morgan Hill including, the General Plan policies in the Land Use Element, for example Policy CNF-2.1 (Orderly Development), which promotes sensible, orderly growth that will promote the local economy. Furthermore, the proposed zoning text amendment for convenience markets is consistent with the General Plan in that it follows current land use development standards for commercial uses.

SECTION 2. The proposed amendments will not be detrimental to the public interest, health, safety, convenience, or welfare of the City. A land use program for convenience markets that includes a Conditional Use Permit for each use allows the approval bodies to evaluate each use to ensure they will not be detrimental to the City.

SECTION 3. The proposed revisions for convenience market uses are internally consistent with the overall zoning code. The land use changes require a Conditional Use Permit for each use and overall development standards consistent with the zone district each business would be located within.

SECTION 4. The Planning Commission hereby recommends approval of changes to the text of the Morgan Hill Municipal Code amending table 18.24-1 in Section 18.24.020 (Land Use Regulations); amending Section 18.92.030 (Convenience Markets); adding Sections 18.92.031 (Liquor Store) and 18.92.032 (Convenience Markets with Fuel and Service Stations); and amending Section 18.124.040 (Commercial Uses)which are shown by strike-out text for deletions, and underline text for additions. All text amendments recommended to be made as shown in the draft ordinance (Attachment 2 to the staff report).

PASSED AND ADOPTED THIS 12nd DAY OF NOVEMBER 2019, AT A REGULAR MEETING OF THE PLANNING COMMISSION BY THE FOLLOWING VOTE:

AYES: **COMMISSIONERS:**

NOES: **COMMISSIONERS:**

ABSTAIN: **COMMISSIONERS:**

ABSENT: **COMMISSIONERS:**

ATTEST:

_____

JENNA LUNA, Deputy City Clerk

APPROVED:

_____

JUAN MIGUEL MUNOZ-MORRIS, Chair

Attachment: ZA2019-0013_PC_DraftResolution [Revision 1] (2506 : Zoning Text Amendment for Convenience Markets)

ORDINANCE NO. , NEW SERIES

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MORGAN HILL AMENDING SECTION 18.24.020 (LAND USE REGULATIONS) OF CHAPTER 18.24 (COMMERCIAL ZONING DISTRICTS); AMENDING SECTION 18.92.030 (CONVENIENCE MARKETS) OF, AND ADDING SECTIONS 18.92.031 (LIQUOR STORE) AND 18.92.032 (CONVENIENCE MARKETS WITH FUEL AND SERVICE STATIONS) TO, CHAPTER 18.92 (SUPPLEMENTAL STANDARDS); AND AMENDING SECTION 18.124.040 (COMMERCIAL USES) OF CHAPTER 18.124 (LAND USE DEFINITIONS) OF TITLE 18 (ZONING) OF THE MUNICIPAL CODE OF THE CITY OF MORGAN HILL REGULATING CONVENIENCE MARKETS, FUEL AND SERVICE STATIONS, AND LIQUOR STORES

THE CITY COUNCIL OF THE CITY OF MORGAN HILL DOES ORDAIN AS FOLLOWS:

Section 1. The Retail Uses and Vehicle Related Uses sections in Section 18.24.020 (Land Use Regulations) Of Chapter 18.24 (Commercial Zoning Districts) of Title 18 (Zoning) are hereby amended to read as follows (additions in underline, deletions in ~~strikeout~~):

18.24.020 - Land use regulations.

A. Permitted Land Uses. Table 18.24-1 identifies land uses permitted in the commercial zoning districts.

Table 18.24-1 Permitted Land Uses in the Commercial Zoning Districts

Key P Permitted Use A Administrative Use Permit required C Conditional Use Permit required — Use not allowed	Zoning District					Additional Regulations
	CO	CN	CG	CH	CS	
Retail Uses						
Convenience Markets	—	C	C	C	C	
Convenience Market with Fuel and Service	—	C	C	C	C	

Attachment: Proposed Ordinance [Revision 4] (2506 : Zoning Text Amendment for Convenience Markets)

Station						
General Retail	—	P	P	P	C	
Home Improvement Centers	—	—	P	—	P	
Liquor Store	—	C	C	C	C	
Large Commodity Retail	—	—	C	—	C	
Vehicle-Related Uses						
Convenience Market with Fuel and Service Station	—	C	C	C	C	
Fuel and Service Stations	—	C	C	C	C	
Towing and Impound	—	—	—	—	C	
Vehicle Rentals	—	C [2]	C [2]	P	P	
Vehicle Repair and Maintenance, Minor	—	—	C	—	P	
Vehicle Sales and Leasing	—	C [1]	C [1]	P	P	
Vehicle Washing	—	C	C	C	C	

Section 2. Section 18.92.030 (Convenience Markets) of Chapter 18.92 (Supplemental Standards) of Title 18 (Zoning) is hereby amended to read as follows (additions in underline, deletions in ~~strikeout~~):

18.92.030 - Convenience markets.

A. Purpose. This section establishes standards for convenience markets in order to:

1. Ensure the compatibility of convenience markets with neighboring commercial and residential land uses;

2. Minimize potential negative impacts from convenience markets on adjacent land uses; and

3. Require new convenience markets to incorporate crime prevention measures to protect the public health, safety, and welfare.

~~B. Separation Between Convenience Markets.~~

~~1. A new convenience market shall be located a minimum of one thousand feet from an existing or approved convenience market except as allowed by Paragraph 2 below. The distance between convenience markets shall be measured as the straight-line distance between the exterior walls of the market structures.~~

~~2. The city may allow exceptions to the separation requirement in Paragraph 1 above for:~~

~~a. One convenience market (regardless of size) on property adjacent to the interchange of Highway 101 and Dunne Avenue, Tennant Avenue, and Cochrane Road; and~~

~~b. Convenience markets with three hundred square feet or less of area devoted to sales and display.~~

B~~C~~. Separation from Schools. A new convenience market shall be located a minimum of one thousand feet from the boundary of an existing school or a proposed school site as designated by the Morgan Hill Unified School District.

~~D. Restrooms and Automotive Services. Convenience markets which also sell automotive fuels shall provide the following additional services without charge:~~

~~1. One restroom for women and one restroom for men available to customers and employees. If restroom entrances open directly to the outside of the building, the restroom entrances shall be screened from public view.~~

~~2. Hoses conveying air and water for the service of automotive vehicles available for public uses in locations approved by the development services department.~~

~~E~~C. Loiter Control.

1. Public pay telephones on an exterior wall of the convenience market or anywhere on the site shall not allow incoming calls. Public telephones allowing incoming calls are allowed within the building interior.

2. Video games may not be installed or operated on the premises of the convenience market.

3. The police department may require additional loiter control measures as conditions of approval for the convenience market conditional use permit.

D~~F~~. Crime Prevention Measures.

1. The exterior of the convenience market shall be illuminated during all hours of darkness during which the market is open for business. Exterior illumination shall allow law enforcement personnel to easily identify persons within front entry areas, adjacent public sidewalks, parking areas, throughways, and alleys under control by the convenience market. Illumination shall be located and designed to minimize interference with the quiet enjoyment of nearby residential properties.

2. Commercial alarm systems and video security cameras shall be installed and maintained within the building to the specifications of the police department as required by the conditional use permit.

3. The police department may require additional crime prevention measures as conditions of approval for the convenience market conditional use permit.

4. Persons under the age of eighteen who are employed in a capacity which allows for selling of alcoholic beverages must be under the continual supervision of a person twenty-one years of age or older.

~~G~~E. ~~Concurrent~~ Sale of Alcoholic Beverages ~~and Automotive Fuels. If concurrent sale of alcoholic beverages and automotive fuels are proposed in conjunction with the convenience market use, the following additional requirements shall apply as specified in Section 23790.5 of the Business and Professions Code:~~

1. No alcoholic beverages shall be displayed within ten feet of the cash register or front door unless located within a permanently affixed cooler.

2. No display or sale of alcoholic beverages shall be made from an ice tub.

3. No alcoholic beverage advertising ~~shall be located on fuel pump islands and no advertising for alcoholic beverages~~ shall be located on buildings or windows.

4. Employees on duty between the hours of ten p.m. and two a.m. who sell beer or wine shall be at least twenty-one years of age.

Section 3. Sections 18.92.031 (Liquor Store) and 18.92.032 (Convenience Markets with Fuel and Service Stations) is hereby added to Chapter 18.92 (Supplemental Standards) of Title 18 (Zoning) to read as follows :

18.92.031 – Liquor Store

A. Purpose. This section establishes standards for liquor stores in order to:

1. Ensure the compatibility, concentration of liquor stores with neighboring commercial and residential land uses;

2. Minimize potential negative impacts from liquor stores on adjacent land uses; and

3. Require new liquor stores to incorporate crime prevention measures to protect the public health, safety, and welfare.

B. Separation Between liquor stores.

1. A new liquor store shall be located a minimum of one thousand feet from an existing or approved liquor store except as allowed by Paragraph 2 below. The distance between liquor stores shall be measured as the straight-line distance between the exterior walls of the market structures.

2. The city may allow exceptions to the separation requirement in Paragraph 1 above for one liquor store (regardless of size) per interchange on property adjacent to the

interchange of Highway 101 and Dunne Avenue, Tennant Avenue, and Cochrane Road; and

C. Separation from Schools. A new liquor store shall be located a minimum of one thousand feet from the boundary of an existing school or a proposed school site as designated by the Morgan Hill Unified School District.

D. Loiter Control.

1. Public pay telephones on an exterior wall of the liquor store or anywhere on the site shall not allow incoming calls. Public telephones allowing incoming calls are allowed within the building interior.

2. Video games may not be installed or operated on the premises of the liquor store.

3. The police department may require additional loiter control measures as conditions of approval for the liquor store conditional use permit.

E. Crime Prevention Measures.

1. The exterior of the liquor store shall be illuminated during all hours of darkness during which the market is open for business. Exterior illumination shall allow law enforcement personnel to easily identify persons within front entry areas, adjacent public sidewalks, parking areas, throughways, and alleys under control by the liquor store. Illumination shall be located and designed to minimize interference with the quiet enjoyment of nearby residential properties.

2. Commercial alarm systems and video security cameras shall be installed and maintained within the building to the specifications of the police department as required by the conditional use permit.

3. The police department may require additional crime prevention measures as conditions of approval for the liquor store conditional use permit.

4. Persons under the age of eighteen who are employed in a capacity which allows for selling of alcoholic beverages must be under the continual supervision of a person twenty-one years of age or older.

18.92.032 - Convenience Markets with Fuel and Service Stations

A. Purpose. This section establishes standards for convenience markets which also have fuel and service stations, as described in Section 18.124.040 Q. 1., in order to:

1. Ensure the compatibility, concentration of convenience markets with fuel and service stations with neighboring commercial and residential land uses;

2. Minimize potential negative impacts from convenience markets with fuel and service stations on adjacent land uses; and

3. Require new convenience markets with fuel and service stations to incorporate crime prevention measures to protect the public health, safety, and welfare.

B. Separation from Schools. A new convenience market shall be located a minimum of one thousand feet from the boundary of an existing school or a proposed school site as designated by the Morgan Hill Unified School District.

C. Restrooms. Convenience markets which also sell automotive fuels shall provide the following additional services without charge:

1. One restroom for women and one restroom for men available to customers and employees. If restroom entrances open directly to the outside of the building, the restroom entrances shall be screened from public view.

2. Hoses conveying air and water for the service of automotive vehicles available for public uses in locations approved by the development services department.

D. Loiter Control.

1. Public pay telephones on an exterior wall of the convenience market fuel and service stations or anywhere on the site shall not allow incoming calls. Public telephones allowing incoming calls are allowed within the building interior.

2. Video games may not be installed or operated on the premises of the convenience market with fuel and service stations.

3. The police department may require additional loiter control measures as conditions of approval for the convenience market with fuel and service stations conditional use permit.

E. Crime Prevention Measures.

1. The exterior of the convenience market with fuel and service stations shall be illuminated during all hours of darkness during which the market is open for business. Exterior illumination shall allow law enforcement personnel to easily identify persons within front entry areas, adjacent public sidewalks, parking areas, throughways, and alleys under control by the convenience market. Illumination shall be located and designed to minimize interference with the quiet enjoyment of nearby residential properties.

2. Commercial alarm systems and video security cameras shall be installed and maintained within the building to the specifications of the police department as required by the conditional use permit.

3. The police department may require additional crime prevention measures as conditions of approval for the convenience market with fuel and service stations conditional use permit.

4. Persons under the age of eighteen who are employed in a capacity which allows for selling of alcoholic beverages must be under the continual supervision of a person twenty-one years of age or older.

F. Concurrent Sale of Alcoholic Beverages and Automotive Fuels. If concurrent sale of alcoholic beverages and automotive fuels are proposed in conjunction with the convenience market with fuel and service stations use, the following additional requirements shall apply as specified in Section 23790.5 of the Business and Professions Code:

1. No alcoholic beverages shall be displayed within ten feet of the cash register or front door unless located within a permanently affixed cooler.
2. No display or sale of alcoholic beverages shall be made from an ice tub.
3. No alcoholic beverage advertising shall be located on fuel pump islands and no self-illuminated advertising for alcoholic beverages shall be located on buildings or windows.
4. Employees on duty between the hours of ten p.m. and two a.m. who sell beer or wine shall be at least twenty-one years of age.

G. A Liquor Store with a fuel and service station is not a permitted use.

H. Parking

1. For convenience markets permitted prior to January 1, 2019, the planning commission may consider a reduction in on-site parking as set forth in section 18.72.060.K. Any reductions in on-site parking requires planning commission approval through a conditional use permit.

Section 4. Subsection P (Retail) of Section 18.124.040 (Commercial Uses) Of Chapter 18.124 (Land Use Definitions) of Title 18 (Zoning) is hereby amended to read as follows (additions in underline, deletions in ~~strikeout~~):

P. Retail.

1. Building Materials. An establishment engaged in the retail sale of lumber and other building materials primarily to contractors and home builders.
2. Convenience Markets. A retail establishment which contains less than five thousand square feet of gross floor area allocated for the sale of groceries, staples, dairy products, sundry items, tobacco products and/or alcoholic beverages. ~~Includes liquor stores where all or the majority of the floor area for retail sales is allocated for the sale of alcoholic beverages.~~ Excludes full-service grocery stores containing less than five thousand square feet of gross floor area where at least ten percent of the floor area is allocated for the sale of fresh meat, seafood and fresh produce products.

3 Convenience Market with Fuel and Service Station. A retail business establishment that meets the combined definitions of Convenience Markets (See section 18.124.040.P.2) and Fuel and Service Stations (See Section 18.124.040.Q.1).

4. General Retail. Stores and shops selling merchandise to the general public. Includes grocery stores, specialty food markets, drug stores, general merchandise stores, department stores, clothing stores, pet stores, small hardware stores, cellular phone sales and service, florists, arts and crafts galleries, and other similar retail establishments. Excludes "building materials," "convenience markets," "home improvement centers," and "large commodity retail."

~~4~~5. Goods Produced On-Site. A retail establishment selling goods produced by a related on-site manufacturing use.

~~5~~6. Home Improvement Centers. A retail establishment which carries a full line of building materials, appurtenances and decorator items primarily for homeowners (not contractors) to improve and maintain individual dwellings. Excludes building supply yards and lumberyards for contractors and home builders (see "building materials").

~~6~~7. Large Commodity Retail. A retail use where more than seventy-five percent of the gross floor area is used for display, sales, and related storage of bulky commodities, and which typically generate a demand for fewer parking spaces than do other types of retail uses. Includes retail sail of carpeting and floor covering; catalog and mail order sales; construction equipment and machinery; garden and farm equipment; heating, ventilating, air conditioning, and other mechanical equipment and supplies; kitchen, bathroom and plumbing appliances, equipment and supplies; lumber and building materials; office furniture, equipment and machinery, including computers; and household furniture.

8. Liquor Store. A retail establishment where all or the majority of the floor area for retail sales is allocated for the sale of alcoholic beverages (which includes beer, wine, and distilled spirits) for off-premises consumption.

Section 5. **Severability.** Should any provision of this ordinance be deemed unconstitutional or unenforceable by a court of competent jurisdiction, such provision shall be severed from the ordinance, and such severance shall not affect the remainder of the ordinance.

Section 6. **Effective Date; Posting**. This Ordinance shall take effect on ____ _____, 2019. The City Clerk is hereby directed to publish this Ordinance or a summary thereof pursuant to Government Code Section 36933.

This ordinance was introduced at a meeting of the City Council held on the _____ day of _____, 2019, and adopted at a meeting held on the _____ day of _____, 2019, and said ordinance was duly passed and adopted in accordance with law by the following vote:

AYES: COUNCIL MEMBERS:

NOES: COUNCIL MEMBERS:

ABSTAIN: COUNCIL MEMBERS:

ABSENT: COUNCIL MEMBERS:

ATTEST: **APPROVED:**

_____ _____
IRMA TORREZ, City Clerk RICHARD CONSTANTINE, Mayor

CERTIFICATE OF THE CITY CLERK

I, IRMA TORREZ, CITY CLERK OF THE CITY OF MORGAN HILL, CALIFORNIA, do hereby certify that the foregoing is a true and correct copy of Ordinance No. , New Series, adopted by the City Council of the City of Morgan Hill, California at their regular meeting held on the ____ day of _____, 2019.

WITNESS MY HAND AND THE SEAL OF THE CITY OF MORGAN HILL.

DATE: _____ _____
IRMA TORREZ, City Clerk

ATTACHMENT 2

City of Morgan Hill - Current Ordinance

18.92.030 - Convenience markets.

A. Purpose. This section establishes standards for convenience markets in order to:

1. Ensure the compatibility of convenience markets with neighboring commercial and residential land uses;
2. Minimize potential negative impacts from convenience markets on adjacent land uses; and
3. Require new convenience markets to incorporate crime prevention measures to protect the public health, safety, and welfare.

B. Separation Between Convenience Markets.

1. A new convenience market shall be located a minimum of one thousand feet from an existing or approved convenience market except as allowed by Paragraph 2 below. The distance between convenience markets shall be measured as the straight-line distance between the exterior walls of the market structures.
2. The city may allow exceptions to the separation requirement in Paragraph 1 above for:
   a. One convenience market (regardless of size) on property adjacent to the interchange of Highway 101 and Dunne Avenue, Tennant Avenue, and Cochrane Road; and
   b. Convenience markets with three hundred square feet or less of area devoted to sales and display.

C. Separation from Schools. A new convenience market shall be located a minimum of one thousand feet from the boundary of an existing school or a proposed school site as designated by the Morgan Hill Unified School District.

D. Restrooms and Automotive Services. Convenience markets which also sell automotive fuels shall provide the following additional services without charge:

1. One restroom for women and one restroom for men available to customers and employees. If restroom entrances open directly to the outside of the building, the restroom entrances shall be screened from public view.
2. Hoses conveying air and water for the service of automotive vehicles available for public uses in locations approved by the development services department.

E. Loiter Control.

1. Public pay telephones on an exterior wall of the convenience market or anywhere on the site shall not allow incoming calls. Public telephones allowing incoming calls are allowed within the building interior.
2. Video games may not be installed or operated on the premises of the convenience market.
3. The police department may require additional loiter control measures as conditions of approval for the convenience market conditional use permit.

F. Crime Prevention Measures.

1. The exterior of the convenience market shall be illuminated during all hours of darkness during which the market is open for business. Exterior illumination shall allow law enforcement personnel to easily identify persons within front entry areas, adjacent public sidewalks, parking areas, throughways, and alleys under control by the convenience market. Illumination shall be located and designed to minimize interference with the quiet enjoyment of nearby residential properties.

2. Commercial alarm systems and video security cameras shall be installed and maintained within the building to the specifications of the police department as required by the conditional use permit.

3. The police department may require additional crime prevention measures as conditions of approval for the convenience market conditional use permit.

4. Persons under the age of eighteen who are employed in a capacity which allows for selling of alcoholic beverages must be under the continual supervision of a person twenty-one years of age or older.

G. Concurrent Sale of Alcoholic Beverages and Automotive Fuels. If concurrent sale of alcoholic beverages and automotive fuels are proposed in conjunction with the convenience market use, the following additional requirements shall apply as specified in Section 23790.5 of the Business and Professions Code:

1. No alcoholic beverages shall be displayed within ten feet of the cash register or front door unless located within a permanently affixed cooler.

2. No display or sale of alcoholic beverages shall be made from an ice tub.

3. No alcoholic beverage advertising shall be located on fuel pump islands and no advertising for alcoholic beverages shall be located on buildings or windows.

4. Employees on duty between the hours of ten p.m. and two a.m. who sell beer or wine shall be at least twenty-one years of age.

(Ord. No. 2277 N.S., § 5(Exh. A), 6-6-2018)

CITY OF MORGAN HILL

PLANNING COMMISSION STAFF REPORT
MEETING DATE: November 12, 2019

PREPARED BY: Terry Linder, Senior Planner
APPROVED BY: Jennifer Carman, Community Development Director

SIGNS019-0024: E. MAIN-THE RANCH: AMENDMENT TO UNIFORM SIGN PROGRAM TO ADD A SECOND MONUMENT SIGN. THE PROPERTY, IDENTIFIED BY ASSESSOR PARCEL NUMBER 726-22-054, IS LOCATED ON THE NORTHWEST CORNER OF THE INTERSECTION OF EAST MAIN AVENUE AND BUTTERFIELD BOULEVARD.

RECOMMENDATION(S)

1. Open/close public hearing; and,
2. Approve resolution amending the Master Sign Program for The Ranch.

PROJECT SUMMARY:

1. Location: Northwest corner of the intersection of Butterfield Blvd. and E. Main Ave. (APN 726-22-054)
2. Site Area: 4.8 Acres
3. General Plan: Industrial
4. Zoning: Light Industrial

BACKGROUND:

The development known as “The Ranch” was completed in 2001. It consists of three, multi-tenant buildings (135, 155 & 175 E. Main), totaling 65,449 square feet. The uses within The Ranch include research and development, mortgage and title company, and real estate and development services. In 2001 a Master Sign Program was approved (USP-00-08) for The Ranch which provided specifications for the size, material, color and location of individual tenant signs, building addresses and monument sign. A copy of the approved 2001 Master Sign Program for The Ranch has been provided (Attachment 3).

PROJECT DESCRIPTION:

Louie Ranch LLC submitted an application to amend the Master Sign Program for the project site on October 3, 2019. The proposal includes an additional monument sign, and specifies that the new sign would:

1. Incorporate all previous design requirements shown in the current Master Sign Program and shows all dimensions previously approved in the Master Sign Program;

2. Provides street branding for the current tenants within the property; and,

3. Allows tenants to capture the growth seen within the City.

Complete details have been provided in the applicant’s proposal dated July 24, 2019 (Attachment 4).

ANALYSIS:

The proposed amendment to the Master Sign Program has been analyzed with respect to consistency with the: 1) General Plan; 2) Zoning Ordinance; and 3) California Environmental Quality Act.

1. **General Plan**

The following General Plan goals and policies apply to the proposed sign program amendment:

- Policy CNF-8.1 High Quality Design. Require all development to feature high quality design that enhances the visual character of Morgan Hill.

- Policy ED-3.6 Business Friendly Environment. Support and align policies and fee structures around a business first culture that welcomes a range of sectors that employ people across a range of wage levels.

2. **Zoning Ordinance**

Pursuant to Morgan Hill Municipal Code Section 18.88.110, a Master Sign Program is required for any non-residential development with four or more tenants. The purpose of a Master Sign Program is to provide a coordinated approach to signage for multi-tenant developments. The Planning Commission shall consider the following design standards when considering approval of the amendment to the Master Sign program:

Master Sign Program Design Standards

a. Master Sign Programs shall feature a unified and coordinated approach to the materials, color, size, type, placement and general design of signs proposed for a project or property. Master Sign Programs may allow for variety in the design of individual signs provided that the signs contribute to a consistent visual theme within the property.

   The program provides standards for all new building tenant signage, identifying the allowed materials, size, type and placement which will provide a unified look throughout the shopping center. The program allows for flexibility in colors to allow the signage to match the new business colors. The materials and placement will complement the architecture of the center.

b. A Master Sign Program may deviate from standards contained in this chapter relating to permitted sign height, number of signs, sign area, and type of sign. A Master Sign Program may not allow prohibited signs as defined in Section 18.88.050 (Prohibited Signs).

Over the last 17 years numerous administrative sign permits have been issued for The Ranch; each consistent with the 2001 approved Master Sign Program. The existing 36.8 square foot monument sign located at the corner of Butterfield Boulevard and East Main was installed in 2001. The copy on the existing monument sign states the name of the development and the address for each building located within The Ranch.

Existing monument sign.

The proposed 36.8 square foot second monument sign would provide ten individual identification spaces for tenants and would front Butterfield Boulevard. The applicant states the proposed multi-space sign would provide street branding for the current tenants and allow tenants to capture the growth within the City.

Morgan Hill Municipal Code Section 18.88.100, Standards for Specific Sign Types, establishes standards for specific sign types where such signs are permitted. Subsection F 1-6 addresses monument signs. The current proposal's compliance is discussed after each of the following monument sign standards:

a. Maximum Number: one per street frontage or one per vehicle access point from street, whichever is greater.

Property has two frontages; each with a vehicle access point, so two monument signs would be permitted.

b. Maximum Height: eight feet.

The proposed sign is 4.6 feet tall.

c. Maximum Area: one-half of one square foot per lineal foot of property street frontage up to fifty square feet.

Property has two frontages; 420.5 feet on East Main and 406 feet on Butterfield Boulevard allowing each frontage the maximum fifty square feet. The existing and proposed monument signs are each 36.8 square feet.

d. Setbacks: six feet minimum from vehicle access ways and three feet minimum from property lines.

The proposed monument sign is 96 feet south of the nearest vehicle access on Butterfield Boulevard and is setback 15 feet from property line.

e. Minimum Separation: Monument signs shall be separated a minimum of seventy-five feet from monument signs on abutting properties and one hundred feet from monument signs on the same property.

Proposed monument sign will be 100 feet from the existing monument sign at the intersection of East Main Avenue and Butterfield Boulevard and approximately 350 feet away from the existing monument sign on the adjacent industrial property to the north.

f. Landscaping: The sign base area shall be located in an irrigated landscaped planting area.

The second monument sign is proposed within an existing lawn area along Butterfield Boulevard.

Proposed sign location on Butterfield looking south toward E. Main Ave.

Attached is a copy of the amended Master Sign Program incorporating the second monument sign. Added text is shown in red italic, an exhibit detailing the second monument sign has been added and the site maps have been updated to show the location of the second monument sign. The proposed monument sign is consistent with the size, design, color and texture of the existing monument sign and is also consist with Morgan Hill Municipal Code requirements pertaining to monument signs and sign programs.

Once the Master Sign Program is approved, signs consistent with the standards and specifications would be allowed with an Administrative Sign Permit. Any sign not addressed by the Master Sign Program would be required to comply with the City of Morgan Hill Sign Regulations (Chapter 18.88).

The proposed amended Master Sign Program has been provided (Attachment 2). A Resolution has been provided for Planning Commission adoption of the amended Master Sign Program.

3. **California Environmental Quality Act (CEQA):**

The Master Sign Program is Categorically Exempt from environmental review pursuant to Section 15311 (Accessory Structures), which allows construction or replacement of minor structures accessory to commercial facilities, including but not limited to on-premise signs.

Community Engagement:
The proposed project was publicly noticed (mailing to property owners within 300 feet of the project and newspaper legal noticing) of the minimum 10-day period and a sign has been posted at the property location pursuant to the Zoning Code requirements.

LINKS/ATTACHMENTS:
1. PC Resolution
2. Revised Mstr Sign Program Exhibit A

3. Master Sign Program 2001
4. The Ranch - MSP Submittal Letter 7.24.19

RESOLUTION NO. __-

A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF MORGAN HILL APPROVING AN AMENDMENT TO THE MASTER SIGN PROGRAM ESTABLISHED FOR THE LIGHT INDUSTRIAL DEVELOPMENT KNOWN AS "THE RANCH" LOCATED ON THE NORTHWEST CORNER OF THE INTERSECTION OF EAST MAIN AVENUE AND BUTTERFIELD BOULEVARD. THE AMENDMENT ALLOWS FOR A MONUMENT SIGN TO BE PLACED ON THE BUTTERFIELD BOULEVARD PROJECT FRONTAGE. (APN 726-22-054)

WHEREAS, Section 18.88.110 C of the Morgan Hill Municipal Code requires Planning Commission approval of a master sign program.

WHEREAS, on October 3, 2019, a request was received to amend the Master Sign Program established for "The Ranch" to allow a monument sign to be placed on the Butterfield Boulevard frontage in addition to the existing monument sign located on the corner of East Main Avenue and Butterfield Boulevard.

WHEREAS, such request was considered by the Planning Commission at its regular meeting of November 12, 2019, (SIGN2019-0024: E. Main-The Ranch); and

WHEREAS, testimony received at a duly noticed public hearing, along with exhibits and drawings and other materials have been considered in the review process.

NOW, THEREFORE, THE MORGAN HILL PLANNING COMMISSION DOES RESOLVE AS FOLLOWS:

SECTION 1. The proposed master sign program amendment is consistent with the Zoning Ordinance and the General Plan.

SECTION 2. The proposed amendment will not be detrimental to the public interest, health, safety, convenience, or welfare of the city.

The master sign program amendment will provide a coordinated design and a consistent visual theme as required in Section 18.88.110 of the Municipal Code.

SECTION 3. The project approved pursuant hereto is exempt from further environmental review per California Environmental Quality Act Section 15311, Accessory Structures.

SECTION 4. The Planning Commission finds that the master sign program amendment is consistent with the criteria specified in Chapter 18.88 of the Morgan Hill Municipal Code as shown in attached exhibit A.

SECTION 5. Application SIGN2019-0024: E. Main-The Ranch for the master sign

Attachment: PC Resolution [Revision 1] (2518 : Sign2019-0024)

program amendment is approved.

PASSED AND ADOPTED THIS 12th DAY OF NOVEMBER, 2019, AT A REGULAR MEETING OF THE PLANNING COMMISSION BY THE FOLLOWING VOTE:

AYES: COMMISSIONERS:

NOES: COMMISSIONERS:

ABSTAIN: COMMISSIONERS:

ABSENT: COMMISSIONERS:

ATTEST: **APPROVED:**

Jenna Luna, Deputy City Clerk **Juan Miguel Munoz-Morris, Chair**

A F F I D A V I T

I, , applicant, hereby agree to accept and abide by the terms and conditions specified in this resolution.

_____

, Applicant
(Type Name)

Date: _____

Attachment: PC Resolution [Revision 1] (2518 : Sign2019-0024)

Exhibit A
Resolution No. ____

THE RANCH

135, 155 AND 175 E. MAIN AVENUE
MORGAN HILL, CALIFORNIA

MASTER SIGN PROGRAM

Revised per Sign2019-0024: Main-The Ranch

~~1. OVERALL VIEW~~
~~2. DESCRIPTION OF THE SIGNS FOR THE RANCH~~
~~3. INDIVIDUAL FLOOR PLANS~~
4. ~~SIGN CRITERIA LEASE ADDENDUM~~

1. DESCRIPTION OF THE SIGNS FOR THE RANCH
2. INDIVIDUAL FLOOR PLANS
3. SIGN CRITERIA
4. MONUMENT SIGNS 1 & 2 DETAILS
5. MONUMENT SIGN LOCATIONS
6. WALL SIGN DETAILS
7. MONUMENT, ADDRESS AND TENANT ADVERTISING SIGN LOCATIONS

Attachment: Revised Mstr Sign Program Exhibit A (2518 : Sign2019-0024)

Exhibit A
Resolution No. ____

DESCRIPTION OF THE SIGNS FOR THE RANCH.

MONUMENT SIGNS

Monument Sign 1: Mounted in concrete diagonally so that it can be seen from both E. Main Avenue and Butterfield Boulevard. It will be 55" high and 96" long and have lettering saying "The Ranch" and "135,155, 175 E. Main Avenue" See the Exhibits "~~The Ranch~~ Monument Sign *Locations*".

The total square footage of the sign is under 37 SF.

Monument Sign 2: Mounted in concrete perpendicular to Butterfield Boulevard so that it can be seen from north and south bound traffic. It will be 55" high and 96" long and have ten individual spaces to identify businesses located with The Ranch. Lettering saying "The Ranch" shall occupy the arch area at the top of the sign. See the Exhibit "Monument Sign Locations".

The total square footage of the sign is under 37 SF.

ADDRESS SIGNS

135 AND 155 E. MAIN AVENUE

Attached to the concrete panels as shown. 20" numbers in plastic, raised, lettering in a dark brown color (matching the dark brown anodized frames of the windows). These would be numbers only. They will be mounted 16' above grade. See Exhibit "The Ranch-Wall Signage".

175 E. MAIN AVENUE

8" vinyl lettering over the entrances to the building.

TENANT ADVERTISING SIGNS.

These would appear on 135 and 155 E. Main Avenue buildings only. The frontage of each of the units in these identical buildings is 75', 66', 48' and 47' as shown in the attached, larger floor plan. The permitted signs would be plastic, pin mounted, raised letters in a dark brown color only. The letters (and any logos) would be a maximum of 18" high and the total sign would not be permitted to be longer than 12'. In all cases the total square footage would be less than the 1.5 SF allowed per frontage foot—the smallest bay is 47' and would permit over 60SF of signage. Our largest sign will be 12' X 1.5' or 18 SF. See Exhibit "The Ranch-Wall Signage".

These signs will be installed at 16' above grade.

WINDOW SIGNS

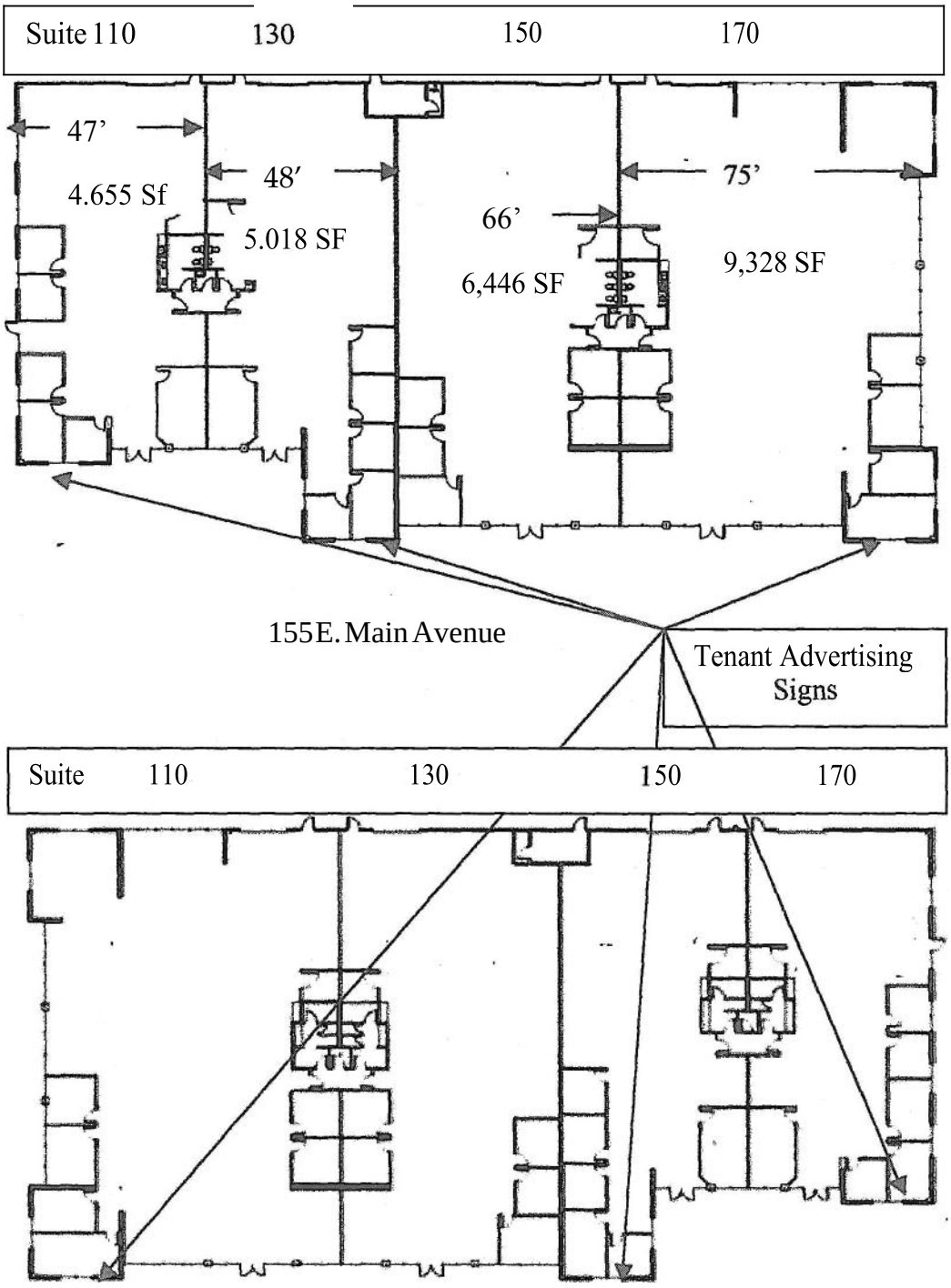
Window signs will be permitted but shall contain only the company's name and logo. They shall be limited to 12 SF. 12 SF is much smaller than 25% of any possible window space required in the Code.

~~SIGN CRITERIA LEASE ADDENDUM~~

~~Attached.~~

Attachment: Revised Mstr Sign Program Exhibit A (2518 : Sign2019-0024)

Exhibit A
Resolution No. _____



135 E. Main Avenue. These two buildings are identical—just mirror images.

Attachment: Revised Mstr Sign Program Exhibit A (2518 : Sign2019-0024)

Exhibit A
Resolution No. ____

SIGNAGE CRITERIA

SIGN CRITERIA.

All signs shall be in compliance with the City of Morgan Hill Sign Code, and all tenants shall apply for and obtain approval of a sign copy change and building permit prior to installation of tenant signs.

Tenant's occupying Suites 110, 150 and 170 of 135 E. Main Avenue and Suites 110, 130 and 170 of 155 E. Main Avenue shall have the right to install Building Mounted exterior signage. Tenant's occupying Suite 130 of 135 E. Main Avenue and Suite 150 of 155 E. Main Avenue and all tenants of 175 E. Main Avenue shall have window signs only.

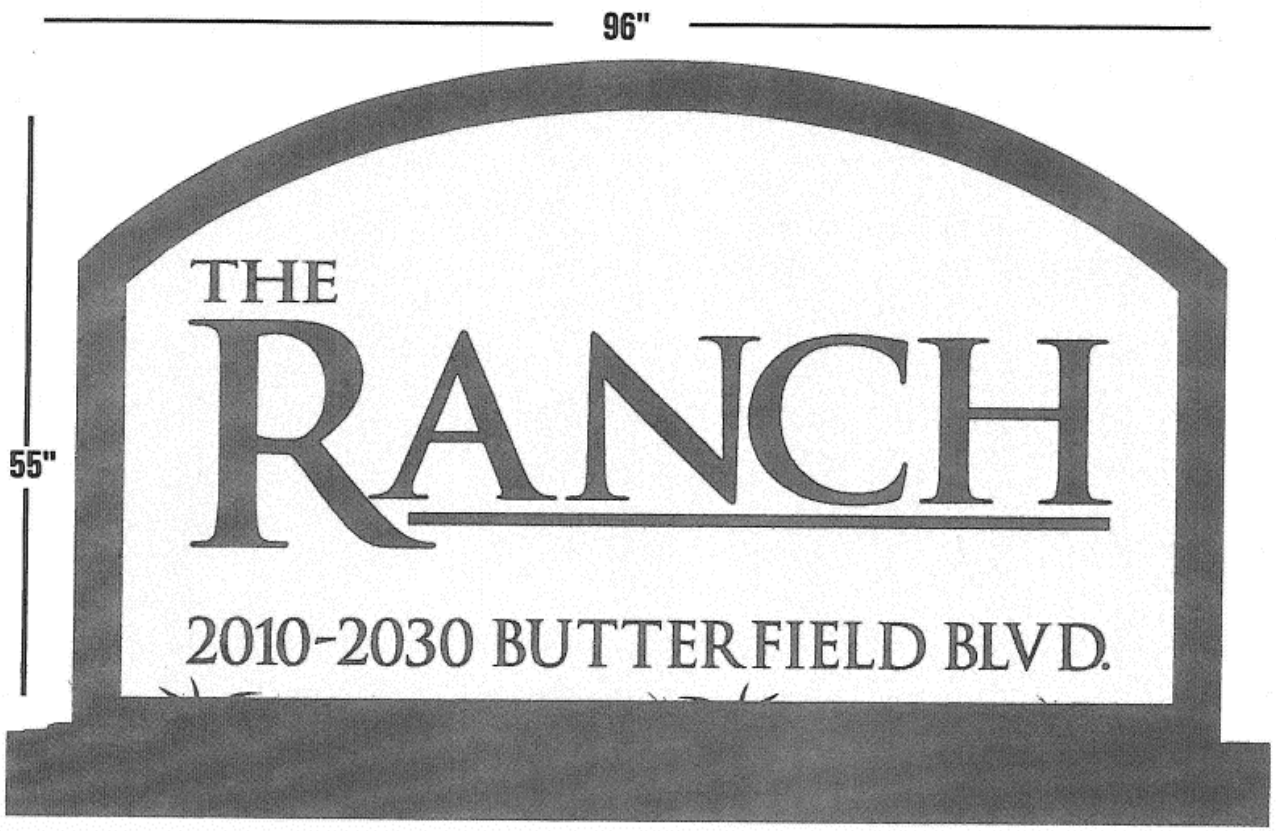
The content of all signs is limited to the Corporate or Company name, Logo, Trademark, and/or Division Name. No description of products or services, slogans, phone numbers, banners or any other type of sign is permitted.

1. Building Mounted Signs; Front of Building. Building Mounted Signs shall not exceed 12' in total length.
    a. All signs shall be individually routed or formed letters that are pin mounted with 3/4' spacers so that they "float off" the wall. The signs are to be centered on the panel directly adjacent the main entrance. All signs must be painted Arion 08 brown.
    b. Cut out or routed 18" tall letters are the standard for the building. Where the name is upper and lower case, the upper case shall be 18". No illuminated signs will be allowed.
    c. Materials such as aluminum, acrylic, and expanded PVC (brand names commonly called Celtec, Sintra, Komatex, Trovicel) are acceptable.
    d. All letters and cutouts over 2" tall will be made from materials which are a minimum of 1/4' thick and a maximum of 3/4' thick.
2. Building Mounted Shipping and Receiving Signs.
    a. One sign is permitted for every shipping entrance. It shall be located on the rear personnel door.
    b. The sign is a maximum size of 18" wide and 12" tall.
    c. Sign shall be made of 1/16' aluminum with vinyl letters.
3. Glass Mounted Signs: Sign on the Windows.
    a. Vinyl signs on the front door or the front windows are allowed. They shall be the lesser of 12 SF.
    b. Front and rear address numbers are provided by the Landlord. These cannot be changed without written approval from the Landlord.
    c. No electric signs are allowed in any exterior window

Attachment: Revised Mstr Sign Program Exhibit A (2518 : Sign2019-0024)

The RANCH - MONUMENT SIGN 1
SOUTH EAST CORNER

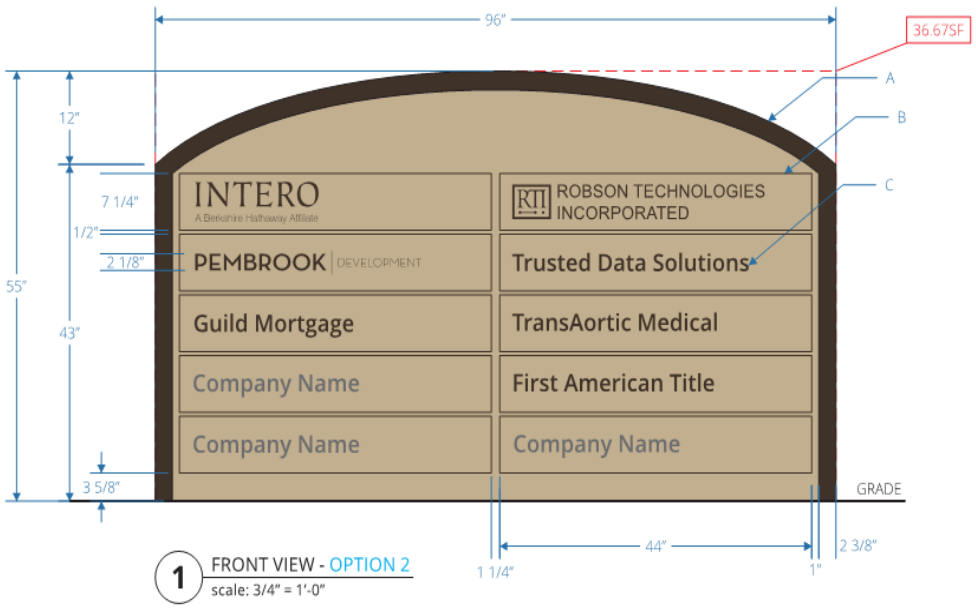
TEXTURE COAT METAL
WITH METAL POSTS
BONE PAINTED BACKGROUND
08 CALOM BROWN TEXT & BORDER



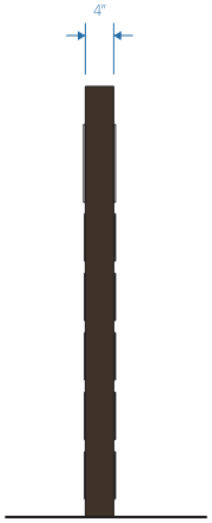
Pro Signs INC.
LOS GATOS 2000
15330 Los Gatos Blvd.
Los Gatos, CA 95032
Tel. 408.358.1218
Fax. 408.358.1565
signs@prosigns.com

PROJECT:	APPROVED:	SALESPERSON:
CONTACT:	DATE:	CREATED BY:

Attachment: Revised Mstr Sign Program Exhibit A (2518 : Sign2019-0024)



1 FRONT VIEW - OPTION 2
scale: 3/4" = 1'-0"



2 SIDE VIEW
scale: 3/4" = 1'-0"

DESCRIPTION QTY: 1

A. 55"h x 96"w x 4"d aluminum, M1- stucco finished, cabinet with curved top, painted MAP C1-Antique White and C2- Brown

B. 1/8" aluminum tenant panel, painted C1-Antique White

C. vinyl tenant name, C2-Brown vinyl

The RANCH - MONUMENT SIGN 2
BUTTERFIELD FRONTAGE

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corporate SIGN SYSTEMS
408.292.1600
2464 De La Cruz Blvd., Santa Clara, CA 95050
www.corporatesigns.com

CLIENT
RITCHIE COMMERCIAL

PROJECT
THE RANCH
135-155-175 E. MAIN AVE.
MORGAN HILL

DRAWING / REVISION DATE
02/05/19 - YY
02/19/19 - YY
03/07/19 - YY
03/14/19 - YY
03/19/19 - YY
05/28/19 - YY

FILE NAME / LOCATION
Ritchie Commercial/ Drawings/ 29663 The Ranch Monument.cdr

ORDER NUMBER
29663

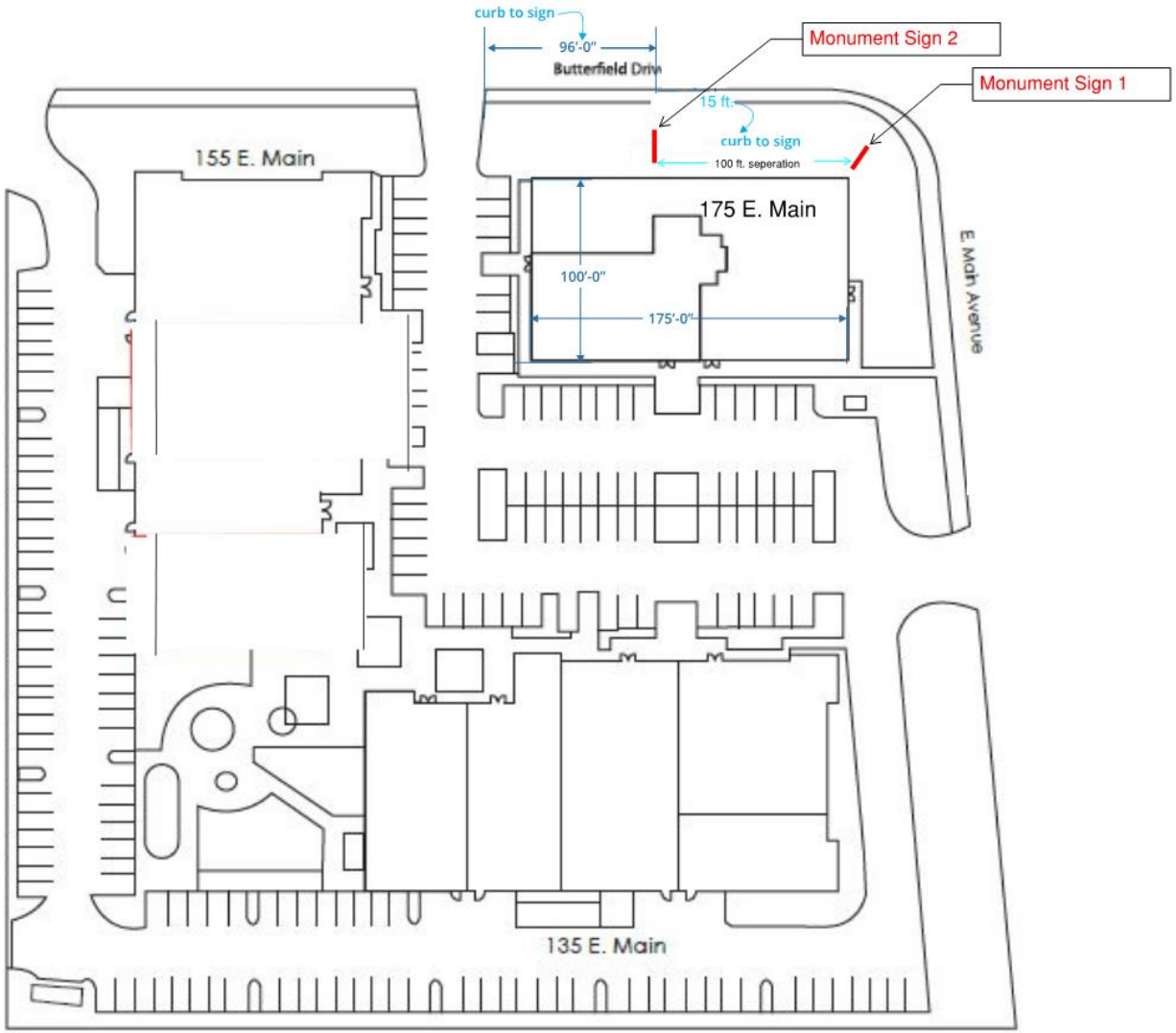
SIGN TYPE
A

SHEET TITLE
MONUMENT ID

All drawings as well as creative content are the property of Corporate Sign Systems. You must have written consent by a Corporate Sign Systems' Officer prior to disclosure, reproduction, or distribution outside of your organization.

PAGE NUMBER
4

Attachment: Revised Mstr Sign Program Exhibit A (2518 : Sign2019-0024)



N

Monument Sign Locations

1 SITE MAP
scale: scale: 1/64" = 1'-0"

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corporate SIGN SYSTE

408.292.1600
2464 De La Cruz Blvd., Santa Clara, CA 9505
www.corporatesigns.com

CLIENT
RITCHIE COMMERCIAL

PROJECT
THE RANCH
135-155-175 E. MAIN AVE.
MORGAN HILL

DRAWING / REVISION DATE
02/05/19 - YY
02/19/19 - YY
03/07/19 - YY
03/14/19 - YY
03/19/19 - YY
05/28/19 - YY

FILE NAME / LOCATION
Ritchie Commercial/ Drawings/ 2966
Ranch Monument.cdr

ORDER NUMBER
296

SIGN TYPE

SHEET TITLE
LOCATION PLAN

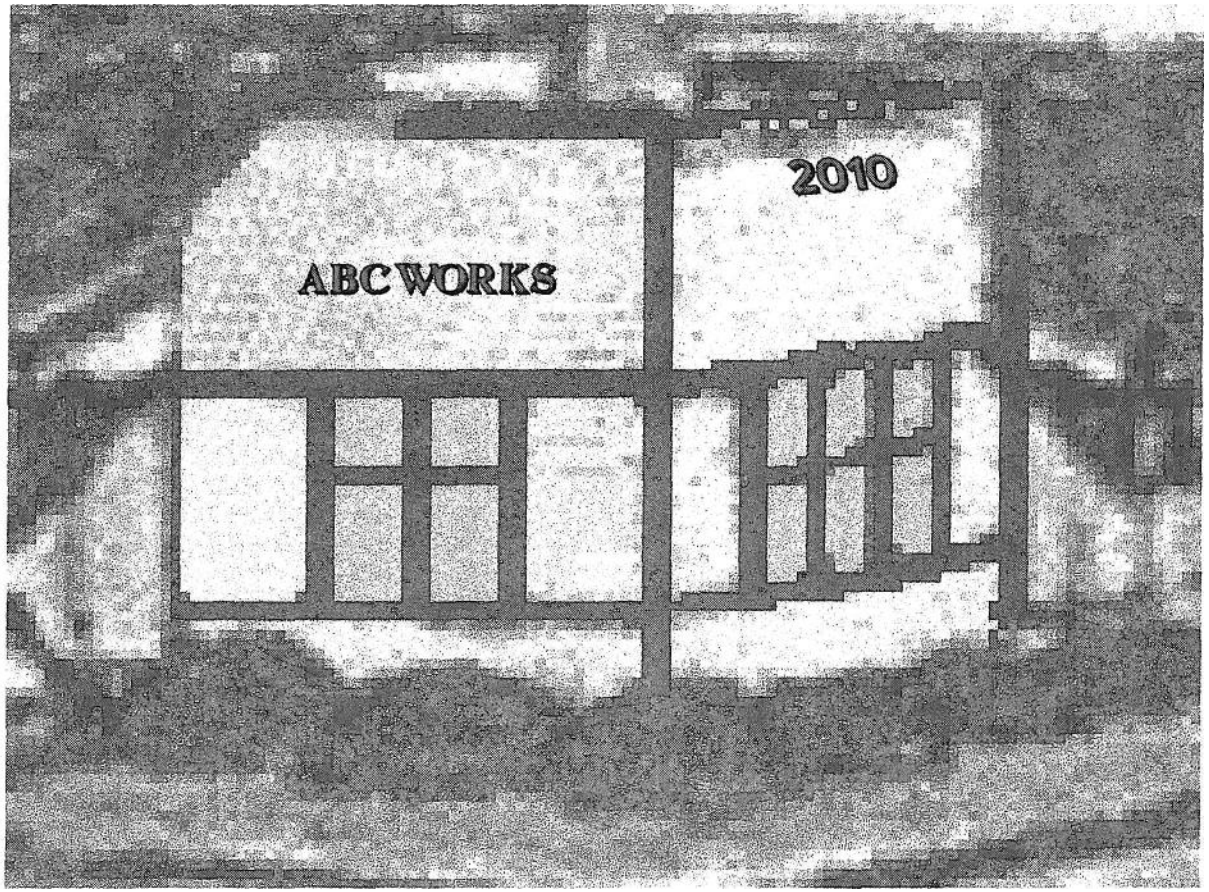
All drawings as well as creative content are the property of Corporate Sign Systems. You must have written consent by a Corporate Sign Systems' Officer pri to disclosure, reproduction, or distributi outside of your organization.

Attachment: Revised Mstr Sign Program Exhibit A (2518 : Sign2019-0024)

THE RANCH - WALL SIGNAGE

BUILDING LETTERS
NO TALLER THAN18"
IN 08 CALON
BROWN

ADDRESS NUMBER
20"NUMBERS IN
GEMINI CLEARVIEW
BOLD IN 08 CALON
BROWN

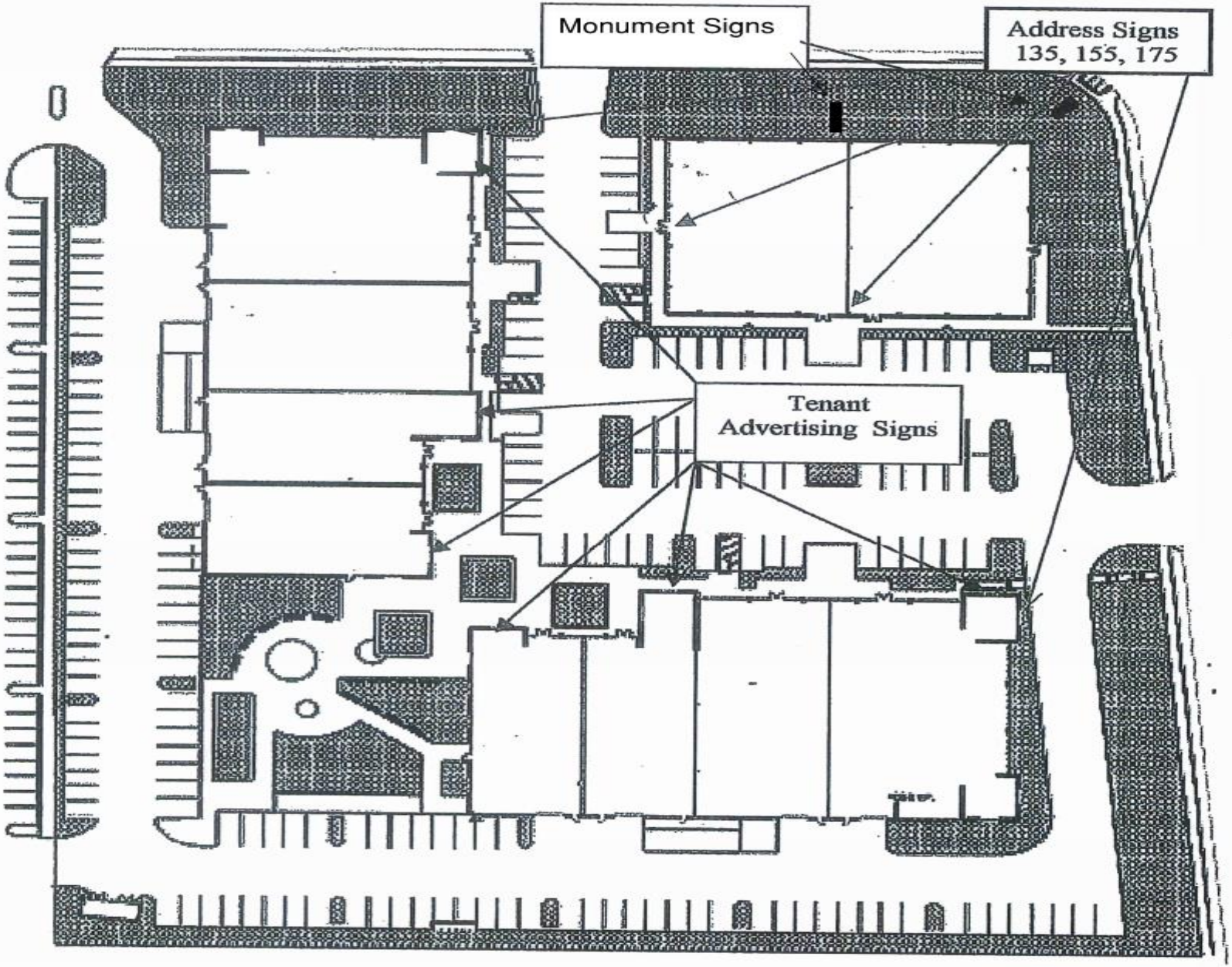


Pro Signs INC. 2000
LOS GATOS
15330 Los atos Blvd
Los Gatos A 95032
Tel. 408 58.1218
Fax. 408 58.1565
signs@pr igns.com

PROJECT:	APPROVED:	SALESPERSON.
CONTACT:	DATE:	CREATED BY:

Attachment: Revised Mstr Sign Program Exhibit A (2518 : Sign2019-0024)

OVERALL VIEW



Attachment: Revised Mstr Sign Program Exhibit A (2518 : Sign2019-0024)

Attachment: Revised Mstr Sign Program Exhibit A (2518 : Sign2019-0024)

THE RANCH

135, 155 AND 175 E. MAIN AVENUE
MORGAN HILL, CALIFORNIA

MASTER SIGN PROGRAM

1. OVERALL VIEW
2. DESCRIPTION OF THE SIGNS FOR THE RANCH
3. INDIVIDUAL FLOOR PLANS
4. SIGN CRITERIA LEASE ADDENDUM

APPROVED:
P Palletino 9/6/01

Attachment: Master Sign Program 2001 (2518 : Sign2019-0024)

DESCRIPTION OF THE SIGNS FOR THE RANCH.

MONUMENT SIGN.

Mounted in concrete diagonally so that it can be seen from both E. Main Avenue and Butterfield Boulevard. It will be 55" high and 96" long and have lettering saying "The Ranch" and "135,155, 175 E. Main Avenue" See the Exhibit "The Ranch-Monument Sign".

The total square footage of the sign is under 37 SF.

ADDRESS SIGNS.

135 AND 155 E. MAIN AVENUE.

Attached to the concrete panels as shown. 20" numbers in plastic, raised, lettering in a dark brown color (matching the dark brown anodized frames of the windows).. These would be numbers only. They will be mounted 16' above grade. See Exhibit "The Ranch-Wall Signage".

175 E. MAIN AVENUE.

8" vinyl lettering over the entrances to the building.

TENANT ADVERTISING SIGNS.

These would appear on 135 and 155 E. Main Avenue buildings only. The frontage of each of the units in these identical buildings is 75', 66', 48' and 47' as shown in the attached, larger floor plan. The permitted signs would be plastic, pin mounted, raised letters in a dark brown color only. The letters (and any logos) would be a maximum of 18" high and the total sign would not be permitted to be longer than 12'. In all cases the total square footage would be less than the 1.5 SF allowed per frontage foot.—the smallest bay is 47' and would permit over 60SF of signage. Our largest sign will be 12' X 1.5' or 18 SF. See Exhibit "The Ranch-Wall Signage".

These signs will be installed at 16' above grade.

WINDOW SIGNS.

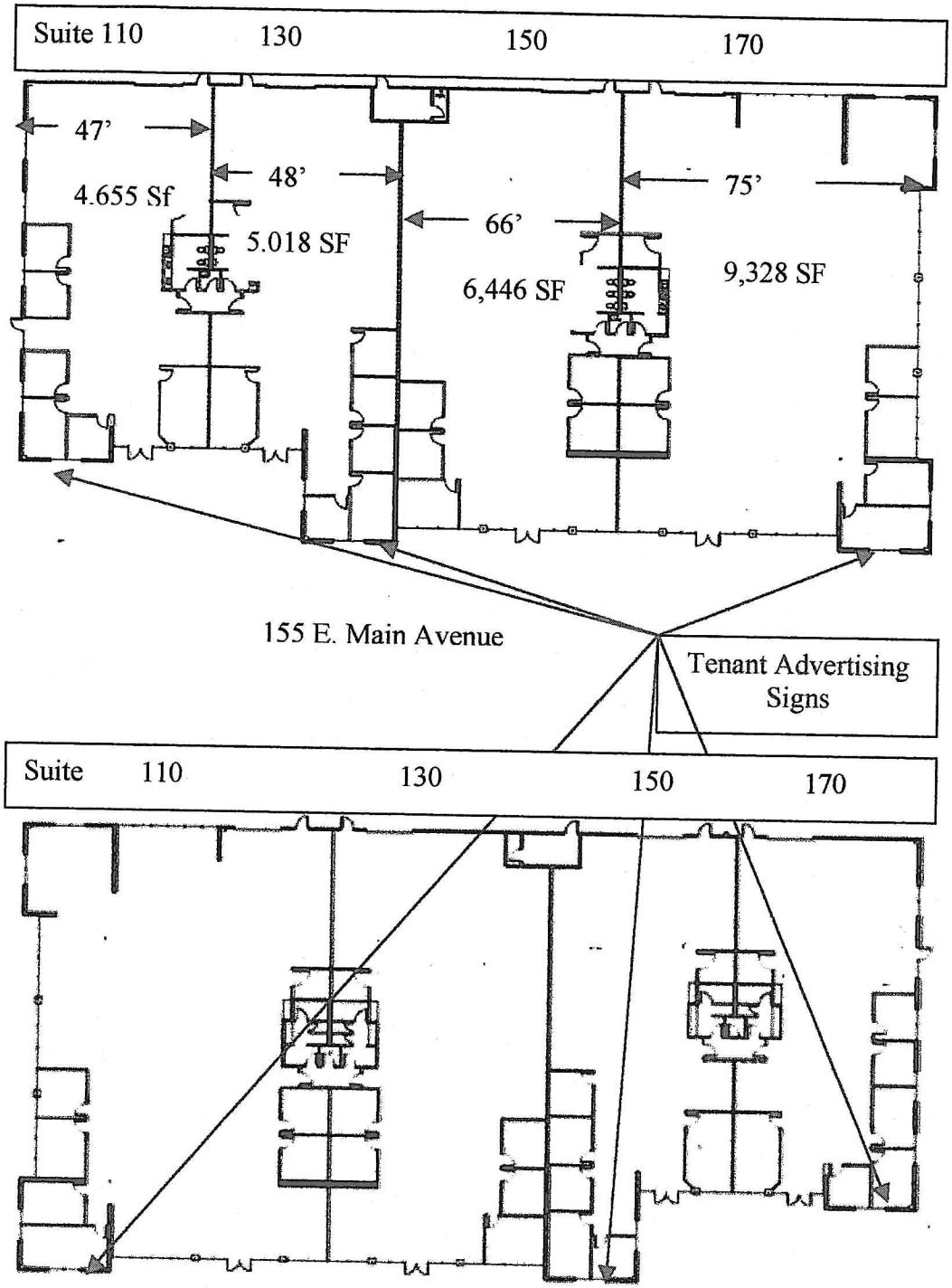
Window signs will be permitted but shall contain only the company's name and logo. They shall be limited to 12 SF. 12 SF is much smaller than 25% of any possible window space required in the Code.

SIGN CRITERIA LEASE ADDENDUM.

Attached.

APPROVED:
P Pulitano 7/6/01

Attachment: Master Sign Program 2001 (2518 : Sign2019-0024)



135 E. Main Avenue. These two buildings are identical—just mirror images.

APPROVED:
[illegible] 7/6/01

Attachment: Master Sign Program 2001 (2518 : Sign2019-0024)

EXHIBIT D
SIGNAGE CRITERIA

SIGN CRITERIA.

All signs shall be in compliance with the City of Morgan Hill Sign Code, and all tenants shall apply for and obtain approval of a sign copy change and building permit prior to installation of tenant signs.

Tenant's occupying Suites 110, 150 and 170 of 135 E. Main Avenue and Suites 110, 130 and 170 of 155 E. Main Avenue shall have the right to install Building Mounted exterior signage. Tenant's occupying Suite 130 of 135 E. Main Avenue and Suite 150 of 155 E. Main Avenue and all tenants of 175 E. Main Avenue shall have window signs only.

The content of all signs is limited to the Corporate or Company name, Logo, Trademark, and/or Division Name. No description of products or services, slogans, phone numbers, banners or any other type of sign is permitted.

1. Building Mounted Signs; Front of Building.. Building Mounted Signs shall not exceed 12' in total length.
    a. All signs shall be individually routed or formed letters that are pin mounted with 3/4' spacers so that they "float off" the wall. The signs are to be centered on the panel directly adjacent the main entrance. All signs must be painted Arlon 08 brown.
    b. Cut out or routed 18" tall letters are the standard for the building. Where the name is upper and lower case, the upper case shall be 18". No illuminated signs will be allowed.
    c. Materials such as aluminum, acrylic, and expanded PVC (brand names commonly called Celtec, Sintra, Komatex, Trovicel) are acceptable.
    d. All letters and cutouts over 2" tall will be made from materials which are a minimum of 1/4' thick and a maximum of 3/4' thick.
2. Building Mounted Shipping and Receiving Signs.
    a. One sign is permitted for every shipping entrance. It shall be located on the rear personnel door.
    b. The sign is a maximum size of 18" wide and 12" tall.
    c. Sign shall be made of 1/16' aluminum with vinyl letters.
3. Glass Mounted Signs: Sign on the Windows.
    a. Vinyl signs on the front door or the front windows are allowed. They shall be the lesser of 12 SF.
    b. Front and rear address numbers are provided by the Landlord. These cannot be changed without written approval from the Landlord.
    c. No electric signs are allowed in any exterior window

Initials

_____

APPROVED:

[illegible] 7/6/01

Attachment: Master Sign Program 2001 (2518 : Sign2019-0024)

Attachment: Master Sign Program 2001 (2518 : Sign2019-0024)

THE RANCH - MONUMENT SIGN

TEXTURE COAT METAL
WITH METAL POSTS
BONE PAINTED BACKGROUND
08 CALON BROWN TEXT & BORDER

APPROVED:
7/6/01

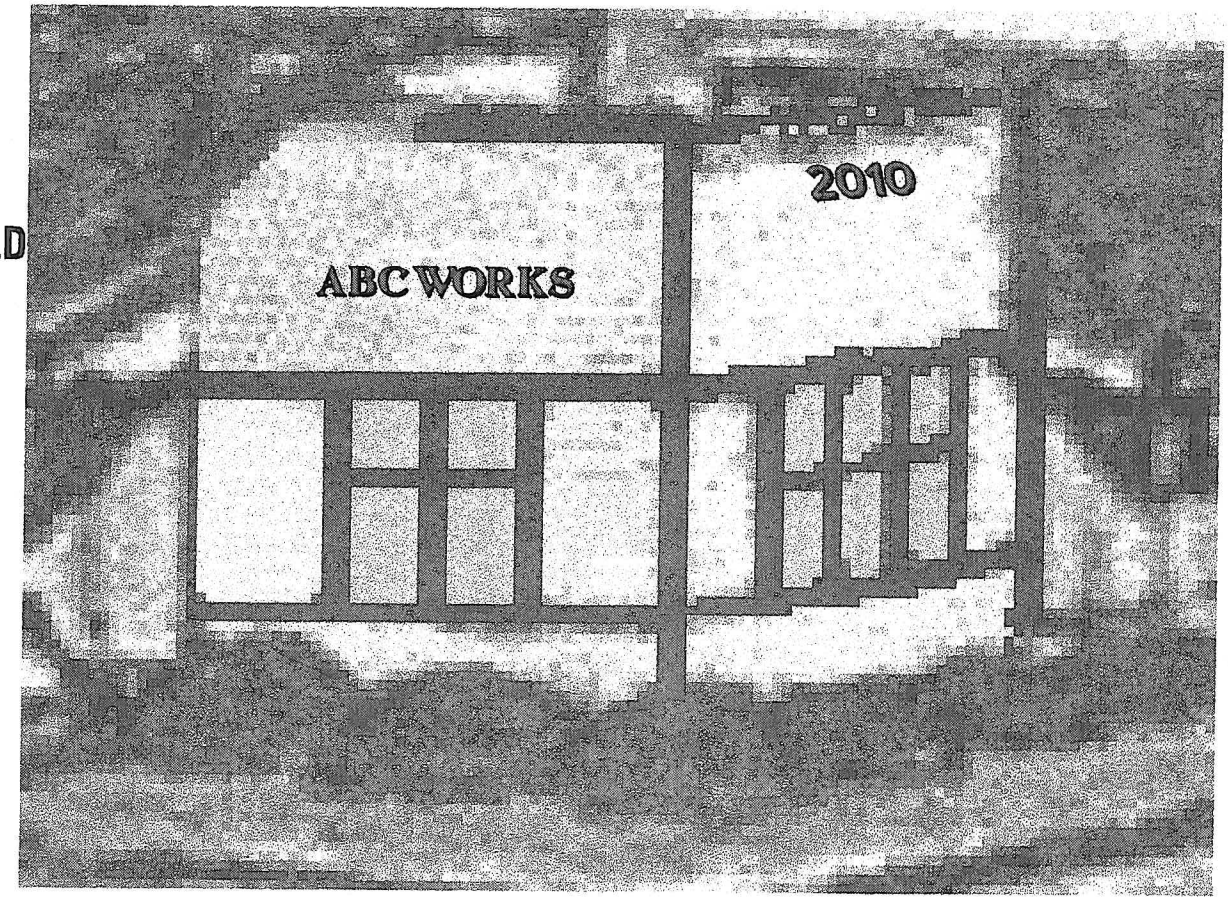
Pro Signs INC.
LOS GATOS 2000
15330 Los Gatos Blvd.
Los Gatos, CA 95032
Tel. 408.358.1218
Fax. 408.358.1565
signs@prosigns.com

PROJECT:	APPROVED:	SALESPERSON:
CONTACT:	DATE:	CREATED BY:

THE RANCH - WALL SIGNAGE

BUILDING LETTERS
NO TALLER THAN 18"
IN 08 CALON BROWN

ADDRESS NUMBER
20" NUMBERS IN
GEMINI CLEARVIEW BOLD
IN 08 CALON BROWN

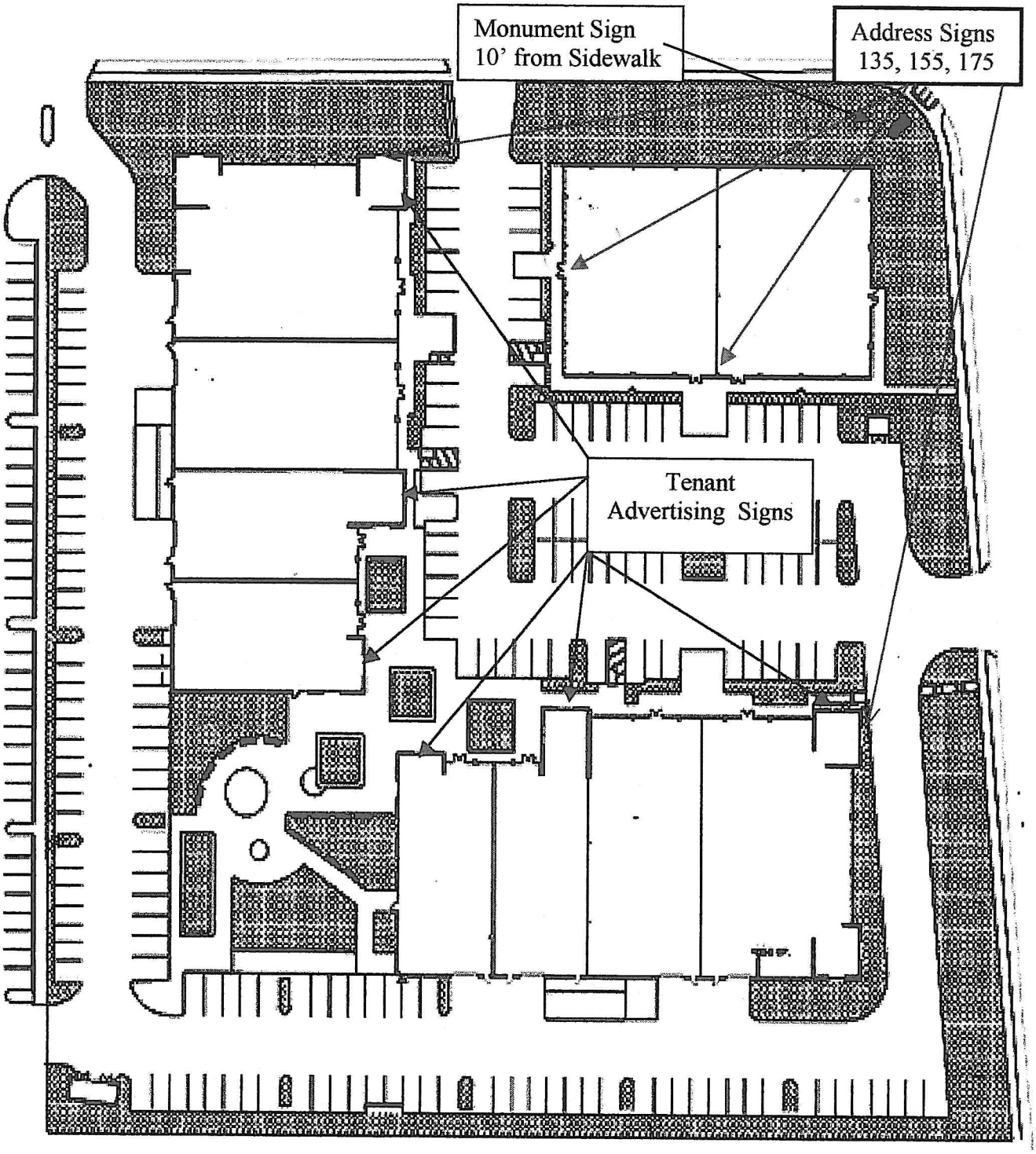


APPROVED:
7/6/01

Pro Signs INC.
LOS GATOS 2000
15330 Los Gatos Blvd.
Los Gatos, CA 95032
Tel. 408.358.1218
Fax. 408.358.1565
signs@prosigns.com

PROJECT:	APPROVED:	SALESPERSON:
CONTACT:	DATE:	CREATED BY:

OVERALL VIEW



APPROVED:
[illegible] 7/6/01

Attachment: Master Sign Program 2001 (2518 : Sign2019-0024)

July 24, 2019

Elaine Collins

Planning Technician

City of Morgan Hill

17555 Peak Avenue

Morgan Hill CA 95037

Dear Elaine:

Enclosed is the revision to the Sign Program for The Ranch. The new design incorporates the requested change to add an additional monument sign to the program. Below are items which are incorporated into the design and feel are beneficial in determining the outcome of the program revision.

1. The new sign design incorporates all previous design requirements shown in the current MSP and shows all dimensions previously approved in the current MSP

2. The new sign design provides street branding for the current tenants within the property.

3. The City of Morgan Hill has grown significantly since the approval of the current MSP on file, and revising the MSP to add an additional monument sign allows our tenants to capture the growth we've seen within the city.

We look forward to the opportunity of continuing our partnership, and can assist in any questions or concerns there may be on the submittal.

Best Regards,

Ritchie Commercial Real Estate

Brian Costello

Attachment: The Ranch - MSP Submittal Letter 7.24.19 (2518 : Sign2019-0024)

The Ranch

135, 155 and 175 E. Main Avenue

Morgan Hill, CA

Master Sign Program – REVISION

1. Description of Proposed and Existing Signage
2. Sign Criteria Lease Addendum
3. New Proposed Signage Shop Drawings
4. Existing Master Sign Program Drawings
5. Exhibit D Sign Criteria

Attachment: The Ranch - MSP Submittal Letter 7.24.19 (2518 : Sign2019-0024)

RITCHIE Commercial
RESPONSIBLE REAL ESTATE

Description of Proposed New Sign for The Ranch

Monument Sign –

Mounted in concrete perpendicular to Butterfield Drive so it can be seen from traffic heading East and West on Butterfield. It will be 55”H and 96”Long. It will incorporate Ten (10) Tenant Names which will change periodically with vinyl applications. See Exhibit “29663-The Ranch 135-155-175 E. Main Ave, Morgan Hill”.

The total square footage of the sign is under 37 sq. ft.

Description of Existing Signage for The Ranch

Monument Sign –

Mounted in concrete diagonally so it can be seen from both E. Main Ave and Butterfield Blvd. The existing sign is 55”H and is 96”Long and has lettering saying “The Ranch”. The total square footage is under 37 sq. ft.

Address Signs –

There are existing 20”H Painted Plastic address letters reading “135” “155” “E. Main Avenue” mounted on the building

Tenant Advertising Signs –

These appear on 135 and 155 E. Main Avenue buildings only and have been approved through the existing MSP. Each tenant sign is no more than 18”H and are no longer than 12’ long. In all cases, the square footage is less than 1.5 SF allowed per frontage foot. They are installed 16’ above grade.

Window Signs –

Windows signs have been installed, per the city code and have been limited to 12 sq. ft. The existing 12 sq. ft. status is much smaller than the 25% allowed per the city code.

Sign Criteria Lease Addendum –

See attached

Attachment: The Ranch - MSP Submittal Letter 7.24.19 (2518 : Sign2019-0024)

RITCHIE Commercial
RESPONSIBLE REAL ESTATE

EXHIBITD

SIGNAGE CRITERIA

SIGN CRITERIA.

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Tenant's occupying Suites 110,150 and 170 of 135 E. Main Avenue and Suites 110, 130 and 170 of 155 E. Main Avenue shall have the right to install Building Mounted exterior signage. Tenant's occupying Suite 130 of 135-E. Main Avenue and Suite 150 of 155 E. Main Avenue and all tenants of 175 E. Main A venue shall have window signs only.

The content of all signs is limited to the Corporate or Company name, Logo, Trademark, and/or Division Name. No description of products or services, slogans, phone numbers, banners or any other type of sign is permitted.

1. Building Mounted Signs; Front of Building. Building Mounted Signs shall not exceed 12' in total length.

    a. All signs shall be individually routed or formed letters that are pin mounted with 3/4' spacers so that they "float off' the wall. The signs are to be centered on the panel directly adjacent the main entrance. All signs must be painted Arion 08 brown.

    b. Cut out or routed 18" tall letters are the standard for the building. Where the name is upper and lower case, the upper case shall be 18". No illuminated signs will be allowed.

    c. Materials such as aluminum, acrylic, and expanded PVC (brand names commonly called Celtec, Sintra, Komatex, Trovicel) are acceptable.

    d. All letters and cutouts over 2" tall will be made from materials which are a minimum of 1/4' thick and a maximum of 3/4' thick.

2. Building Mounted Shipping and Receiving Signs.

    a. One sign is permitted for every shipping entrance. It shall be located on the rear personnel door.

    b. The sign is a maximum size of 18" wide and 12" tall.

    c. Sign shall be made of 1/16' aluminum with vinyl letters.

3. Glass Mounted Signs: Sign on the Windows.

    a. Vinyl signs on the front door or the front windows are allowed. They shall be the littlest of 12 SF.

    b. Front and rear address numbers are provided by the Landlord. These cannot be changed without written approval from the Landlord.

    c. No electric signs are allowed in any exterior window

Attachment: The Ranch - MSP Submittal Letter 7.24.19 (2518 : Sign2019-0024)

CITY OF MORGAN HILL

PLANNING COMMISSION STAFF REPORT
MEETING DATE: November 12, 2019

PREPARED BY: Terry Linder, Senior Planner
APPROVED BY: Jennifer Carman, Community Development Director

AAE2019009 (DAA 09-05): COCHRANE-TOLL BROTHERS-DEVELOPMENT AGREEMENT AMENDMENT TO INCORPORATE 25 ONGOING RESIDENTIAL BUILDING ALLOTMENTS AWARDED FROM THE 2018 RESIDENTIAL DEVELOPMENT CONTROL SYSTEM COMPETITION

RECOMMENDATION(S)

1. Open/close public hearing; and,
2. Adopt a Resolution approving an amendment to a Development Agreement.

LOCATION MAP:

PROJECT SUMMARY:

1. Location: Cochrane Road adjacent to Alicante Estates and Alicante Ranch bordered by Peet Road on the east and Cochrane/Coyote Road to the east and south. (APNs 728-34-029 and 026, 728-60-001 through 057)
2. Site Area: 122 Acres
3. General Plan: Residential Detached Low
4. Zoning: RDL 20,000 PD

BACKGROUND: The 244-unit Borello Ranch project first received allotments in 2009. The project Environmental Impact Report (EIR), Precise Development Plan, Development Agreement and Subdivision approvals were granted in 2013. In July 2016, the project was acquired by Toll Brothers. The project has exercised 71 allotments. A Development Agreement Amendment was approved by the Planning Commission on October 9, 2018 incorporating 25, ongoing residential building allotments for FY 2019/2020. On July 23, 2019, the Planning Commission awarded the project 25 additional ongoing residential building allotments for FY 2020/2021. On September 4, 2019, the City Council approved Resolution No. 19-044, reaffirming the distribution of the RDCS allotments for FY 2020/21.

PROJECT DESCRIPTION:
On September 4, 2019, a Development Agreement Amendment request was filed by Toll Brothers requesting the incorporation of 25, 2020/2021 fiscal year residential building allotments into the project Development Agreement (Attachment 4). This request can be processed with an Administrative Amendment approved by the Planning Commission.

ANALYSIS:

The proposed request was analyzed with respect to consistency with the: 1) General Plan; 2) Zoning Ordinance; and 3) Residential Development Control System (RDCS)

1. **General Plan**

The City of Morgan Hill controls population growth through implementation of the RDCS. The RDCS establishes a voter-approved population ceiling, which is managed by metering the number of residential units that can be built on an annual basis.

The project is consistent with the General Plan land use designation and the provisions of the RDCS. The proposed Development Agreement Amendment request will not alter the project's consistency with the General Plan and through the public benefit commitments will further implement the provisions of the RDCS.

2. **Zoning Ordinance**

Chapter 18.116 (Development Agreements) of the Morgan Hill Municipal Code establishes procedures for processing Development Agreements in compliance with Government Code Sections 65864 through 65869.5. Any Development Agreement may be modified by mutual consent of the parties and compliance with the procedures specified in Municipal Code Section 18.116.040 (Consideration of Proposed Development Agreements).

Consistent with the Morgan Hill Municipal Code, Section 3.04 (Amendments) of the Development Agreement states that amendments or modifications to the Agreement or Project Approval are subject to applicable and procedural provisions of the City's

General Plan, zoning, subdivision, and other applicable land use ordinances and regulations.

For purposes of this Development Agreement Amendment, the RDCS Development Agreement processing provisions would apply.

3. **Residential Development Control System**

Section 18.156.100 of the Municipal Code requires the City Council to adopt and maintain an RDCS Competition Manual. Chapter IV of the RDCS Competition Manual incorporates the RDCS Implementation Policies. Pursuant to Policy H of the RDCS Competition Manual, the Planning Commission is authorized to approve minor amendments to an RDCS Development Agreement, such as time extensions and allotment adjustments for ongoing projects through approval of a Planning Commission Resolution.

The proposed amendment would modify the Development Agreement to incorporate 25, FY 2020/2021 residential building allotments into the project.

Conclusion

The proposed Development Agreement Amendment is mutually agreed to by the City and the applicant, therefore, approval of the attached Resolution is recommended.

CEQA (California Environmental Quality Act):
An EIR was prepared and certified for the project site on February 27, 2013. No further environmental analysis is required.

LINKS/ATTACHMENTS:
1. AAE2019-0009 PC Resolution
2. Amendment to Toll DA. 11.12.19
3. conformed copy of DA
4. DAA Request Letter

RESOLUTION NO. 19-

A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF MORGAN HILL APPROVING A DEVELOPMENT AGREEMENT AMENDMENT DAA 09-05: COCHRANE – TOLL BROTHERS (AAE2019-0009) FOR THE COCHRANE-BORELLO RANCH DEVELOPMENT TO INCORPORATE 25 ONGOING, FY 2020-2021 ALLOTMENTS AWARDED TO RDCS 2016-0015: COCHRANE-BORELLO (APN 728-34-026)

WHEREAS, pursuant to Chapter 18.156 of the Morgan Hill Municipal Code, the Planning Commission has awarded building allotments to applications MC 11-03: Cochrane-Borello, 15 building allotments (FY 2013-2014), MC 13-21: Cochrane-Borello, 25 building allotments (FY 2015-2016), MC 14-12: Cochrane-Borello, 15 building allotments (FY 2016-2017), RDCS2016-0015: Cochrane Borello, 16 building allotments (FY 2018-2019), 25 ongoing building allotments (FY2019-2020) and 25 ongoing building allotments (FY2020-2021);

WHEREAS, on March 27, 2013, the City Council adopted ordinance No. 2065 which approved a Development Agreement for the 244-unit project;

WHEREAS, on September 2, 2015, the City Council adopted Ordinance No. 2161, N.S., which approved an amendment to the Development Agreement incorporating 15 building allotments;

WHEREAS, on June 1, 2016, the City Council adopted Ordinance No. 2201, N.S., which approved an amendment to the development schedule granting an extension to 15 building allotments (FY 2013-2014) and 25 building allotments (FY 2015-2016);

WHEREAS, on June 7, 2017, the City Council adopted Ordinance No. 2243, N.S., which approved an amendment to the development schedule, granting a six-month extension to 15 building allotments (FY 2016-2017) and incorporating 16, FY 2018-2019 allotments;

WHEREAS, on October 9, 2018, the planning Commission approved an amendment to the Development Agreement incorporating an additional 25 ongoing allotments;

WHEREAS, Sections 65864 through 65869.5 of the California Government Code authorize the City of Morgan Hill to enter into binding Development Agreements with persons having legal or equitable interests in real property for the development of such property;

WHEREAS, Section IV.H of the Residential Control System manual adopted by City Council authorizes minor amendments to Development Agreements, such as time extensions and allotment adjustments for ongoing projects, to be approved by Planning Commission resolution;

WHEREAS, on September 4, 2019, Toll CA XX, LP requested the incorporation of

Attachment: AAE2019-0009 PC Resolution [Revision 2] (2530 : AAE20190009: Cochrane-Toll Brothers)

the 25 on-going FY 2020-2021 building allotments into the approved and recorded Development Agreement; and

WHEREAS, said Development Agreement Amendment request was considered by the Planning Commission at its regular meeting of November 12, 2019 for application AAE2019-0009 (DAA 09-05): Cochrane-Toll Brothers; and

WHEREAS, testimony received at a duly-noticed public hearing, along with exhibits and drawings and other materials have been considered in the review process.

NOW, THEREFORE, BE IT RESOLVED BY THE PLANNING COMMISSION OF THE CITY OF MORGAN HILL THAT:

SECTION 1. The Planning Commission approves the Development Agreement Amendment amending Section 3.03 "Establishment and Extension of Residential Development Control System Building Allotments" of the recorded Development Agreement, as previously amended, to incorporate the 25 on-going, FY 2020-2021 building allotments, based on the determination and supporting reasoning of the City and Toll CA XX, LP as required by Morgan Hill Municipal Code Section 18.116.040.

SECTION 2. The Development Agreement Amendment is consistent with the goals, objectives, policies, general land uses and programs specified in the General Plan and any applicable specific plan**.**

The project would provide a total of 244 single-family residential units. There have been no General Plan policy conflicts identified with the proposed project.

SECTION 3. The City Council of the City of Morgan Hill found that, on the basis of the whole record before it (including the EIR and any comments received), that there is no substantial evidence that the project will have a significant effect on the environment and that the Environment Impact Report adopted by the City Council in February 2013 represents the City Council's independent judgment and analysis, and that the EIR was adopted prior to action taken to adopt the original project proposal. The addition of the remaining building allotments to the Development Agreement does not alter the environmental analysis. The custodian of the documents or other material which constitute the record shall be the Community Development Department.

PASSED AND ADOPTED THIS 12TH DAY OF NOVEMBER 2019, AT A REGULAR MEETING OF THE PLANNING COMMISSION BY THE FOLLOWING VOTE:

AYES: COMMISSIONERS:

NOES: COMMISSIONERS:

Attachment: AAE2019-0009 PC Resolution [Revision 2] (2530 : AAE20190009: Cochrane-Toll Brothers)

ABSTAIN: COMMISSIONERS:

ABSENT: COMMISSIONERS:

ATTEST: **APPROVED:**

_____ _____

JENNA LUNA, Deputy City Clerk **JUAN MIGUEL MUNOZ-MORRIS, Chair**

Attachment: AAE2019-0009 PC Resolution [Revision 2] (2530 : AAE20190009: Cochrane-Toll Brothers)

RECORDING REQUESTED BY AND
WHEN RECORDED MAIL TO:

City of Morgan Hill
Community Development Agency
17575 Peak Avenue
Morgan Hill, CA 95037

RECORDING FEES EXEMPT
PURSUANT TO GOVERNMENT
CODE SECTION 27383

AMENDMENT TO DEVELOPMENT AGREEMENT

THIS AMENDMENT TO DEVELOPMENT AGREEMENT ("**Amendment**") is entered into as of the ____day of _____, 2019, by and among Toll CA XX, a California limited partnership ("**Toll**") and CITY OF MORGAN HILL, a municipal corporation of the State of California ("**City**").

RECITALS

A. San Sebastian MH General Partnership, Toll's predecessor in interest, (Developer) entered into a Development Agreement (DA) with City on March 27, 2013 adopted by the City Council as Ordinance No. 2065, subsequently amended by Ordinance number 2161 adopted on September 2, 2015, and amended by Ordinance No. 2201 adopted June 1, 2106, to facilitate the development of that certain real property owned by Developer within the City of Morgan Hill, State of California, which is legally described in Exhibit A to the Development Agreement ("**Property**"). The DA was partially assigned to Toll on July 22, 2016; amended further by Ordinance No. 2243 adopted June 7, 2017; and amended again by Planning Commission Resolution on October 9, 2018. Capitalized terms used but not otherwise defined herein shall have the meaning ascribed to such terms in the Development Agreement.

B. Toll and City desire to enter into this Amendment to incorporate an additional 25 allotments received for this ongoing project.

AGREEMENT

NOW, THEREFORE, Toll and City hereby agree as follows:

1. Amendment to Development Agreement.

a. Section 3.03 of the Development Agreement is hereby amended to incorporate 25 additional allotments as follows:

3.03 Establishment and Extension of Residential Development Control System Building Allotments

Allotments shall be exercised pursuant to Section 18.156.160 of the Morgan Hill Municipal Code as established by Ordinance Number 2229, and Section IV.H of the RDCS Competition Manual. The City may approve an extension to the date by which an allotment must be exercised only as allowed by Section 18.156.170 of the City of Morgan Hill Municipal Code and Section IV.L of the RDCS Competition Manual. Allotments must be exercised as follows:

Attachment: Amendment to Toll DA. 11.12.19 [Revision 1] (2530 : AAE20190009: Cochrane-Toll Brothers)

FY 2013-2014-(15 units)	01-15-17
FY 2015-2016-(25 units)	06-30-18
FY 2016-2017-(15 units)	12-30-18
FY 2018-2019-(16 units)	06-30-19
FY 2019-2020-(25 units)	12-20-20
FY 2020-2021-(25 units)	03-04-22

2. Development Agreement in Full Force and Effect. Except as specifically provided herein with respect to the assignment, all the terms, covenants, conditions and provisions of the Development Agreement shall remain in full force and effect.

3. Recording. City shall cause this Amendment to be recorded in the Official Records of Santa Clara County.

4. Severability. Except as otherwise provided herein, if any provision(s) of this Amendment is (are) held invalid, the remainder of this Amendment shall not be affected, except as necessarily required by the invalid provisions, and shall remain in full force and effect unless amended or modified by mutual consent of the Parties.

5. Counterparts. This Amendment may be executed in one or more counterparts, each of which shall be deemed to constitute an original, but all of which, when taken together, shall constitute one and the same instrument, with the same effect as if all of the Parties to this Amendment had executed the same counterpart.

6. Effective Date/Amendments. The Effective Date of this Amendment shall be the date upon which this Amendment is approved by the City of Morgan Hill Planning Commission. This Amendment shall not be amended except by an agreement in writing signed by the parties hereto or their respective successors-in-interest.

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[Signature Page Follows]

Attachment: Amendment to Toll DA. 11.12.19 [Revision 1] (2530 : AAE20190009: Cochrane-Toll Brothers)

IN WITNESS WHEREOF, Toll and City have entered into this Agreement as of the date first above written.

"CITY"

CITY OF MORGAN HILL

_____
Christina J. Turner
City Manager

Approved as to form:

_____
Donald A. Larkin
City Attorney

Date: _____

"DEVELOPER"

TOLL CA XX, A CALIFORNIA LIMITED PARTNERSHIP

By_____
Name_____
Its_____

Date: _____

(ALL SIGNATURES, EXCEPT CITY CLERK AND CITY ATTORNEY, MUST BE ACKNOWLEDGED BEFORE A NOTARY)

Attachment: Amendment to Toll DA. 11.12.19 [Revision 1] (2530 : AAE20190009: Cochrane-Toll Brothers)

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

STATE OF CALIFORNIA)
) ss.
COUNTY OF _____)

On _____, before me, _____

_____ (*insert name and title of the officer*)

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

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

WITNESS my hand and official seal.

Signature _____ (Seal)

Attachment: Amendment to Toll DA. 11.12.19 [Revision 1] (2530 : AAE20190009: Cochrane-Toll Brothers)

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

STATE OF CALIFORNIA)
) ss.
COUNTY OF _____)

On _____, before me, _____

_____ (*insert name and title of the officer*)

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

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WITNESS my hand and official seal.

Signature _____ (Seal)

Attachment: Amendment to Toll DA. 11.12.19 [Revision 1] (2530 : AAE20190009: Cochrane-Toll Brothers)

23985458
Regina Alcomendras
Santa Clara County - Clerk-Recorder
07/19/2018 08:58 AM
CONFORMED COPY
Copy of document recorded.
Has not been compared with original.

RECORDING REQUESTED BY AND
WHEN RECORDED MAIL TO:

City of Morgan Hill
Community Development Department
17575 Peak Avenue
Morgan Hill, CA 95037

RECORDING FEES EXEMPT
PURSUANT TO GOVERNMENT CODE SECTION 27383

127-04-18-041

AMENDED AND RESTATED DEVELOPMENT AGREEMENT BY AND BETWEEN THE CITY OF MORGAN HILL AND TOLL CA XX, A CALIFORNIA LIMITED PARTNERSHIP REGARDING THE SAN SEBASTIAN RESIDENTIAL DEVELOPMENT PROJECT

BN 32975814v2

Attachment: conformed copy of DA (2530 : AAE20190009: Cochrane-Toll Brothers)

RESIDENTIAL DEVELOPMENT AGREEMENT
BY AND BETWEEN
THE CITY OF MORGAN HILL
AND
TOLL CA XX, a CALIFORNIA LIMITED PARTNERSHIP

This Amended and Restated Development Agreement ("**Agreement**") is entered into on the below-stated "**Effective Date**" by and between the City of Morgan Hill, a California municipal corporation, (hereinafter "**City**"), and Toll CA XX, a California Limited Partnership, and its successor and assigns (hereinafter, collectively, "**Developer**"), pursuant to Section 65864 *et seq*. of the Government Code of the State of California and City's police powers. City and Developer are, from time to time, also hereinafter referred to individually as a "**Party**" and collectively as the "**Parties**." This Amended and Restated Development Agreement replaces the Development Agreement approved by Ordinance 2065, as subsequently amended and restated by Ordinance 2161, and amended by Ordinance 2201.

NOW, THEREFORE, in consideration of the mutual covenants and promises contained herein and other considerations, the value and adequacy of which are hereby acknowledged, the Parties hereby agree as follows:

RECITALS

A. To strengthen the public planning process, encourage private participation in comprehensive planning and reduce the economic risk of development, the Legislature of the State of California adopted Government Code Sections 65864 *et seq*. ("**Development Agreement Statute**"), which regulates development agreements with any person having a legal or equitable interest in real property providing for the development of that property and establishes certain development rights in the property. In accordance with the Development Agreement Statute, and by virtue of its police powers, City has the authority to enter into development agreements, and has reflected that authority in its Morgan Hill Municipal Code (Chapter 18.80 *et seq*.) ("**Enabling Ordinance**"). This Agreement has been drafted and processed pursuant to the Development Agreement Statute and the Enabling Ordinance.

B. Developer currently has a legal and/or equitable interest in the Property.

C. Developer proposes to plan, develop, construct, operate and maintain the Project on the Property (as such terms are defined herein).

D. As of the Effective Date, various land use regulations, allotments, entitlements, grants, permits and other approvals have been adopted, issued, and/or granted by City relating to the Project (collectively "**Existing Approvals**"), including without limitation, all of the following:

1. RDCS Applications: MC 11-03/MC 13-21/MC 14-12/RDCS 2016-0015: Cochrane-Borello;
2. Environmental Assessment: EA 09-23: Cochrane-Borello;
3. Zoning Amendment Application: ZA 09-08: Cochrane-Borello; and,

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4. Subdivision Application: SD 09-07: Cochrane-Borello.

The Existing Approvals are more particularly described in the EIR, and the resolutions adopting the Existing Approvals.

E. For the reasons recited herein, Developer and City have determined that the Project is the type of development for which this Agreement is appropriate. This Agreement will help to eliminate uncertainty in planning, provide for the orderly development of the Project consistent with the planning goals, policies, and other provisions of the City's General Plan and City's Municipal Code, and otherwise achieve the goals and purposes for which the Development Agreement Statute was enacted.

F. On February 14, 2012, February 25, 2014, February 10, 2015 and January 10, 2017, the Morgan Hill Planning Commission approved allotments for the Project pursuant to Chapter 18.78 of the Morgan Hill Municipal Code ("**Residential Development Control System", or "RDCS**"). For purposes of this Agreement, references to Chapter 18.78 or RDCS shall reference the Chapter as it existed through February 28, 2017, unless otherwise specified herein. This Agreement serves to secure in a permanent and enforceable manner the public benefits set forth in Exhibit C, included in the Developer's application, as required pursuant to Section 18.78.060.A of Chapter 18.78 of the Code. The purpose of this amendment is to incorporate 16 fiscal year 2018-2019 allotments and approve an extension of 15 fiscal year 2016-2017 allotments due to rain delays.

G. On April 25, 2017, following a duly noticed and conducted public hearing, the Planning Commission of the City ("**Planning Commission**"), adopted a Resolution confirming CEQA compliance for this Agreement, finding that this Agreement is consistent with the City's General Plan and the Zoning Ordinance, and recommending that this amended Agreement be approved by the City Council.

H. On May 17, 2017, following a duly noticed and conducted public hearing, the Morgan Hill City Council ("City Council") introduced Ordinance No. 2243 ("**Ordinance**"), accepting the recommendation of the planning commission, finding that the development agreement amendment approved by this ordinance is compatible with the goals, objectives, policies, and land uses designated by the General Plan, and approving this Agreement. The City adopted the Ordinance on June 7, 2017, and the Ordinance became effective thirty (30) days later.

I. The amended Development Agreement approved by Ordinance No. 2243 was not timely recorded, and subsequent changes have been made by action of City Council which affect the amended Development Agreement, as referenced herein. On November 15, 2017, the City Council introduced Ordinance No. 2264 and on December 6, 2017, City Council adopted Ordinance No. 2264, which allows allotments granted to a project under a previous Residential Development Control System (RDCS) (e.g., Measure C) to change when the allotments are considered exercised to be pursuant to Section 18.78.160.A of the RDCS Ordinance (Measure S). Under Measure S, an allotment is considered exercised with the recordation of a Final Map, issuance of a grading permit, or the commencement of construction if no Final Map or grading

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permit is required. Therefore, Developer may exercise its allotments pursuant to Measure S provisions.

ARTICLE 1
ADMINISTRATION

1.01 Effective Date. The "Effective Date" in this Agreement shall be the date that the Ordinance became effective.

1.02 Definitions.

(a) The following terms, phrases and words shall have the meanings and be interpreted as set forth in this Section:

(1) **"Allotments"** shall mean those residential allotments awarded Developer through the Residential Development Control System

(2) "**Applicable Law"** shall have that meaning set forth in Section 2.01(a) of this Agreement.

(3) "**Commitments**" shall have that meaning set forth in Section 2.04(a) of this Agreement.

(4) "**Director**" shall mean the Director of Community Development, and his or her designee.

(5) **"Existing Approvals"** shall have that meaning set forth in Recital D of this Agreement.

(6) "**Existing City Laws**" shall mean all City ordinances, resolutions, rules, regulations, guidelines, motions, practices and official policies governing land use, zoning and development, RDCS, permitted uses, density and intensity of use, maximum height, bulk and size of proposed buildings, and other City land use regulations in force and effect on the Effective Date of this Agreement as may have been modified through the date of recordation of this Agreement.

(7) "**Impact Fees**" shall mean those fees imposed so that developments bear a proportionate share of the cost of public facilities and service improvements that are reasonably related to the impacts and burdens of the Project, adopted pursuant to Morgan Hill Municipal Code Chapter 3.56 and California Government Code Section 66001 et seq.

(8) **"Legal Effect"** shall mean the ordinance, resolution, permit, license or other grant of approval that has been adopted by City and has not been overturned or otherwise rendered without legal and/or equitable force and effect by a court of competent jurisdiction, and all applicable administrative appeal periods and statutes of limitations have expired.

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(9) **"New City Laws"** shall mean any and all City ordinances, resolutions, orders, rules, official policies, standards, specifications and other regulations whether adopted or enacted by City, its staff or its electorate (through their powers of initiative, referendum, recall or otherwise) that is not a Subsequent Approval, that takes "**Legal Effect**" after the Effective Date and recordation of this Agreement, and that applies City wide.

(10) **"Project"** shall mean the development containing 244 single family residential units as more particularly described in the Environmental Impact Report titled Cochrane-Borello, dated August 2012. Any reference in this Agreement to the "Project" shall mean and include the "Property" to which this Agreement applies, but may only be a phase of the complete development of the Property.

(11) **"Project Approvals"** mean, collectively, all phases of the Project Approvals.

(12) **"Property"** shall mean that certain real property consisting of approximately 122 acres located within the City, as more particularly described and shown on ***Exhibit B*** to this Agreement.

(13) **"RDCS"** means the Residential Development Control System set forth in Chapter 18.78 of the Morgan Hill Municipal Code.

(14) **"Second Notice"** shall have that meaning set forth in Section 4.07(c) of this Agreement.

(15) **"Subdivision Document"** means, pursuant to the Subdivision Map Act and this Agreement, any tentative map, vesting tentative map, parcel map, final map, or Subdivision Improvements Agreement, any such new map or any amendment to any such map, or any resubdivision.

(16) **"Subsequent Approvals" and "Subsequent Approval"** mean those City permits, entitlements, approvals or other grants of authority (and all text, terms and conditions of approval related thereto), that may be necessary or desirable for the development of the Project, that are sought by Developer, and that are granted by City after the City Council adopts the Ordinance, including without limitation, a City Resolution of Application for Annexation and subdivision maps and any Subdivision Document.

(b) To the extent that any defined terms contained in this Agreement are not defined above, then such terms shall have the meaning otherwise ascribed to them elsewhere in this Agreement, or if not in this Agreement, by controlling law.

1.03 **Term.**

(a) The term ("**Term**") of this Agreement shall commence on the Effective Date, and then shall continue (unless this Agreement is otherwise terminated or modified as provided in this Agreement) until the earliest of (1) the loss of all development allotments for the Project pursuant

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to the RDCS, if applicable, (2) the issuance of a certification of occupancy for all units in the Project or (3) ten (10) years plus one day after the Effective Date; provided however that Developer's obligations pursuant to Sections 2.03 and 2.04 shall survive the termination of this Agreement until such obligations are fully performed and completed in accordance with this Agreement.

(b) Any Subdivision Document relating to the Project shall automatically be extended to and until the end of the Term of this Agreement. The termination of this Agreement shall have no effect on the remaining term of a Subdivision Document that has not yet expired. Any improvement agreement entered into pursuant to the Subdivision Map Act (Gov. Code §§ 66410 *et seq.*) or other State or local regulation shall have that term determined by City. If this Agreement terminates for any reason prior to the expiration of vested rights otherwise given under the Subdivision Map Act to any vesting tentative map, vesting parcel map, vesting final map or any other type of vesting map on the Property (or any portion of the Property) (collectively, "**Vesting Map**"), such Vesting Map approved during the Term of this Agreement shall NOT extend the Applicable Law beyond the stated Term of this Agreement and the City rules, regulations and official policies applicable to that portion of the Property covered by such Vesting Map shall become those City rules, regulations and official policies in effect as of the date of the termination of this Agreement; provided, however, that City and Developer may agree to an extension of the Term of this Agreement with respect to the area covered by any such Vesting Map.

(c) If any "**Third Party Challenge**" (as that term is defined in Section 4.06(a) of this Agreement) is filed, then the Term of this Agreement shall be tolled for the period or periods of time from the date of the filing of such litigation until the conclusion of such litigation by dismissal or entry of a final judgment ("**Litigation Tolling**"). Notwithstanding the foregoing, regardless of the number of Third Party Challenges that may be filed during the Term of this Agreement, the sum-total of such Litigation Tolling shall not exceed five (5) years. The filing of any Third Party Challenge shall not delay or stop the development, processing or construction of the Project, or the approval or issuance of any Project Approvals, unless enjoined or otherwise controlled by a court of competent jurisdiction. The Parties shall not stipulate to the issuance of any such order unless mutually agreed to.

ARTICLE 2
APPLICABLE LAW

2.01 Applicable Law—Generally.

(a) As used in this Agreement, "**Applicable Law**" shall mean the rules, regulations, official policies, standards, and specifications applicable to the development of the Property listed below in this Section 2.01. The order of their importance is the order in which they are listed (with highest importance listed first, second most important listed second, etc.); in the event of a conflict between them, their order shall determine which one controls (the one listed higher controlling over the one listed lower):

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1) All the provisions, terms and conditions of this Agreement.
2) Existing Approvals.
3) The Subsequent Approvals, provided such Subsequent Approvals are:
   i) In compliance with all controlling California law;
   ii) Mutually agreed to by the Parties; and
   iii) Duly enacted by City.

4) The "Existing City Laws" that are not in conflict with this Agreement and the Project Approvals.
5) Any "New City Laws" Developer is subject to under this Agreement.

(b) The Parties shall cooperatively assemble all of the necessary documents to memorialize, to the best of their abilities, the Project Approvals, Existing City Laws, and the terms and conditions contained in this Agreement to assist Developer to maintain the documents assembled and to provide a continuing reference source for the approvals granted and the ordinances, policies and regulations in effect on the Effective Date of this Agreement.

2.02 <u>Vested Right to Applicable Law</u>.

(a) During the Term of this Agreement, Developer shall have the vested right to develop the Project subject only to, and in accordance with, the Applicable Law, and during the Term of this Agreement City shall have the right to regulate the development and use of the Project subject only to, and in accordance with, the Applicable Law.

(b) Nothing contained herein will give Developer a vested right to obtain a sewer connection for said Project in the absence of sewer capacity available to the Project.

(c) Pursuant to this Agreement, the Applicable Law will be an expanding body of law, such as, for example, when Subsequent Approvals are granted by City, and/or when Developer becomes subject to a New City Law pursuant to this Agreement.

(d) The vested rights to develop the Project according with Applicable Law and this Agreement shall be vested only to those residential units having an RDCS allotment. Nothing contained herein shall give Developer a vested right to develop the described Project absent valid RDCS residential building allotments.

(e) Developer agrees that the terms and conditions of this Agreement and conditions of approval issued pursuant to this Agreement shall govern and dictate the vesting of the Developer's right to develop in lieu of any other instrument of vesting, including any vesting tentative map or any other agreement, instrument or document purporting to vest any right of development. Developer agrees to waive any vesting rights by operation of any otherwise applicable city, state or federal law.

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2.03 Project Impacts and Costs.

(a) Agreement Subject to Project Mitigation Requirements. Notwithstanding any other express or implied term or condition of this Agreement (or the Approvals) to the contrary, throughout the Term of this Agreement, the full and complete mitigation of all environmental (including any mitigation measure adopted pursuant to CEQA), physical, fiscal and other impacts of the Project and the Property on the community and on the City of Morgan Hill and its services, facilities, operations and maintenance (collectively, "**Project Mitigation**") shall be borne by and shall be the sole and exclusive responsibility of the Developer. Such Project Mitigation may be conditions of any Applicable Law or Project Approval and may include a mix of different approaches, including without limitation, Developer construction of and/or financing of such services, facilities, operations and maintenance through the payment of impact fees or other fees, taxes, levies, assessments, or other financing mechanisms including without limitation, reimbursement agreements, Landscaping and Lighting Districts, Mello-Roos Districts, Community Facilities Districts, Assessment Districts, Tax-Exempt and Taxable Financing Mechanisms, Maintenance Districts, Homeowners Associations, and participation in the Statewide Communities Infrastructure Program (collectively, "**Financing Mechanisms**"). The necessary scope and extent of such Project Mitigation, and which combination of Financing Mechanisms should be employed relating to such Project Mitigation to assure success of the Project Mitigation, shall be determined by City, in its sole and exclusive discretion, pursuant to appropriate City ordinance, resolution, regulations or procedures, taking into account and guided by the pre-existing rights of others in the existing and future public services and facilities (including their operations and maintenance) that Developer may seek to use. If no Financing Mechanism is available to fund the Project Mitigation, then the Project shall not progress forward.

(b) Impact Fees. In addition to any agreed-upon Project-specific requirements as set forth in Section 2.04 and as part of the Project's sole and exclusive obligation (and the Developer's as the owner of same) to cover Project Mitigation, Developer shall pay all Impact Fees and in the amounts in legal effect at the time any such Impact Fees become due and payable as provided for in the City's Municipal Code.

(c) Processing Fees. In addition to any agreed-upon Project-specific requirements as set forth in Section 2.04, the Project (including Developer as owner of same) shall be responsible for the costs to City of processing any and all Developer-requested land use approvals, including without limitation, building permits, plan checks, and environmental studies required pursuant to CEQA and other similar requests for City permits and entitlements, when such costs are incurred by City. City shall impose those funding requirements needed to ensure that the processing costs to the City are fully covered by the Developer. Further, if additional, accelerated, or more frequent inspections are requested by Developer of City than would otherwise take place in City's ordinary course of business, then City may either hire additional contract inspectors, plan checkers, engineers or planners, or City may hire a full or part time employee. If City hires additional contractors, then Developer shall reimburse City, on a monthly basis in arrears, the cost to City of hiring such additional contract inspectors, plus Developer shall pay to City an additional ten

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percent (10%) of such cost to City on the same payment schedule. City shall use such additional 10% to defray administrative costs. If City hires a full or part time employee, then Developer shall reimburse City, on a monthly basis, in arrears, for a pro rata share of the total cost to the City of such employee, plus ten percent (10%) for administrative costs, for the period from hire to the end of the Term of this Agreement.

2.04 RDCS and Other Specific Project-Specific Requirements.

(a) The Specific Restrictions and Requirements set forth in Exhibit C are public benefit commitments ("**Commitments**") voluntarily assumed by Developer in return for benefits derived from the City's Residential Development Control System (RDCS) allotment approval program. These requirements are not considered Project Mitigation within the meaning of Section 2.03 of this Agreement. Developer hereby agrees that these requirements are not subject to credit, refund or reimbursement or prohibition pursuant to otherwise applicable city, state or federal law and hereby waives any such right to credit, refund, reimbursement or prohibition. These Commitments are voluntarily assumed by Developer in return for benefits derived from the RDCS. Pursuant to the RDCS, awarding of residential building allotments to new development is a competitive process based on a point system. Additional points can be awarded to a development proposal that voluntarily commits to providing a public benefit contribution in addition to those measures already required to mitigate its impacts. The Commitments result in additional points thereby allowing the development proposal to secure a higher score pursuant to the RDCS, which in turn may provide a high enough score for the development proposal to secure residential building allotments. The Commitments set forth in Exhibit C, derived from that RDCS process, are enforced through this Agreement.

(b) Substitution of Commitments within the same objective may be allowed in limited circumstances, as provided in Section IV. F of the RDCS Competition Manual, with approval of the Community Development Director documented through an Administrative Amendment as provided in Section 3.05 of this Agreement. No changes which would degrade the quality of the project, lower the value of commitments or lower the total point score in the RDCS evaluation, or would subject the Project to further environmental review under CEQA, shall be approved. In circumstances in which substitution within the same Objective is not possible, substitution may be allowed only by resolution of the Planning Commission.

(c) The Developer's RDCS applications MC 11-03: Cochrane-Borello (allotments awarded February 14, 2012), MC 13-21 Cochrane-Borello (allotments awarded February 25, 2014), MC 14-12: Cochrane-Borello (allotments awarded February 10, 2015), RDCS 2016-0015 (allotments awarded January 10, 2017) and approval actions (as reflected in the official records, including agendas and minutes of the City Planning Commission and City Council) shall be incorporated into this Agreement by this reference.

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2.05 Construction Codes.

With respect to the development of any or all of the Project or the Property, Developer shall be subject to the California Building Code and all those other State-adopted construction, fire and other codes applicable to improvements, structures, and development, and the applicable version or revision of said codes by local City action (collectively referred to as "**Construction Codes**") in place at that time that a plan check application for a building, grading or other permit subject to such Construction Codes is submitted to City for approval, provided that such Construction Codes have been adopted by City and are in effect on a City-wide basis.

2.06 Timing of Development.

(a) Securing Building Permits and Beginning Construction. Developer is required to obtain any approvals or permits for the development of the Project in accordance with this Agreement, the Applicable Law, and the Project Approvals. However, any Subsequent Approval initiated by Property Owner, which substantially changes the permitted uses or substantially increases the height, and density or floor area allowed under the Project Approvals, shall be subject to the rules, regulations, ordinances and official policies of the City then in effect. Developer agrees to secure building permits and to begin construction of the Project in accordance with the time requirements set forth in the Construction Codes and the RDCS, if applicable, as these exist on the Effective Date. In the event Developer fails to comply with the above permit issuance and beginning construction dates, and satisfactory progress towards completion of the project in accordance with the RDCS, the RDCS allotment shall expire pursuant to Section 18.78.160 (as adopted by Ordinance number 2229) of Chapter 18.78 of the Morgan Hill Municipal Code.

(b) Progress Reports Until Construction of Project is Complete. Developer shall make reports regarding the progress of construction in such detail and at such time as the Community Development Director of the City of Morgan Hill reasonably requests.

(c) City of Morgan Hill to Receive Construction Contract Documents. If the City reasonably requests copies of off-site and landscaping contracts or documents for purpose of determining the amount of any bond to secure performance pursuant to said contracts, Developer agrees to furnish such documents to the City.

(d) Certificate of Completion. Within thirty (30) days after completion to the City's satisfaction of 100% of the total number of units in the Project, the City shall provide Developers with an instrument in recordable form certifying completion of the entire project. Upon issuance of the certificate of completion for 100% of the total units of the Project, this Development Agreement shall be deemed terminated as to the entire Project.

2.07 Improvements.

In any instance where Developer is required to install improvements (including those set forth in Exhibit C), Developer shall obtain City approval of the plans and specifications and the

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timing and manner of the installation of improvements, and provided Developer has supplied all information required by City, City shall review and act on the application for such approval with good faith and in a reasonable manner. Where the actual cost of any improvement exceeds Developer's estimated cost or commitment, Developer shall be solely responsible for all improvements costs in excess of those approved by City unless otherwise provided for in a reimbursement agreement.

2.08 Overcapacity, Oversizing.

(a) City may require Developer to construct on-site and off-site improvements in a manner that provides for oversizing or overcapacity so that the constructed improvement will serve other development or residents or facilities and services outside of the Project ("**Oversizing**"). Such Oversizing shall be reasonable in scope. The Parties recognize that the City shall not require any Oversizing from Developer except in connection with the Project Approvals and in accordance with provisions of the Subdivision Map Act and Applicable Law.

(b) Unless no credit or reimbursement is owed to Developer pursuant to Section 2.04 of this Agreement, Developer's right to receive credits and reimbursements for Oversizing or excessive payment or performance shall be determined and processed pursuant to the City's Municipal Code and controlling practices (relative to credits and reimbursements) on the Effective Date.

2.09 New City Laws.

(a) City may apply any New City Law to the Project that is not in conflict with this Agreement and the Applicable Law it describes. City shall not apply any New City Law to the Project that is in conflict with this Agreement and the Applicable Law it describes, nor otherwise reduces the development rights or assurances provided by this Agreement. City shall not apply to the Project nor Property any no-growth or slow-growth ordinance, measure, policy, regulation or development moratorium either adopted by City or by a vote of the electorate and whether or not by urgency ordinance, interim ordinance, initiative, referendum or any other change in the laws of the City by any method or name which would alter the Applicable Law that may stop, delay, or effect the rate, timing or sequence of development.

(b) Without limiting the generality of the foregoing, and except as otherwise provided in this Agreement, a New City Law shall be deemed to be in conflict with this Agreement or the Applicable Law or to reduce the development rights provided hereby if the application to the Project would accomplish any of the following results, either by specific reference to the Project or as part of a general enactment which affects or applies to the Project:

(1) Change any land use designation or permitted use of the Property allowed by the Applicable Law or limit or reduce the density or intensity of the Project, or any part thereof, or otherwise require any reduction in the total number of residential dwelling units, square footage, floor area ratio, height of buildings, or number of proposed non-residential buildings, or other improvements;

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(2) Limit or control the availability of public utilities, services, or facilities otherwise allowed by the Applicable Law;

(3) Limit or control the rate, timing, phasing or sequencing of the approval, development, or construction of all or any part of the Project in any manner, or take any action or refrain from taking any action that results in Developer having to substantially delay construction of the Project or require the acquisition of additional permits or approvals by the City other than those required by the Applicable Law;

(4) Limit or control the location of buildings, structures, grading, or other improvements of the Project in a manner that is inconsistent with or more restrictive than the limitations in the Existing Approvals and the Subsequent Approvals (as and when they are issued);

(5) Limit the processing of Subsequent Approvals.

(c) If City determines that it has the right pursuant to this Agreement to impose/apply a New City Law on the Property/Project, it shall send written notice to Developer of that City determination (**"Notice of New City Law"**). Upon receipt of the Notice of New City Law, if Developer believes that such New City Law is in conflict with this Agreement, Developer may send written notice to the City of the alleged conflict within thirty (30) days of receipt of City's Notice of New Law (**"Objection to New City Law"**). Developer's Objection to New City Law shall set forth the factual and legal reasons why Developer believes City cannot apply the New City Law to the Property/Project. City shall respond to Developer's Objection to New City Law (**"City Response"**) within thirty (30) days of receipt of said Developer Objection to New City Law. The City Response shall set forth the factual and legal reasons why City believes it can apply the New City Law to the Project. Thereafter, the Parties shall meet and confer within thirty (30) days of the date of Developer's receipt of the City Response (the **"Meet and Confer Period"**) with the objective of attempting to arrive at a mutually acceptable solution to this disagreement. Within fifteen (15) days of the conclusion of the Meet and Confer Period, City shall make its determination, and shall send written notice to Developer of that City determination. If City determines to "impose/apply" the New City Law to the Project, then Developer shall have a period of ninety (90) days from the date of service of such City determination within which to file legal action challenging such City action. In other words, a 90-day statute of limitations regarding Developer's right to judicial review of the New City Law shall commence upon Developer's receipt of City's determination following the conclusion of the Meet and Confer Period. If upon conclusion of judicial review of the New City Law (at the highest judicial level sought and granted), the reviewing court determines that Developer is not subject to the New City Law, such New City Law shall cease to be a part of the Applicable Law, and City shall return Developer to the position Developer was in prior to City's application of such New City Law (*e.g.*, City return fees, return dedications, etc.). The above-described procedure shall not be construed to interfere with City's right to adopt or apply the New City Law with regard to all other areas of City (excluding the Project).

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(d) Developer in its sole and absolute discretion may elect to have applied to the Project a New City Law that is not otherwise a part of the Applicable Law, subject to the limitations set forth in this subdivision (d). In the event Developer so elects to be subject to a New City Law that is not otherwise a part of the Applicable Law, Developer shall provide notice to City of that election and thereafter such New City Law shall be part of the Applicable Law. In no event shall any New City Law become part of the Applicable Law if it would relieve Developer from, or impede Developer's compliance with, Developer's obligations pursuant to this Agreement, including without limitation Developer's obligations of full "Project Mitigation" pursuant to Section 2.03 or the "RDCS and Other Project Specific Requirement" pursuant to Section 2.04. Further, for the purposes of this Agreement, the "New City Laws" Developer may elect to be subject to pursuant to this Section shall not mean nor include any or all individual development agreements with other developers (including without limitation such development agreements' term and conditions, exhibits, etc.) executed before or after the Effective Date of this Agreement.

(e) City shall not be precluded from adopting and applying New City Laws to the Project to the extent that such New City Laws are specifically required to be applied by State or Federal laws or regulations, and implemented through the Federal, State, regional and/or local level ("**Mandated New City Laws**"), including without limitation those provisions in the Development Agreement Statute concerning property located in a flood hazard zone (Government Code Section 65865.5), or that such New City Laws are necessitated by or arise from a declaration of City, local, state or federal declaration of a state of emergency.

(f) In the event that an administrative challenge and/or legal challenge (as appropriate) to a Mandated New City Laws preventing compliance with this Agreement is brought and is successful in having the Mandated New City Law determined to not apply to this Agreement, this Agreement shall remain unmodified and in full force and effect.

ARTICLE 3
PROCESSING

3.01 Processing.

(a) This Agreement does not provide Developer with any right to Subsequent Approvals nor to develop or construct the Project beyond that which is authorized in the Existing Approvals. For any Subsequent Approvals necessary for the Project, this Agreement simply provides a process by which such Subsequent Approvals may be processed by Developer, and later included into this Agreement, if and only if such Subsequent Approvals are compliant with all controlling California law (including proper Planning and Zoning Law and CEQA compliance), and are adopted/approved by City, which shall retain all lawful discretion in this regard. That public review process is ongoing, and following the City's adoption of this Agreement, that public review process shall continue. Nothing in this Agreement shall be construed to limit the authority or obligation of City to hold necessary public hearings, or to limit the discretion of City or any of its officers or officials with regard to the Project Approvals that legally require the exercise of

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discretion by City. City's discretion as to the granting of Subsequent Approvals shall be the discretion afforded by the Applicable Law.

(b) The Parties agree that this Agreement does not modify, alter or change the City's obligations pursuant to CEQA and acknowledge that Subsequent Approvals may require additional environmental review pursuant to CEQA.

(c) Upon submission by Developer of any and all necessary and required applications for Subsequent Approvals and payment of any and all appropriate processing and other fees as provided in this Agreement, City shall use its best efforts to promptly commence and diligently complete all steps necessary to acting on the requested Subsequent Approvals, including, but not limited to, (i) the holding of any and all required public hearings and notice for such public hearings, and (ii) the granting of the requested approval to the extent that it is consistent with Applicable Law.

3.02 Significant Actions by Third Parties Necessary to Implement the Existing Approvals.

(a) At Developer's sole discretion, Developer shall apply for such other permits, grants of authority, agreements, and other approvals from other private and/or public and quasi-public agencies, organizations, associations or other entities ("**Other Entity**") as may be necessary to the development of, or the provision of services and facilities to, the Project ("**Other Permits**").

(b) City shall cooperate with Developer in its endeavors to obtain any Other Permits and shall, from time to time, at the request of Developer, join with Developer in the execution of such permit applications and agreements as may be required to be entered into with any such other agency.

(c) In the event that any such Other Permit is not obtained from an Other Entity within the time permitted by law for such other entity to act and such circumstance materially deprives Developer of the ability to proceed with development of the Project or any portion thereof, or materially deprives City of a bargained-for public benefit of this Agreement, then, in such case, and at the election of either party, Developer and City shall meet and confer with the objective of attempting to mutually agree on solutions that may include alternatives, Subsequent Approvals, or an amendment(s) to this Agreement to allow the development of the Project to proceed with each Party substantially realizing its bargained-for benefit therefrom.

3.03 Establishment and Extension of Residential Development Control System Building Allotments

Allotments shall be exercised pursuant to Section 18.78.160 of the Morgan Hill Municipal Code as established by Ordinance Number 2229, and Section IV.J of the RDCS Competition Manual. The City may approve an extension to the date by which an allotment must be exercised only as allowed by Section 18.78.170 of the City of Morgan Hill Municipal Code and Section IV.L of the RDCS Competition Manual. Allotments must be exercised as follows:

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FY 2013-2014-(15 units)	01-15-17
FY 2015-2016-(25 units)	06-30-18
FY 2016-2017-(15 units)	12-30-17
FY 2018-2019-(16 units)	06-30-19

On August 24, 2016, Phase 1 Final Map recorded for Tract No. 10176 exercising 21 allotments. On November 7, 2016, Phase 1B Final Map recorded for Tract No. 10330 exercising 33 allotments. Phase 2A Final Map for Tract 10451 will record no later than June 30, 2018 exercising 16 allotments.

3.04 Amendments.

This Agreement may be amended from time to time by mutual consent in writing of the Parties to this Agreement in accordance with Government Code Section 65868. Any request by Developer for an amendment or modification to this Agreement or a Project Approval shall be subject to the applicable substantive and procedural provisions of the City's General Plan, zoning, subdivision, and other applicable land use ordinances and regulations (i.e., City review and approval) in effect when such an amendment or modification request is approved.

No amendment to this Development Agreement shall be necessary to extend the RDCS exercise of allotment date as provided in Section 3.03, nor to substitute an RDCS Commitment as provided in Section 2.04(b) of this Agreement.

3.05 Administrative Amendment

Upon the written request of, and payment of the established fee by, Developer, substitution of Commitments within the same criteria category may be processed administratively by the Community Development Director. Any Administrative Amendment must be made in writing approved by the Director and approved by the City Attorney, and signed by the Developer.

ARTICLE 4
DEFAULT, VALIDITY PROVISIONS, ASSIGNMENT

4.01 Defaults.

(a) Any failure by City or Developer to perform any material term or provision of this Agreement, which failure continues uncured for a period of sixty (60) days (or 150 days for a Mortgagee (as that term is defined in Section 4.10(a)) following written notice of such failure from the other Party (unless such period is extended by written mutual consent) ("**Notice of Default**"), shall constitute a default pursuant to this Agreement ("**Default**"). Any Notice of Default shall specify the nature of the alleged failure and, where appropriate, the manner in which such alleged failure satisfactorily may be cured. If the nature of the alleged failure is such that it cannot reasonably be cured within such 60-day period (or 150 days for a Mortgagee), then the commencement of the cure within such time period, and the diligent prosecution to completion of the cure thereafter, shall be deemed to be a cure within such 60-day period (or 150 days for a Mortgagee). If the alleged failure is cured, then no Default shall exist and the noticing Party shall take no further action. If the alleged failure is not cured, then a Default shall exist pursuant to this

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Agreement and the non-defaulting Party may exercise any of the remedies available pursuant to this Article.

(b) No failure or delay in giving notice of default shall constitute a waiver of default; provided, however, that the provision of written notice and opportunity to cure shall nevertheless be a prerequisite to the enforcement or correction of any default. Waiver of a breach or default pursuant to this Agreement shall not constitute a continuing waiver or a waiver of a subsequent breach of the same or any other provision of this Agreement.

4.02 Actions During Cure Period.

(a) During any cure period and during any period prior to any delivery of notice of failure or default, the Party charged shall not be considered in default for purposes of this Agreement. If there is a dispute regarding the existence of a default, the Parties shall otherwise continue to perform their obligations hereunder, to the maximum extent practicable in light of the disputed matter and pending its resolution or formal termination of the Agreement as provided herein.

(b) City will continue to process in good faith development applications during any cure period, but need not approve any such application if it relates to an alleged default of Developer hereunder.

4.03 Resolution of Disputes.

(a) If any dispute arises between or among the Parties as to interpretation or application of any of the terms of this Agreement, the Parties shall attempt to resolve the dispute in accordance with this Agreement prior to third party mediation, arbitration, or formal court action. As to any such dispute, the Parties shall first meet and confer in good faith to resolve the matter between themselves. Each Party shall make all reasonable efforts to provide to the other Party or Parties all information relevant to the dispute, to the end that all Parties will have appropriate and adequate information to resolve the dispute. Should the Parties not resolve the dispute informally, the Parties agree to meet and confer regarding any dispute, in an effort to agree on utilizing Judicial Arbitration Mediation Services ("JAMS") for Alternative Dispute Resolution ("ADR"). However, no party shall be required to use JAMS or ADR.

(b) In the event either Party is in default pursuant to the terms of this Agreement, the other Party may elect, in its sole and absolute discretion, to pursue any of the following courses of action: (i) waive such default; (ii) pursue administrative remedies as provided herein; (iii) pursue judicial remedies as provided for herein; and/or (iv) terminate this Agreement.

(c) Except as otherwise specifically stated in this Agreement, either Party may, in addition to any other rights or remedies, institute legal action to cure, correct, or remedy any default by another Party to this Agreement, to enforce any covenant or agreement herein, to enjoin any threatened or attempted violation hereunder, or to seek specific performance. It is expressly understood and agreed that the sole legal remedy available to Developer for a breach or violation of this Agreement by City shall be a legal action in mandamus, specific performance, and/or other

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injunctive or declaratory relief to enforce the provisions of this Agreement, and that Developer shall not be entitled to bring an action for damages including, but not limited to, lost profits, consequential damages or other economic damages. For purposes of instituting a legal action pursuant to this Agreement, any City Council determination pursuant to this Agreement shall be deemed a final agency action.

4.04 Periodic Review.

(a) The City shall review this Agreement at least once per year to assure compliance with the RDCS, at which time the Developer is required to demonstrate good faith compliance with the terms of this Agreement.

(b) If, as a result of such annual review, the City finds and determines, on the basis of substantial evidence, that Developer has not complied in good faith with the terms or conditions of this Agreement, the City may rescind all or part of the allotments awarded pursuant to the RDCS, in addition to all other legally available remedies.

4.05 Force Majeure Delay, Extension of Times of Performance.

(a) Performance by any Party hereunder shall be excused, waived or deemed not to be in default where delays or defaults are due to war, insurrection, strikes, walkouts, riots, floods, earthquakes, fires, casualties, acts of God, governmental entities other than City, including revisions to capacity ratings of the wastewater plant by the Regional Water Quality Control Board, the State Water Resources Board, enactment of conflicting State or Federal laws or regulations, or litigation (including without limitation litigation contesting the validity, or seeking the enforcement or clarification of this Agreement whether instituted by the Developer, City, or any other person or entity) (each a "**Force Majeure Event**").

(b) Any Party claiming a delay as a result of a Force Majeure Event shall provide the other Party with written notice of such delay and an estimated length of delay. Upon the other Party's receipt of such notice, an extension of time shall be granted in writing for the period of the Force Majeure Event, or longer as may be mutually agreed upon by the Parties, unless the other Party objects in writing within ten (10) days after receiving the notice. In the event of such objection, the Parties shall meet and confer within thirty (30) days after the date of objection to arrive at a mutually acceptable solution to the disagreement regarding the delay. If no mutually acceptable solution is reached, any Party may take action as permitted in this Agreement.

4.06 Third Party Legal Actions.

(a) In the event of any administrative, legal or equitable action or other proceeding instituted by any person, entity or organization (that is not a Party to this Agreement) challenging the validity of this Agreement, any Project Approvals, or the sufficiency of any environmental review pursuant to CEQA ("**Third Party Challenge**"), the Parties shall cooperate with each other in good faith in the defense of any such challenge.

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(b) City shall have the option to defend such Third-Party Challenge or to tender the complete defense of such Third-Party Challenge to the Developer ("**Tender**"). If City chooses to defend the Third-Party Challenge or Developer refuses City's Tender, City shall control all aspects of the defense and Developer shall pay City's attorney's fees and costs (including related court costs).

(c) If Developer accepts City's Tender, Developer shall control all aspects of the defense and shall pay its own attorney's fees and costs (including related court costs), and shall indemnify and hold harmless City against any and all third-party fees and costs arising out of such Third-Party Challenge. If City wishes to assist Developer when Developer has accepted the Tender, Developer shall accept that assistance and City shall pay City's own attorney's fees and costs (including related court costs) ("**City Costs**"), and Developer shall pay its own attorney's fees and costs (including related court costs), and shall indemnify and hold harmless City against any and all third-party fees and costs arising out of such Third Party Challenge (such third party fees and costs shall not include City Costs).

(d) If any part of this Agreement or any Project Approval is held by a court of competent jurisdiction to be invalid, the City shall: (1) use its best efforts to sustain and/or reenact that part of this Agreement and/or Project Approval; and (2) take all steps possible to cure any inadequacies or deficiencies identified by the court in a manner consistent with the express and implied intent of this Agreement, and then adopting or re-enacting such part of this Agreement and/or Project Approval as necessary or desirable to permit execution of this Agreement and/or Project Approval.

4.07 <u>Estoppel Certificate</u>.

(a) Any Party may, at any time, and from time to time, deliver written notice to any other Party, and/or to the Developer's lender, requesting such Party to certify in writing that, to the knowledge of the certifying Party:

(1) This Agreement has not been amended or modified either orally or in writing or if so amended, identifying the amendments.

(2) The Agreement is in effect and the requesting Party is not known to be in default of the performance of its obligations pursuant to this Agreement, or if in default, to describe therein the nature and amount of any such defaults.

(b) This written certification shall be known as an "**Estoppel Certificate.**" A Party receiving a request hereunder shall execute and return such Estoppel Certificate within ten (10) days following the receipt of the request, unless the Party, in order to determine the appropriateness of the Estoppel Certificate, promptly commences and proceeds to conclude an Annual Review. The Parties acknowledge that an Estoppel Certificate may be relied upon by Assignees and other persons having an interest in the Project, including holders of mortgages and deeds of trust. The City Manager shall be authorized to execute an Estoppel Certificate for City.

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(c) If a Party fails to deliver an Estoppel Certificate within the ten (10) day period, as provided for in Section 4.07(b) above, the Party requesting the Estoppel Certificate may deliver a second notice (the "**Second Notice**") to the other Party stating that the failure to deliver the Estoppel Certificate within ten (10) working days following the receipt of the Second Notice shall constitute conclusive evidence that this Agreement is without modification and there are no unexcused defaults in the performance of the requesting Party. Failure to deliver the requested Estoppel Certificate within the ten (10) working day period shall then constitute conclusive evidence that this Agreement is in full force and effect without modification and there are no unexcused defaults in the performance of the requesting Party.

4.08 Assignment/Covenants Run with the Land.

(a) Right to Assign. Developer shall have the right to sell, assign, or transfer this Agreement with all its rights, title and interests therein to any person, firm or corporation acquiring an interest in the Project or Property (or portion thereof associated with the Project) at any time during the term of this Agreement ("**Assignee**"). Developer shall provide City with written notice of any assignment or transfer of all or a portion of the Property no later than thirty (30) days prior to such action, which notice shall include specific portions of the Project or Property to be assigned and the proposed form of assignment. Any proposed assignment shall be subject to the express written consent of City, which consent shall not be unreasonably withheld, delayed or conditioned. City's approval of a proposed assignment or transfer shall be based upon the proposed assignee's reputation, experience, financial resources and access to credit and capability to successfully carry out the development of the Property to completion. The written assignment, assumption or release of rights or obligations with respect to a portion of the Project or of the Property shall specify the portion of the Project or Property and the rights assigned and obligations assumed, and shall be approved by the City Attorney. The express written assumption by an Assignee of the obligations and other terms and conditions of this Agreement with respect to the Property or such portion thereof sold, assigned or transferred shall relieve Developer of such obligations so assumed. Any such assumption of Developer's obligations pursuant to this Agreement shall be deemed to be to the satisfaction of the City Attorney if executed in the form as may be approved by the City Attorney.

(b) Release Upon Assignment. Upon assignment, in whole or in part, and the express written assumption by the Assignee of such assignment, of Developer's rights and interests pursuant to this Agreement, Developer shall be released from its obligations with respect to the Property/Project (or any portion thereof), and any lot, parcel, or portion thereof so assigned to the extent arising subsequent to the effective date of such assignment. A default by any Assignee shall only affect that portion of the Property/Project owned by such Assignee and shall not cancel or diminish in any way Developer's rights or obligations hereunder with respect to the assigned portion of the Property/Project not owned by such Assignee. The Assignee shall be responsible for the reporting and annual review requirements relating to the portion of the Property/Project owned by such Assignee, and any amendment to this Agreement between City and Assignee shall only affect the portion of the Property/Project owned by such Assignee.

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(c) Covenants Run with the Land. This Agreement and all of its provisions, agreements, rights, powers, standards, terms, covenants and obligations shall be binding upon the Parties and their respective heirs, successors (by merger, consolidation, or otherwise) and assigns, devisees, administrators, representatives, lessees, and all other persons or entities acquiring the Project and/or Property, any lot, parcel or any portion thereof, or any interest therein, whether by sale, operation of law or in any manner whatsoever, 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 Agreement shall be enforceable during the Term as equitable servitudes and constitute covenants running with the land pursuant to applicable law, including, but not limited to Civil Code Section 1468. This Agreement shall not be binding upon any consumer, purchaser, transferee, devisee, assignee, or any other successor of Developer acquiring a completed residential unit comprising all or part of the Project ("**Consumer**") unless such Consumer is specifically bound by a provision of this Agreement or by a separate instrument or Agreement.

4.09 Encumbrances on the Property.

The parties hereto agree that this Agreement shall not prevent or limit Developer, in any manner, at Developer's sole and absolute discretion, from encumbering the Property, or any portion thereof or any improvements thereon with any Mortgage securing financing with respect to the construction, development, use or operation of the Project. Mortgagee may require certain modifications to this Agreement, and City shall negotiate in good faith any such request for modification or subordination.

4.10 Obligations and Rights of Mortgage Lenders.

(a) The holder of any mortgage, deed of trust or other security arrangement with respect to the Property, or any portion thereof ("**Mortgagee**"), shall not be obligated pursuant to this Agreement to construct or complete improvements or to guarantee such construction or completion, but shall otherwise be bound by all of the terms and conditions of this Agreement that pertain to the Property or such portion thereof in which it holds an interest.

(b) Each Mortgagee shall be entitled to receive written notice from City of results of the annual review to be done pursuant to Section 4.04 and any default by Developer pursuant to this Agreement, provided such Mortgagee has informed City of its address for notices. Each Mortgagee shall have a further right, but not an obligation, to cure such default in accordance with the default and default cure provisions in Sections 4.01, 4.02, and 4.03 of this Agreement. In the event Developer (or any permitted Assignee) becomes subject to an order for relief pursuant to any chapter of Title 11 of the United States Code (the "**Bankruptcy Code**"), the cure periods provided for a Mortgagee in Section 4.01(a) of this Agreement shall be tolled for so long as the automatic stay of Section 362 of the Bankruptcy Code remains in effect as to Developer (or any permitted Assignee); provided, however, if City obtains relief from the automatic stay pursuant to Bankruptcy Code Section 362 to declare any default by or exercise any remedies against Developer (or any permitted Assignee), the tolling of any Mortgagee's cure period shall automatically terminate on the earlier of: (i) the date that is sixty days after entry of the order

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granting City relief from the automatic stay, or (ii) the date of the entry of an order granting Mortgagee relief from the automatic stay. Each Mortgagee shall be entitled to receive written notice from City of the filing of any motion by City in which City seeks relief from the automatic stay of Section 362 of the Bankruptcy Code to declare any default by or exercise any remedies against Developer (or any permitted Assignee).

(c) Any Mortgagee who comes into possession of the Property, or any portion thereof, pursuant to a foreclosure of a mortgage or a deed of trust, or deed in lieu of such foreclosure, shall take the Property, or such portion thereof, subject to any pro rata claims for payments or charges against the Property, or such portion thereof, that have accrued prior to the time such holder comes into possession. In addition, any Mortgagee who comes into possession of the Property or any portion thereof, pursuant to a foreclosure of mortgage or deed of trust, or deed in lieu of such foreclosure, shall, subject to Section 4.10(a) above, be a permitted Assignee and, as such, shall succeed to all the rights, benefits and obligations of Developer pursuant to this Agreement.

(d) Nothing in this Agreement shall be deemed to be construed to permit or authorize any such holder to devote the Property, or any portion thereof, to any uses, or to construct any improvements thereof, other than those uses and improvements provided for or authorized by this Agreement, subject to all of the terms and conditions of this Agreement.

4.11 Compliance with Government Code Section 65867.5.

In accordance with the requirements of Government Code Section 65867.5, City and Developer agree that any tentative subdivision map(s) for the Project is hereby made subject to a condition that a sufficient water supply shall be available. Proof of the availability of a sufficient water supply shall be secured in accordance with the provisions of Government Code Section 66473.7.

4.12 Termination.

This Agreement shall terminate upon the expiration of the Term, as set forth in Section 1.03(a), or at such other time as this Agreement is terminated in accordance with the terms hereof, whichever occurs first. Upon termination of this Agreement, the City shall record a notice of such termination, in a form satisfactory to the City Attorney that the Agreement has been terminated.

ARTICLE 5
GENERAL PROVISIONS

5.01 Miscellaneous.

(a) Preamble, Recitals, Exhibits. References herein to "this Agreement" shall include the Preamble, Recitals and all of the exhibits of this Agreement.

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(b) Requirements of Development Agreement Statute. The permitted uses of the Property; density and/or intensity of use of the Property; the maximum height and size of proposed buildings and other structures; provisions for reservation or dedication of land for public purposes; location of public improvements; and other terms and conditions applicable to the Project shall be those set forth in the Development Approvals and, as and when they are issued, the Subsequent Development Approvals; and Applicable Law. As Subsequent Approvals are adopted and therefore become part of the Applicable Law, the Subsequent Approvals will refine the permitted uses, density and/or intensity of use, maximum height and size of buildings and other structures, provisions for reservation or dedication of land, and other terms and conditions applicable to the Project.

(c) Governing Law and Attorneys' Fees. This Agreement shall be construed and enforced in accordance with the laws of the State of California and legal actions commenced pursuant to this Agreement shall be brought in Santa Clara Superior Court. Should any legal action be brought by a Party for breach of this Agreement or to enforce any provision herein, the prevailing party of such action shall be entitled to reasonable attorneys' fees, court costs, and such other costs as may be fixed by the court.

(d) Project as a Private Undertaking. No partnership, joint venture, or other association of any kind between Developer, on the one hand, and City on the other hand, is formed by this Agreement. The development of the Property is a separately undertaken private development. The only relationship between City and Developer is that of a governmental entity regulating the development of private Property and the owners of such private Property.

(e) Indemnification. Developer shall hold City, its elective and appointive boards, commissions, officers, agents, and employees, harmless from any liability for damage or claims for damage for personal injury, including death, as well as from claims for property damage which may arise from Developer's contractors, subcontractors', agents' or employees' operations on the Project, whether such operations be by Developer or by any Developer's contractors, subcontractors, or by any one or more persons directly or indirectly employed by, or acting as agent for Developer or any of Developer's contractors or subcontractors. Developer shall indemnify and defend City and its elective and appointive boards, commissions, officers, agents and employees from any suits or actions at law or in equity for damages caused, or alleged to have been caused, by reason of any of the aforesaid operations and Developer shall pay all reasonable attorney's fees and costs that the City may incur. City does not, and shall not, waive any rights against Developer which it may have by reason of the aforesaid hold-harmless requirement of Developer because of the acceptance of improvements by City, or the deposit of security with City by Developer. The aforesaid hold-harmless requirement of Developer shall apply to all damages and claims for damages of every kind suffered, or alleged to have been suffered, by reason of any of the aforesaid operations referred to in this subsection, regardless of whether or not City has prepared, supplied or approved of, plans and/or specifications for the subdivision. Notwithstanding anything herein to the contrary, Developer's indemnification of City shall not apply to the extent that such action, proceedings, demands, claims, damages, injuries or liability is based upon the active negligence of the City.

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(f) Insurance. Developer shall, during the life of this Agreement take out and maintain insurance coverage with an insurance carrier authorized to transact business in the State of California as will protect the Developer or any Contractor or any Subcontractor or anyone directly or indirectly employed by any of them or by anyone for whose acts any of them may be liable, from claims for damages because of bodily injury, sickness, disease, or death of their employees or any person other than their employees, or for damages because of injury to or destruction of tangible property, including loss of use resulting therefrom. The minimum limits of liability for such insurance coverage which shall include comprehensive general and automobile liability, including contractual liability assumed pursuant to this Agreement, shall be as follows:

Limit of Liability for Injury or Accidental Death:
Per Occurrence $1,000,000
Limit of Liability for Property Damage: Aggregate
Liability for Loss $1,000,000

Such liability insurance policies shall name the City as an additional insured, by separate endorsement, and shall agree to defend and indemnify the City against loss arising from operations performed pursuant to this Agreement and before permitting any Contractor or Subcontractors to perform work pursuant to this Agreement, the Developer shall require Contractor or Subcontractors to furnish satisfactory proof that insurance has been taken out and is maintained similar to that provided by the Developer as it may be applied to the Contractor's or Subcontractor's work.

(g) Interpretation/Construction. This Agreement has been reviewed and revised by legal counsel for both Developer and City, and any rule or presumption that ambiguities shall be construed against the drafting Party shall not apply to the interpretation or enforcement of this Agreement. The standard of review of the validity and meaning of this Agreement shall be that accorded legislative acts of City. As used in this Agreement, and as the context may require, the singular includes the plural and vice versa, and the masculine gender includes the feminine and neuter and vice versa.

(h) Notices.

(1) All notices, demands, or other communications that this Agreement contemplates or authorizes shall be in writing and shall be personally delivered or mailed, via first class mail to the respective Party at the below listed address. Notice shall be deemed received five days after the date of mailing or upon date of personal delivery.

If to City:

City Clerk
17575 Peak Avenue
Morgan Hill, CA 95037
Tel: (408) 779-7271
Tel: (408) 779-7259
Fax: (408) 779-3117

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With a Copy To: City Attorney
17575 Peak Avenue
Morgan Hill, CA 95037
Tel: (408) 779-7271
Fax: (408) 779-1592

If to Developer: Attn: Toll Brothers CA XX
Rick Nelson
6800 Koll Center Parkway, Suite 320
Pleasanton, CA 94566-7053

(2) Any Party may change the address stated herein by giving notice in writing to the other Parties, and thereafter notices shall be addressed and transmitted to the new address. Any notice given to the Developer as required by this Agreement shall also be given to any lender which requests that such notice be provided. Any lender requesting receipt of such notice shall furnish in writing its address to the Parties to this Agreement.

(i) Recordation. The Clerk of the City shall record, within ten (10) days after the Effective Date, a copy of this Agreement in the Official Records of the Recorder's Office of Santa Clara County. Developer shall be responsible for all recordation fees, if any.

(j) Severability. If any term or provision of this Agreement, or the application of any term or provision of this Agreement to a specific situation, is found to be invalid, void, or unenforceable, the remaining terms and provisions of this Agreement, or the application of this Agreement to other situations, shall continue in full force and effect.

(k) Jurisdiction. The interpretation, validity, and enforcement of the Agreement shall be governed by and construed pursuant to the laws of the State of California.

(l) Entire Agreement. This Agreement, including these pages and all the exhibits (set forth below) inclusive, and all documents incorporated by reference herein, constitute the entire understanding and agreement of the Parties.

(m) Signatures. The individuals executing this Agreement represent and warrant that they have the right, power, legal capacity, and authority to enter into and to execute this Agreement on behalf of the respective legal entities of Developer and City. This Agreement may be executed in multiple originals, each of which is deemed to be an original.

(n) Counterparts. This Agreement may be executed in several counterparts, each of which shall be deemed an original, and all such counterparts shall together constitute one and the same instrument.

(o) Exhibits. The following exhibits are attached to this Agreement and are hereby incorporated herein by this reference for all purposes as if set forth herein in full:

Attachment: conformed copy of DA (2530 : AAE20190009: Cochrane-Toll Brothers)

Exhibit A	***Description of Project***
Exhibit B	***Legal Description of Lot on Which Project is to be Located***
Exhibit C	***RDCS Project Requirements and Commitments***

IN WITNESS WHEREOF, City and Developer have executed this Agreement as of the date first hereinabove written.

CITY OF MORGAN HILL:

s/_____

Christina J. Turner
City Manager

Date: 7/16/18

Attest:

s/_____

Angie Gonzalez
Deputy City Clerk

Approved as to Form:

s/ Cynthia L. Gibson
for Donald A. Larkin
City Attorney

Date: 7-3-18

DEVELOPER:

TOLL CA XX, LP

s/_____

JOHN CALLAHAN / SENIOR VICE PRESIDENT
Name/Title [print]

Date: 5/23/18

Corporate entities must provide a second signature:

s/_____

Robert D. Mosse Group President
Name/Title [print]

Date: 5/23/18

(ALL SIGNATURES, EXCEPT CITY CLERK AND CITY ATTORNEY, MUST BE ACKNOWLEDGED BY A NOTARY)

Attachment: conformed copy of DA (2530 : AAE20190009: Cochrane-Toll Brothers)

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 Alameda)

On May 23, 2018 before me, Allison, Sweeney, Notary Public
(insert name and title of the officer)

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

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

WITNESS my hand and official seal.

ALLISON SWEENEY
Notary Public - California
Alameda County
Commission # 2155876
My Comm. Expires Jul 2, 2020

Signature Allison Sweeney (Seal)

Attachment: conformed copy of DA (2530 : AAE20190009: Cochrane-Toll Brothers)

A notary 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

On July 16, 2018, before me, Angelica Gonzalez, a Notary Public in and for said County and State, personally appeared Christina Turner, 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, or the entity upon behalf of which the person(~~s~~) acted, executed the instrument.

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

WITNESS my hand and official seal.

SIGNATURE OF NOTARY PUBLIC

ANGELICA GONZALEZ
Notary Public - California
Santa Clara County
Commission # 2113361
My Comm. Expires May 29, 2019

(ABOVE AREA FOR NOTARY SEAL)

Attachment: conformed copy of DA (2530 : AAE20190009: Cochrane-Toll Brothers)

EXHIBIT A

DESCRIPTION OF PROJECT:

AS FOUND IN APPLICATIONS MC 11-03/MC 13-21/MC 14-12/RDCS2016-0015: COCHRANE-BORELLO AND AS DESCRIBED IN THE EIR FOR COCHRANE-BORELLO DATED AUGUST 2012 AND FINAL EIR DATED JANUARY 2013

Attachment: conformed copy of DA (2530 : AAE20190009: Cochrane-Toll Brothers)

EXHIBIT B

LEGAL DESCRIPTION

EXHIBIT "A"

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

PARCEL ONE:

Beginning at a point on the Southeasterly line of the Laguna Seca Rancho at the most Southerly corner of the 300 Acre Tract of Land described in the Deed from Jose Jesus Bernal and Susana Gulnac de Bernal to Alvora Cottle, dated November 8, 1862, and recorded November 10, 1862, in Book "Q" of Deeds, at Page 157, said Point of Beginning being marked by an Old stake "E"; thence running along the Southwesterly line of said 300 Acre Tract of Land and along the center line of Peet Road, N. 65 deg 09' W. 27.01 chains to a picket marked M.H.F. and 1 1/2 inch iron pipe five feet long driven along side at the most Southerly corner of the 112.68 Acre Tract of Land described in the Deed from Alvora Cottle, et ux, to Simon Mathews, dated August 13, 1867, and recorded August 20, 1867, in Book "Z" of Deeds, at Page 88; thence running N 15 deg 14' E. and along said line 46.84 chains to an old stake in mound of cobbles marked M.P.2 and from which a live oak 24" in diameter bears N 17 deg 34' W. 0.40 chains and sycamore 12" in diameter bears N 31 deg 30' W. 0.34 chains; thence N. 52 deg 46' W. 3.58 chains to a stake marked P.M. standing in the Northeasterly line of the 635.20 Acre Tract of Land conveyed by Cesar Piatti, et ux, to Jose Jesus Bernal by Deed dated January 31, 1861, and recorded February 4, 1861, in Book "O" of Deeds, at Page 35, records of said County of Santa Clara, and from which stake P.E. a sycamore 8" in diameter bears S 20 deg 35' E. 0.27 chains distant; thence along said line of said 635.20 Acre Tract, S. 68 deg 53' E. 14.087 chains to a point in said line that is distant S. 69 deg 07 W. 515.68 feet and N. 68 deg 53' W. 167.83 feet measured along the Northerly line of said 635.20 Acre Tract from the Northeasterly corner of the aforementioned 300 Acre Tract; thence S 15 deg 02' E. 176.88 feet to a 3/4" iron pipe, S 15 deg 05' W. 527.90 feet to a 3/4" iron pipe and S. 75 deg 43' E. 967.94 feet to a point in a line that is parallel with the Westerly line of the Coyote Road and distant Westerly at right angles 1.32 feet therefom; thence along said parallel line S 11 deg 17' E. 24.04 chains to a point in the Southeasterly line of the Laguna Seca Rancho; thence along said line S. 46 deg 20' W. 22.94 chains to the Point of Beginning, and being a portion of the Rancho Laguna Seca and being a part of that 156.92 Acre Tract of Land as laid down, designated and delineated upon the Map of the Survey of the formerly Phegley Home Ranch in the Rancho Laguna Seca, and which said Map was filed for record in the Office of the Recorder of the County of Santa Clara, State of California, in Book "F2" of Maps, at Page 28.

Excepting therefrom the Parcel of property bounded by a line beginning at an iron pipe set at the Point of Intersection of the Southwesterly line of Cochran Road, formerly Coyote Road, 40 feet wide, with the Southerly line of that certain 14.31 Acre Tract of Land described in the Deed from Katherine Garnett Rhoades, also known as Katherine G. Rhoadens, to Harold E. Thomas, et ux, dated March 12, 1945; and recorded March 14, 1945, in Book 1249 of Official Records, Page 108; thence along said line of Cochran Road, formerly Coyote Road, S. 11 deg 17' E. 232.34 feet to an iron pipe; thence leaving said line of Cochran Road and running at right angles thereto, S. 78 deg 43' W. 170.0 feet to an iron pipe; thence at right angles, and parallel with said line of Cochran Road, N. 11 deg 17' W. 311.73 feet to an iron pipe set on the Southerly line of said 14.31 Acre Tract; thence along said Southerly line of said 14.31 Acre Tract, S. 76 deg 15' E. 187.63 feet to the Point of Beginning and being a portion of the Rancho Laguna Seca. Being designated upon the Map of the Record of Survey, which was filed for record on February 27, 1958, in Book 91 of Maps, at Page 13, Records of Santa Clara County, California.

Also excepting that portion of Said Land conveyed to the County of Santa Clara, instrument recorded March 23, 1954 in Book 2839, Page 377, Official Records.

Also excepting therefrom that portion of Said Land conveyed to the Santa Clara Valley Water Conservation District by Deed recorded March 23, 1960 in Book 4737, Page 109, Official Records.

Also excepting therefrom that portion of Said Land conveyed to the United States of America, by Deed recorded December 28, 1984 in Book J145, Page 391, Official Records.

Also excepting therefrom that portion of Said Land conveyed to the United States of America by Deed recorded February 15, 1985 in Book J251, Page 392, Official Records.

Also excepting therefrom that portion of Said Land conveyed to the Santa Clara Valley Water District by Deed recorded May 17, 1985 in Book J349, Page 325, Official Records.

Attachment: conformed copy of DA (2530 : AAE20190009: Cochrane-Toll Brothers)

Also excepting therefrom that portion of Said Land conveyed to the Santa Clara Valley Water District by Deed recorded May 17, 1985 in Book J349 Page 328, Official Records.

PARCEL TWO:

Together with those certain rights and interests reserved and described in that certain Deed executed by Katherine Garnett Rhoades, also known as Katherine G. Rhoades, in favor of Sebastian G. Borello and Luigia Borello, Husband and Wife, As Joint Tenants, recorded March 5, 1945 in Book 1250 Page 75, Official Records.

Also together with those certain rights to irrigation facilities and appurtenances thereto, which rights were reserved in that certain Deed executed by S. G. Borello & Sons, Inc., a Corporation, in favor of the Santa Clara Valley Water Conservation District, recorded March 23, 1960 in Book 4737, Page 109, Official Records.

Also together with those certain rights and interests reserved in that certain Deed executed by S. G. Borello & Sons, Inc., a Corporation, in favor of the United States of America, recorded December 28, 1984 in Book J145, Page 391, Official Records.

Also together with those certain rights reserved in that certain Deed executed by S. G. Borello & Sons, Inc., in favor of the Santa Clara Valley Water District, recorded May 17, 1985 in Book J349, Page 328, Official Records.

"Note: Parcel Two herein described is being included so as to avoid Chicago Title being the cause of excluding it from conveyances. Said parcel is not insured even though it may be included as part of the legal description of the land described in any policy."

Assessor's Parcel No. 728-34-027

Attachment: conformed copy of DA (2530 : AAE20190009: Cochrane-Toll Brothers)

EXHIBIT C SPECIFIC RESTRICTIONS AND REQUIREMENTS

The following restriction and requirements apply to Phase 1 (15 FY 13-14 allotments/15 FY 2016-17 allotments), Phase 2, (25 FY 15-16 allotments), and Phase 3, 16 FY 18-19 allotments of the Development proposed in the following respective RDCS applications: MC 11-03: Cochrane-Borello, MC 13-21: Cochrane-Borello, MC 14-12: Cochrane-Borello and RDCS 2016-0015: Cochrane Borello and shall apply to that portion of the Property included in the said phases of the development on the Property. The following chart describes the applicable reference in the Morgan Hill Municipal Code (as it existed at the time of the applications) to the requirement, a description of the commitments specific to the Project, the requirement timing of the implementation and the total estimated costs of improvement or applicable fee commitment. These commitments are **IN ADDITION** to any mitigation requirements pursuant to CEQA, impact fees, in-lieu fees or other requirements pursuant to federal or state laws, or the Morgan Hill Municipal Code (See Section 2.03 of the Agreement)

* Costs are estimates and may require augmentation for the completion of improvements. Impact fees are subject to the provisions of Section 2.03 (b) of this Agreement.

Section No.	Category/Criteria	Public Benefit/Commitment	Implementation	Estimated Contribution
-	**Public Schools**			
B.1	Developer Fees	**MC 11-03, MC 13-21, MC 14-12 and RDCS2016-0015:** Commit to payment of district adopted developer fees as provided by the Leroy F. Green School Facilities Act of 1988.		
B.4	Off-site pedestrian safety improvements	**MC 11-03:** Developer will provide off-site pedestrian safety improvements or traffic safety improvements near or on a	FY 2013-2014 allotments	$4,125/unit

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Section No.	Category/Criteria	Public Benefit/Commitment	Implementation	Estimated Contribution
		MHUSD school site valued at ($825 X 5 = $4,125) $4,125 dollars per unit or pay an in-lieu fee equal to $4,125 dollars per unit or develop any other improvements valued at $4,125 dollars per unit to be determined by the MHUSD.		
		MC 13-21 and MC 14-12: Will provide off-site pedestrian safety improvements or traffic safety improvements near or on a MHUSD school site valued at ($825 X 5 = $4,125) $4,125 dollars per unit or pay an in-lieu fee equal to $4,125 dollars per unit or develop any other improvements valued at $4,125 dollars per unit to be determined by the MHUSD.	FY 2015-2016 and FY 2016-2017 allotments	$4,125/unit
		RDCS 2016-0015: Will provide off-site pedestrian safety improvements or traffic safety improvements near or on MHSUD school valued at $4,950 per unit or pay an in lieu fee equal to $4950 dollars per unit.	FY 2018-2019 allotments	$4,950/unit

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Section No.	Category/Criteria	Public Benefit/Commitment	Implementation	Estimated Contribution
	Open Space			
B.1.a	Open space buffer (freeway/arterials)	**MC 11-03, MC 13-21, MC 14-12 and RDCS2016-0015**: Developer commits to providing a minimum 10-foot buffer in excess to the standard along Peet Road (arterial). Minimum setback for fence/wall on side yard is 15 feet (20 feet average). For front yard, minimum 30 feet.	Architectural and Site Review	
B.1.b	Common useable open space	**MC 11-03, MC 13-21, MC 14-12 and RDCS2016-0015:** Private open space areas and amenities are to be maintained by a Homeowners Association.	Architectural and Site Review	
B.1.c	Convenient access to amenities	**MC 11-03, MC 13-21, MC 14-12 and RDCS2016-0015**: Developer to provide a minimum 7-foot wide pedestrian/bicycle pathway in areas no less than 20 foot wide with an average of 30 foot wide. Cannot be redundant of public sidewalks and will provide convenient direct and safe access to the centrally	Architectural and Site Review	

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Section No.	Category/Criteria	Public Benefit/Commitment	Implementation	Estimated Contribution
		located park.		
B.1.d	Accessibility to parks/open space	**MC 11-03, MC 13-21, MC 14-12 and RDCS2016-0015:** For consistency with prior scoring of application, Developer will provide minimum 7-foot wide pathway in area no less than 20-foot wide. Pathway will provide access through SCVWD property to "The Ranch at Alicante" subdivision which has pathway that provides better access to Coyote Creek Park on north side of Cochrane Road.	Architectural and Site Review	
B.2	Ratio of Open Space Area	**MC 11-03:** Provides less than 25% building coverage. **MC 13-21, MC 14-12 and RDCS2016-0015**: Provides less than 25% building coverage	FY 2013-2014 allotments FY 2015-2016, FY 2016-2017 and FY2018-2019 allotments	
B.4.a	TDC for projects (<20% slope)	**MC 11-03, MC 13-21, MC 14-12 and RDCS2016-0015:** Developer commits to purchase TDC's at a ratio of one TDC for every twenty units in project.	Paid prior to certificate of occupancy	
	Public Facilities			

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Section No.	Category/Criteria	Public Benefit/Commitment	Implementation	Estimated Contribution
B.2.a	Grids water	**MC 11-03, MC 13-21, MC 14-12 and RDCS2016-0015:** Project proposes to grid water in future phases Peet to Cochrane.	FY 2013-2014/FY 2015-2016/FY 2018-2019 allotments	
B.2.b	Drainage concept consistent with City's storm drain system	**MC 11-03, MC 13-21, MC 14-12 and RDCS2016-0015:** Drainage concept will be consistent with City's Storm drain system (e.g., the City Storm Drainage Master Plan, local area storm drain system).	Improvement Plans	
B.2.c	Storm drain lines constructed within paved area of the street	**MC 11-03, MC 13-21, MC 14-12 and RDCS2016-0015:** All Storm drain lines will be constructed entirely within the paved area of the street (curb to curb), or in a location acceptable to the Director of Public Works. Public Storm Drain Lines that are to be maintained by the City shall be constructed within a paved area or a location acceptable to the Director of Public Works.	Improvement Plans	
B.2.d	No on-site detention pond or open space retention areas required	**MC 11-03, MC 13-21, MC 14-12 and RDCS2016-0015:** Developer will provide an oversized detention pond along Cochrane Road. Oversized detention ponds shall be provided	Improvement Plans	

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Section No.	Category/Criteria	Public Benefit/Commitment	Implementation	Estimated Contribution
		because the adjacent Alicante Ranch project cannot accept any additional flows. Additional storage capacity shall be provided at the direction of the Director of Public Works.		
B.2.f	Excess public improvements	**MC 11-03, MC 13-21, MC 14-12 and RDCS2016-0015**: Will provide public facilities, off site storm drainage or pedestrian improvements from a City approved list or improvements on/or adjacent in excess of standard requirements (eg. sewer, traffic control) at a rate of $4400/unit per stated requirements or pay an in-lieu fee equal to $4,400/unit.	FY 2013-2014, FY 2015-2016, FY 20162017, and FY 2018-2019 allotments	$4,400.00/unit
B.2.g	Contribution to RDCS Capital Improvements fund	**MC 11-03**: Developer will contribute $1,100 per unit to the RDCS Capital Improvement Program Fund:	FY 2013-2014 allotments	$1,100 per unit
	Parks and Paths			

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Section No.	Category/Criteria	Public Benefit/Commitment	Implementation	Estimated Contribution
B.2	On-site recreational amenities	**MC 11-03, MC 13-21, MC 14-12 and RDCS2016-0015:** Swimming Pool Restroom Area Club house with kitchen area Tennis Court Recreation Hall Exercise Room Cabana/Shade Trellis 1/2 Court Basketball Court	Architectural and Site Review	
B.3	Bicycle/equestrian/pedestrian paths	**MC 11-03, MC 13-21, MC 14-12 and RDCS2016-0015:** Developer commits to the criteria above and agrees to install 6.1 Miles of Class II Bike Lanes where required by the 2008 Bicycle Master Plan (244/10*0.25) =6.1 Miles. (1 Mile = 5280 feet). Developer commits to a total of 32,208 Linear Feet of Class II bike lane improvements.	Prior to installation, the Project shall coordinate with City of Morgan Hill to determine the location for the Class II bike lane improvements to be installed.	
B.6	Additional park fees (in-lieu fee)	**MC 11-03, MC 14-12 and RDCS2016-0015:** Developer agrees to pay the lesser of double the required in-lieu park fees or $1,100 per unit.	FY 2013-2014, FY 2016-2017 and FY2018-2019 allotments	$1,100/unit
B.8	Dedication of land	**MC 11-03, MC 13-21, MC 14-**		

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Section No.	Category/Criteria	Public Benefit/Commitment	Implementation	Estimated Contribution
		12 and RDCS2016-0015: Project shall reserve and dedicate over 50% of the required park area of 2.4 Acres to private park activities.		
	Housing Needs			
B.1	15% Granny units or R-2 projects 10%-25% single family units	**MC 11-03, MC 13-21, MC 14-12 and RDCS2016-0015**: The developer to provide a minimum of 15 percent secondary units for the entire project.	Architectural and Site Review	
B.2.a	Standard Housing Fee	**MC 11-03, RDCS2016-0015**: Developer commits to pay Double the standard housing fee, and to provide a minimum of 20 percent of the overall dwellings with secondary dwelling units (244 lots with 49 secondary units = 20.08 percent of total project) **MC 13-21 and MC 14-12**: Developer commits to payment of the standard housing fee and to provide a minimum of 20 percent of the overall dwellings with secondary dwelling units.		
	Housing Types			

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Section No.	Category/Criteria	Public Benefit/Commitment	Implementation	Estimated Contribution
B.1.a	Diversity of housing	**MC 11-03, MC 13-21, MC 14-12 and RDCS2016-0015**: Developer is committing to provide three housing types: single family detached units, secondary dwelling units and 15 percent of the units to be single-story.	Architectural and Site Review	
B.3.a	Housing variation- single-family	**MC 11-03, MC 13-21 MC 14-12 and RDCS2016-0015**: The project will provide for a variation of housing sizes within the project. The proposed project provides at least a fifty percent variation in house size from the smallest to largest floor plan and each house size represents at least ten percent of the total units.	For purposes of making the determination, there must be at least three (3) different floor plans and there must be a two hundred square foot difference between the size of each floor plan (less than two hundred square feet difference will be aggregated as one floor plan). Architectural and Site Review	
B.4	25% visitability accessible units	**MC 11-03, MC 13-21, MC 14-12 and RDCS2016-0015:** The project will provide at least 25 percent of the dwellings as visitability accessible units. Visitability units are accessible dwellings that have one zero step entrance on an accessible route; all main floor interiors, including bathrooms, with 32 inches of	Building Permit	

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Section No.	Category/Criteria	Public Benefit/Commitment	Implementation	Estimated Contribution
		clear passage space; and at least a half-bath on the main floor usable for a person in a wheelchair.		
	Quality of Construction Standards			
B.1	Natural and Environmental	**MC 11-03:** The following improvements shall be included in each home: •Recycling center built in to cabinet layout with pull out bins. •Noncombustible siding. •5/8 sheet rock in all interior bathroom walls. •Appliances shall be Energy Star rated. **MC 13-21**: The following improvements shall be included in each home: •Full exterior OSB/Plywood wrap with window/door flashing. •5/8" Type "X" sheetrock in all interior walls. •Mud room from garage into home in 30% of homes •Recycle center built in to cabinet layout with pull outs for bins. •Noncombustible Siding and	Building Permit	

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Section No.	Category/Criteria	Public Benefit/Commitment	Implementation	Estimated Contribution
		roofing Materials except for window, fascia and door trim on all homes. •Energy Star rated fresh air exhausts system in home. **MC 14-12, RDCS2016-0015**: The following improvements shall be included in each home: •Full exterior OSB/Plywood wrap with window/door flashing. •Installation of light weight wallboard for all walls excluding code requirement for fire walls. •Installation of one dedicated 3/4inch electrical raceway for a future circuit to accommodate two 220 Volt electric car charging stations inside the garage. •Installation of 90% high efficiency fan forced heating. •Zoned heating and air condition for all one and two story homes. •Listed sound attenuated materials in wall that adjoin a bathroom and or bedroom walls. •Installation of high efficiency energy star water heater with		

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Section No.	Category/Criteria	Public Benefit/Commitment	Implementation	Estimated Contribution
		energy factor of 0.70. •Installation of ultra-high efficiency or dual flush toilet (only 2016-0015). •Install rain sensor monitor in irrigation system. •Foundations: 20% reduction of cement in the concrete mix design by use of ash, slag, silica fume or rice hull ash (only 2016-0015).		
	Lot Layout and Orientation			
B.1.b	Excess side yard setbacks	Side yard setbacks (majority) shall exceed city requirements by 20%.	Architectural and Site Review	
B.1.f	Transition of lot sizes	A sufficient transition in lot sizes shall be proposed in the site plan design to allow compatibility between existing and proposed neighborhoods.	Architectural and Site Review	
B.1.h	Project design	Each floor plan/elevation repeats less than 3.5 times.	Architectural and Site Review	
B.2.a	Continuous park/open space	Park/open space area shall be aggregated into a large meaningful area.	Architectural and Site Review	
B.2.b	Enhance neighborhood security	A Minimum 75 percent of the units' entrances shall be visible	Architectural and Site Review	

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Section No.	Category/Criteria	Public Benefit/Commitment	Implementation	Estimated Contribution
		from the public right of way or private circulation areas, and pedestrian walkways. A security gate is to be installed.		
B.3.a	Front setback variation	A minimum five-foot front setback variation is provided between adjoining units.	Architectural and Site Review	
B.3.b	Rear setback variation	A minimum five-foot rear setback variation is provided between single-family dwellings.	Architectural and Site Review	
B.3.c	Lot width variation	A four-foot variation in standard lot widths (excluding cul-de-sac lots) and each lot width represents at least 10 percent of the total lots.	Architectural and Site Review	
B.3.d	Garage placement variation (single family and multi-family)	At least 50% percent of units have side-loading, detached, rear garages, or two car garages with tandem parking space to accommodate a third vehicle inside the garage.	Architectural and Site Review	
B.4	Noise reduction	Project commits to: •Greater setbacks at project boundaries. •Sound insulation in units exposed to higher noise levels than average or on specific units as required by the Director of	Architectural and Site Review	

Section No.	Category/Criteria	Public Benefit/Commitment	Implementation	Estimated Contribution
		Planning. • •Locating AC units away from property lines.		
	Circulation Efficiency			
B.1.a	Discourage fast traffic	**MC 11-03**: Project shall have gated private streets	Architectural and Site Review/Improvement Plans	
B.1.a/B.1.b	Future street extensions	**MC 11-03, MC 13-21 MC 14-12 and RDCS2016-0015**: The project will provide the Peet Road/Hill Road realignment per the City's General Plan •Project will provide the following internal improvements: Privately maintained private streets. •Storm water bio-swales. •Project specific street sections will be utilized. •Roadway system that meets City Standard R-Values and allow for a looping pattern of circulation.	Improvement Plans	
B.1.c	Eliminates stub or substandard streets	**MC 11-03, MC 13-21 MC 14-12 and RDCS2016-0015:** Applicant commits to install street improvements along the length of the realigned section of Peet Road between Half Road and the	Improvement Plans	

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Section No.	Category/Criteria	Public Benefit/Commitment	Implementation	Estimated Contribution
		northwesterly boundary of the project.		
B.1.d	Looping pattern of circulation	**MC 11-03 and MC 13-21:** Interior streets and/or drive aisles are designed to meet all city safety and parking standards and allow for a looping pattern of circulation.	Improvement Plans	
B.1.e	Backout distance	**MC 11-03, MC 13-21 MC 14-12 and RDCS2016-0015**: The project will provide for a minimum 20-foot clear view back outdistance between enclosed garage space and roadway and/or drive aisle.	Architectural and Site Review/Improvement Plans	
B.1.i	Landscaped islands and entry monument	**MC 11-03**: Islands and entry statements will be provided at all project entries.	Architectural and Site Review/Improvement Plans	
B.2	Internal Circulation	**MC 11-03 and MC 13-21**: Internal project circulation is designed for use primarily by local residents.	Architectural and Site Review/Improvement Plans	
B.2.a/B.1.h	Two access points	**MC 11-03, MC 13-21 MC 14-12 and RDCS2016-0015**: All phases will have access from two separate streets.	Architectural and Site Review/Improvement Plans	
B.2.b	Avoids undesirable traffic situations	**MC 11-03**: No double frontage	Architectural and Site	

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Section No.	Category/Criteria	Public Benefit/Commitment	Implementation	Estimated Contribution
		lots. No utility easements in rear or side yards of private property. No landlocked property.	Review/Improvement Plans	
B.2.c	Detached sidewalks	**MC 14-12:** Project shall include detached sidewalks with a minimum five-foot street landscape strip.	FY 2016-2017 and FY 2018-2019 allotments Site and Architectural Review/Improvement Plans	
B.2.d/B.1.j	Facilitates emergency response	**MC 11-03, MC 13-21 MC 14-12 and RDCS2016-0015**: The proposed access points to the project will provide adequate circulation for emergency response and police patrol.	Site and Architectural Review/Improvement Plans	
B.3.a	Converts lighting	**MC 14-12 and RDCS2016-0015:** Converts existing city lighting to energy efficient LED lights at a ratio of one street light conversion per dwelling unit.	FY 2016-2017 and FY 2018-2019 allotments	The cost of the light conversion shall be at least equal to or greater than $ 750.00 per unit.
B.4	General Community Benefit	**MC 11-03 MC 14-12 and RDCS2016-0015**: The project will install full street improvements on the realignment of Peet Road at a cost of $2,200/unit or pay an in lieu-fee	FY 2013-2014, 20162017 and FY 2018-2019 allotments	$2,200.00

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Section No.	Category/Criteria	Public Benefit/Commitment	Implementation	Estimated Contribution
		equal to $2,200 dollars per unit. Should the cost exceed $2,200/unit for said Peet Road realignment, Developer will install offsite improvements from the City approved list. The project has committed to install full street improvements along the full length realigned section of Peet Road between Half Road and the northwesterly boundary of the project. **MC 13-21:** The project will install street improvements along the length of the re- aligned section of Peet Road between Half Road and the northwesterly boundary of the project. Developer has obtained letters from the affected property owners agreeing to the required dedication at a cost of $1,100 dollars per unit or pay an in- lieu-fee equal to $1,100 dollars per unit. Said fee shall not exceed $1,100 dollars per unit.	FY 2015-2016 allotments Improvement Plans	$1,100.00
	Safety and Security			
B.1.a	Fire proof safe	**MC 11-03, MC 13-21, MC 14-**	FY 2013-2014	

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Section No.	Category/Criteria	Public Benefit/Commitment	Implementation	Estimated Contribution
		12 and RDCS2016-0015: Units shall have a fireproof safe installed; the safe shall be bolted to the floor or other suitable location.	FY 2015-2016, FY 2016-2017, and FY 2018-2019 allotments Building Permit	
B.1.b	First aid kit	**MC 11-03, MC 13-21, MC 14-12 and RDCS2016-0015:** Developer agrees to provide a first aid kit with a poison control document installed in the kitchen area of each dwelling unit.	Building Permit	
B.1.d	Outdoor lighting	**MC 11-03**: Project will provide: •Outdoor lighting to meet all police department specifications. • •On-site lighting (or modified electrolier) to a minimum of 1.5-foot candles in all park and common areas	Building Permit	
B.1.e/B.1.f	Illuminated address numbers	**MC 11-03, MC 13-21, MC 14-12 and RDCS2016-0015**: Developer will install illuminated address numbers for each unit. House identification number markers will be installed at the entrance of each culde-sac.to be maintained by the homeowner's	Building Permit	

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Section No.	Category/Criteria	Public Benefit/Commitment	Implementation	Estimated Contribution
		association.		
B.1.g	Intrusion protection device	**MC 11-03, MC 13-21, MC 14-12 and RDCS2016-0015**: Applicant commit to installation of intrusion protection entry gate at the entrance to project.	Building Permit	
B.1.h	Parks with lighting	**MC 13-21, MC 14-12 and RDCS2016-0015**: Applicant commits to providing 0n-site lighting in all large usable areas and parks to a minimum of 1.5 foot candles or modified electrolier.	Building Permit	
B.1.k	Illuminated pathways/walkways	**MC 14-12 and RDCS2016-0015**: Applicant commits to illuminating all pathways and pedestrian walkways with a minimum of 1 foot candle.	Building Permit	
B.2	Non-combustible siding	**MC-11-03**: Noncombustible siding will be used on 50% of units comprising of at least 75% of the siding on each unit.	Building Permit	
B.2	Crime Prevention through Environmental Design (CPTED)	**MC 14-12 and RDCS2016-0015**: Applicant commits to utilizing the design principles of CPTED of natural surveillance: 1. Project will include features	Building Permit	

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Section No.	Category/Criteria	Public Benefit/Commitment	Implementation	Estimated Contribution
		that maximize the visibility of people, parking and entrances 2. Features that include landscape plantings, paving designs, and gateway treatments that define property lines and distinguish private space from public space 3. Project shall include features that promotes natural access control by designing streets, walkways and entrances to clearly indicate public routes and discourage access to private areas		
B.3	Lockable hardware	**MC 11-03, MC 13-21, MC 14-12 and RDCS2016-0015:** Applicant commits to installing lockable hardware on all side yard and patio gates.	Building Permit	
B.4	Central Monitoring	**MC 11-03, MC 13-21, MC 14-12 and RDCS2016-0015**: Each unit shall have installed an intrusion alarm; fire alarm and heat detector system monitored by a central station or auto dialer which meets City ordinance. A	Building Permit	

Attachment: conformed copy of DA (2530 : AAE20190009: Cochrane-Toll Brothers)

Section No.	Category/Criteria	Public Benefit/Commitment	Implementation	Estimated Contribution
		one-year monitoring contract shall be provided with home purchase and commits to deliver to the homeowner a City specific responsible listing card that the MH Police Dept. can keep on file.		
B.5	Neighborhood emergency preparedness	**MC 11-03, MC 13-21, MC 14-12 and RDCS2016-0015:** Project commits to neighborhood Emergency Preparedness Program administered through a homeowner's association or central property management.	Building Permit	
B.6	Neighborhood "Watch Program"	**MC 11-03, MC 13-21, MC 14-12 and RDCS2016-0015**: The developer shall include provisions in the Covenants, Conditions and Restrictions (CC&R's) of the homeowner's association which directs a Board representative to the City of Morgan Hill Police Department's Community Service Officer to enact a neighborhood watch program to be established as part of the first phase of the development.	Building Permit	
	Landscaping, Screening and Color			

Attachment: conformed copy of DA (2530 : AAE20190009: Cochrane-Toll Brothers)

Section No.	Category/Criteria	Public Benefit/Commitment	Implementation	Estimated Contribution
B.1.a	Twenty-four inch box trees	**MC 11-03, MC 13-21, MC 14-12 and RDCS2016-0015**: Provide twenty-four-inch box-size trees at a ratio of one box-size tree per ten trees.	Architectural and Site Review	
B.1.b	Planting around off-street parking	**MC 11-03, MC 13-21, MC 14-12 and RDCS2016-0015**: Sufficient planting will be provided around the necessary and appropriate group parking to achieve shading and visual screening as viewed from the public street.	Architectural and Site Review	
B.1.c	Varied front yard landscaping	**MC 11-03, MC 13-21, MC 14-12 and RDCS2016-0015**: Varied front yard landscaping plans will be installed by the developer.	Architectural and Site Review	
B.1.d	Street Tree Master Plan	**MC 11-03, MC 13-21, MC 14-12 and RDCS2016-0015**: Project will conform to a Street Tree Master Plan	Architectural and Site Review	
B.2.a	Pervious hardscape cover	**MC 11-03, MC 13-21, MC 14-12:** Project will provide drought tolerant grasses and limit lawn areas. Landscape to be installed	Architectural and Site Review	

Section No.	Category/Criteria	Public Benefit/Commitment	Implementation	Estimated Contribution
		will include pervious hardscape such as decorative paving, wood decking, decorative stone and similar non-irrigated areas on at least twenty-five percent of the landscape area. **RDCS2016-0015**: Project will provide drought tolerant grasses and limit lawn areas. Landscape to be installed will include pervious hardscape such as decorative paving, wood decking, decorative stone and similar non-irrigated areas on at least fifteen percent of the landscape area.		
B.2.b	Low to moderate water use	**MC 11-03, MC 13-21, MC 14-12 and RDCS2016-0015**: Automatic irrigation with separate valve and circuits for trees; shrubs and groundcovers; and lawn areas will be provide per requirement.	Architectural and Site Review	
B.2.c	Existing water supply (off-site irrigation well)	**MC 11-03, MC 13-21, MC 14-12 and RDCS2016-0015**: Project will provide a separate watersource for irrigation of all common open space areas that are maintained by a homeowner's	Architectural and Site Review	

Attachment: conformed copy of DA (2530 : AAE20190009: Cochrane-Toll Brothers)

Section No.	Category/Criteria	Public Benefit/Commitment	Implementation	Estimated Contribution
		association.		
B.3	Overall Landscaping	**MC 11-03, MC 13-21, MC 14-12 and RDCS2016-0015:** Landscaping shall be installed on all areas visible from public and private rights-of-way.	Architectural and Site Review	
B.4	Underground retention	**MC 11-03, MC 13-21, MC 14-12 and RDCS2016-0015**: Project will install pervious pavement in all open parking lots, driveways and sidewalk areas to minimize drainage runoff.	Architectural and Site Review	
	Natural and Environmental Features			
B.1	Site Grading	**MC 11-03, MC 13-21, MC 14-12 and RDCS2016-0015:** Foundation types will be designed to minimize grading of the site and road alignment follows and maintains existing ground elevation to the greatest extent possible. Minimal grading is considered a fill or excavation of less than two feet in depth (four feet is acceptable for detention ponds or required fill for flood protection), and restricts the amount of runoff caused by impervious surfaces and the	Building Permit	

Attachment: conformed copy of DA (2530 : AAE20190009: Cochrane-Toll Brothers)

Section No.	Category/Criteria	Public Benefit/Commitment	Implementation	Estimated Contribution
		covering of land area suitable for percolation or bio-swales where applicable.		
B.1.b	Sustainable building ordinance	**MC 11-03:** Applicant will comply with the City's Sustainable Building Ordinance (70 BIG points)	Building Permit	
B.2.c	Solar photovoltaic panels (60%)	**MC 13-21, MC 14-12 and RDCS2016-0015:** Project Install solar photovoltaic panels to offset 60% of anticipated electrical energy demand of residential unit.	Building Permit	
B.2.h	Build It Green	**MC 11-03:** The project will add 50 BIG points beyond the commitments in the Quality of Construction category. **MC 13-21, MC 14-12 and RDCS2016-0015:** The project will add 40 BIG points beyond the 70-point commitment in the Quality of Construction category	Building Permit	
	Livable Communities			
B.2.a	Bus shelters, benches, street sections	**MC 11-03, MC 13-21, MC 14-12 and RDCS2016-0015:** Applicant commits to install a bench, shelter, and pullout area	Improvement Plans	

Attachment: conformed copy of DA (2530 : AAE20190009: Cochrane-Toll Brothers)

Section No.	Category/Criteria	Public Benefit/Commitment	Implementation	Estimated Contribution
		across the street from Live Oak High School. The existing bus pull out area, is pavement and lacks a shelter.		
B.6	Architectural variation	**MC 11-03, MC 13-21, MC 14-12 and RDCS2016-0015:** Plans contain porches and/or balconies visible to the right of way. Applicant commits to criteria for at least 25% of the units. Provides a consistent level of architectural relief. Elevation plans show two different roof lines and two different pitches throughout the project.	Architectural and Site Review	
B.7	Maximizes privacy	**MC 11-03, MC 13-21, MC 14-12 and RDCS2016-0015:** Applicant has used design and layout techniques to maximize privacy within and outside the homes.	Architectural and Site Review	

Attachment: conformed copy of DA (2530 : AAE20190009: Cochrane-Toll Brothers)

RUGGERI-JENSEN-AZAR
ENGINEERS ▪ PLANNERS ▪ SURVEYORS

September 4, 2019

Community Development Department
City of Morgan Hill
17555 Peak Avenue
Morgan Hill, CA 95037

Re: Development Agreement Amendment Request – *Borello Ranch Estates*

Dear Planning Staff,

On behalf of our client, Toll Brothers, RJA is filing the attached Development Agreement Amendment application package to amend AAE2018-0013.

Borello Ranch Estates is a 120-acre, 244-unit residential development project, located south of Cochrane Road between Peet and Half Roads. The previously-approved Development Agreement, AAE2018-0013, includes a total of 96 allocations from previous competitions. Subsequent to AAE2018-0013's approval, the applicant participated in the 2018 competition (RDCS2016-0015: FY 2020/2021), and received 25 on-going allocations.

The attached Development Approval Amendment application proposes to include the 25 allocations as referenced above.

Thank you for your consideration.

Sincerely,

Ross Doyle

Ross Doyle
Senior Planning Project Manager
Ruggeri Jensen Azar

Attachment: DAA Request Letter (2530 : AAE20190009: Cochrane-Toll Brothers)

CITY OF MORGAN HILL

PLANNING COMMISSION STAFF REPORT
MEETING DATE: November 12, 2019

PREPARED BY: Terry Linder, Senior Planner
APPROVED BY: Jennifer Carman, Community Development Director

E. DUNNE-YOUNG DEVELOPMENT AGREEMENT AMENDMENT TO INCORPORATE 26 BUILDING ALLOTMENTS FOR FISCAL YEAR 2020/2021 AWARDED FROM THE 2018 RESIDENTIAL DEVELOPMENT CONTROL SYSTEM AND TRANSFERRED FROM THE MONTEREY-LUCKY SHING PROJECT FOR THE EAST DUNNE-YOUNG PROJECT (ALSO KNOWN AS ANDALUSIA) AAE2019-0010(DAA2018-0002)

RECOMMENDATION(S)

1. Open/close public hearing; and,
2. Adopt a Resolution recommending City Council approval of an amendment to a Development Agreement (DA 2018-0002) and a transfer of allotments from the Monterey-Lucky-Shing project.

PROJECT SUMMARY:

1. Location: North side of E. Dunne Avenue, behind the Morgan Hill Kindercare Learning Center located at 605 E. Dunne Ave. (726-02-007)
2. Site Area: 3.5 Acres
3. General Plan: Residential Attached Medium (16-24 dwelling units per acre)
4. Zoning: Residential Attached Medium, RAM

BACKGROUND:

The 46-unit Andalusia project received 20 fiscal year allotments in June 2018. The Development Agreement was approved by ordinance adopted by City Council in January 2019 and Tentative Subdivision Map was approved by the Planning Commission in November of 2018. On July 23, 2019, the Planning Commission awarded the project 15 on-going residential building allotments for FY 2020/2021. On September 4, 2019, the City Council approved Resolution No. 19-044, reaffirming the distribution of the RDCS allotments for FY 2020/21.

PROJECT DESCRIPTION:

On October 17, 2019, a Development Agreement Amendment request was filed by Diana Dunne Investors, LLC, requesting the incorporation of fifteen, fiscal year 2020/2021 residential building allotments into the Andalusia project Development Agreement (Attachment 3). In addition, the request includes incorporating into the Development Agreement, eleven FY 2020/21 transferred allotments from RDCS2019-0005: Monterey-Lucky Shing. Attached is a letter from the owners of the property for application RDCS2019-0005 Monterey-Lucky Shing, consenting to the transfer of

allotments to the Andalusia project (Attachment 4).

ANALYSIS:
The proposed request was analyzed with respect to consistency with the: 1) General Plan; 2) Zoning Ordinance; and 3) Residential Development Control System (RDCS)

1. **General Plan**

The City of Morgan Hill controls population growth through implementation of the RDCS. The RDCS establishes a voter-approved population ceiling, which is managed by metering the number of residential units that can be built on an annual basis.

The project is consistent with the General Plan land use designation and the provisions of the RDCS. The proposed Development Agreement Amendment request will not alter the project's consistency with the General Plan and will further implement the provisions of the RDCS through the public benefit commitments.

2. **Zoning Ordinance**

Chapter 18.116 (Development Agreements) of the Morgan Hill Municipal Code establishes procedures for processing Development Agreements in compliance with Government Code Sections 65864 through 65869.5. Any Development Agreement may be modified by mutual consent of the parties in accordance with Government Code section 65868 and compliance with the procedures specified in Municipal Code Section 18.116.040 (Consideration of Proposed Development Agreements), which require an ordinance approved by City Council.

Consistent with the Morgan Hill Municipal Code, Section 3.04 (Amendments) of the Development Agreement states that amendments or modifications to the Agreement or Project Approval are subject to applicable and procedural provisions of the City's General Plan, zoning, subdivision, and other applicable land use ordinances and regulations in effect when the amendment is approved.

3. **Residential Development Control System**

Section 18.156.100 of the Municipal Code requires the City Council to adopt and maintain an RDCS Competition Manual. Chapter IV of the RDCS Competition Manual incorporates the RDCS Implementation Policies.

Pursuant to Section M of Chapter IV "RDCS Implementation Policies" of the RDCS Competition Manual, completion of a project can be expedited through the transfer of fiscal year allotments between and within projects. Transfers must meet the following criteria:

a. **The receiving project has sufficient lead time to exercise the transferred**

allotment prior to the deadline.

The E. Dunne-Young project is fully entitled as follows:

- Tentative Map SD2018-0004: November 27, 2018
- Development Agreement DA2018-0002: January 23, 2019
- Site Review SR2018-0020: February 28, 2019

The E. Dunne-Young project submitted master plans for building permits on October 14, 2018.

The FY 2020/21 allotments must be exercised by March 4, 2022 (within 30 months of approval). Considering the progress of the project, there would be sufficient time to exercise the RDCS allotments.

b. **The transfer must work as a trade between two developments or within a project.**

The transfer of 11 allotments from RDCS 2019-0005: Monterey-Lucky Shing would provide a fully allotted project allowing for uninterrupted completion. The 13 allotments remaining for RDCS 2019-0005: Monterey-Lucky Shing are sufficient to represent phase one of that project and processing of entitlements.

c. **The transfer may apply to partially allotted and fully allotted projects**

Both projects involved in the transfer are partially allotted.

d. **Both on-going and recently allotted first time projects may transfer allotments.**

RDCS2017-0012: E. Dunne-Young is considered an on-going project and RDCS 2019-0005: Monterey-Lucky Shing is a recently allotted first time project.

Conclusion

The proposed Development Agreement amendment would modify the Development Agreement to incorporate 15, FY 2020/2021, on-going residential building allotments and incorporate 11, FY 2020/21 transferred allotments from RDCS2019-0005: Monterey-Lucky Shing. The proposed Development Agreement amendment is mutually agreed to by the City and the applicant and is consistent with the criteria specified within Chapter IV. RDCS Implementation Policies, Section M of the RDCS Competition Manual. Staff recommends that the Planning Commission recommend approval of the Development Agreement amendment incorporating the RDCS allotments.

California Environmental Quality Act (CEQA):
A Mitigated Negative Declaration and Mitigation Monitoring and Reporting Program were approved in 2018 as part of the project entitlements. No further environmental analysis is required.

LINKS/ATTACHMENTS:

1. AAE19-10 PCReso
2. DA Amendment
3. Request for Transfer of Allotments (Andalusia)
4. Transfer Authorization (Manzanita Park)
5. Recorded DA

RESOLUTION NO. 19-

A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF MORGAN HILL RECOMMENDING APPROVAL OF THE TRANSFER OF 11 ALLOTMENTS FROM THE MONTEREY-LUCKY SHING PROJECT AND A DEVELOPMENT AGREEMENT AMENDMENT AAE2019-0010 (DAA2018-0002): E. DUNNE-YOUNG (ANDALUSIA) TO INCORPORATE 26 BUILDING ALLOTMENTS INTO THE APPROVED DEVELOPMENT AGREEMENT FOR THE 46-UNIT ANDALUSIA DEVELOPMENT LOCATED ON THE NORTH SIDE OF EAST DUNNE AVENUE, DIRECTLY NORTH OF THE MORGAN HILL KINDERCARE FACILITY LOCATED AT 605 EAST DUNNE AVENUE (APN 726-02-007)

WHEREAS, pursuant to Chapter 18.156 of the Morgan Hill Municipal Code, the Planning Commission awarded 20 building allotments in June 2018 to application RDCS 2017-0012: E. Dunne-Young (Andalusia) (FY2019-2020) and 15 ongoing building allotments in July 2019 (FY2020-21); and

WHEREAS, on January 23, 2019, the City Council adopted Ordinance No. 2294 which approved a Development Agreement for RDCS2017-0012: E. Dunne-Young; and

WHEREAS, on September 4, 2019, the City Council, pursuant to Chapter 18.156 of the Morgan Hill Municipal Code, reaffirmed the Planning Commission RDCS award of allotments, affirming the 15 ongoing allotments for Andalusia and 24 building allotments for RDCS 2019-0005: Monterey-Lucky Shing FY2020-2021; and

WHEREAS, Section M of Chapter IV "RDCS Implementation Policies" of the RDCS Competition Manual authorizes the transfer of allotments in order to expedite the completion of projects awarded allotment under the RDCS, the transfer of fiscal year allotment between and within project; and

WHEREAS, the applicant is requesting a transfer of 11 of the 24 building allotments awarded to RDCS2019-0005: Monterey-Lucky Shing to the Andalusia project;

WHEREAS, the applicant is further requesting an amendment to the Development Agreement to incorporate 15 on-going building allotments and to incorporate 11 of the 24 building allotments to be transferred from RDCS2019-0005: Monterey-Lucky Shing; and

WHEREAS, Sections 65864 through 65869.5 of the California Government Code authorize the City of Morgan Hill to enter into binding Development Agreements, and to amend said agreements, with persons having legal or equitable interests in real property for the development of such property; and

Attachment: AAE19-10 PCReso [Revision 3] (2532 : AAE2019-0010 E. Dunne-Young)

WHEREAS, said transfer request and Development Agreement Amendment request was considered by the Planning Commission at its regular meeting of November 12, 2019;

WHEREAS, testimony received at a duly-noticed public hearing, along with exhibits and drawings and other materials have been considered in the review process.

NOW, THEREFORE, BE IT RESOLVED BY THE PLANNING COMMISSION OF THE CITY OF MORGAN HILL THAT:

SECTION 1. The Planning Commission recommends that the City Council approve the transfer of 11 allotments from RDCS 2019-0005: Monterey- Lucky Shing to RDCS 2017-0012: E. Dunne-Young as the request meets the following criteria as specified by Section M "Transfer of Allotments" of Chapter IV "RDCS Implementation Policies" of the RDCS Competition Manual:

a. **The receiving project has sufficient lead time to exercise the transferred allotment prior to the deadline.**

The E. Dunne-Young project is fully entitled as follows:

- Tentative Map SD2018-0004: November 27, 2018
- Development Agreement DA2018-0002: January 23, 2019
- Site Review SR2018-0020: February 28, 2019

The E. Dunne-Young project submitted master plans for building permits on October 14, 2018.

The FY 2020/21 allotments must be exercised by March 4, 2022 (within 30 months of approval). Considering the progress of the project, there would be sufficient time to exercise the RDCS allotments.

b. **The transfer must work as a trade between two development or within a project.**

The transfer of 11 allotments from RDCS 2019-0005: Monterey-Lucky Shing would provide a fully allotted project allowing for uninterrupted completion. The 13 allotments remaining for RDCS 2019-0005: Monterey-Lucky Shing are sufficient to represent phase one of that project and processing of entitlements.

c. **The transfer may apply to partially allotted and fully allotted projects**

Both projects involved in the transfer are both partially allotted.

Attachment: AAE19-10 PCReso [Revision 3] (2532 : AAE2019-0010 E. Dunne-Young)

d. **Both on-going and recently allotted first time projects may transfer allotments.**

RDCS2017-0012: E. Dunne-Young is considered an on-going project and RDCS 2019-0005: Monterey-Lucky Shing is a recently allotted first time project.

SECTION 2. The Planning Commission further recommends that the City Council approve the Development Agreement Amendment based on the below determinations and findings. The Amendment does not change the previous findings made for the approved Development Agreement.

SECTION 3. The Development Agreement Amendment is consistent with the goals, objectives, policies, general land uses and programs specified in the General Plan and any applicable specific plan**.**

The project would provide a total of 46 multi-family residential units. The project is consistent with the General Plan land use designation and the provisions of RDCS. The proposed Development Agreement Amendment request will not alter the project's consistency with the General Plan and will further implement the provisions of the RDCS through the public benefit commitments There have been no General Plan policy conflicts identified with the proposed project.

SECTION 4. The Development Agreement Amendment is compatible with the uses authorized in the zoning district in which the property is located.

The proposed residential use is permitted within the Residential Attached Low (RAL) zoning district and would be compatible with the surrounding residential uses.

SECTION 5. The Development Agreement Amendment complies with the provisions of the California Environmental Quality Act and city's procedures adopted pursuant thereto.

The project is subject to CEQA and an Initial Study/Mitigated Negative Declaration has been prepared and adopted for the project. No further environmental analysis is required.

SECTION 6. The Development Agreement Amendment will not adversely affect the orderly development of property or the preservation of property values.

The project will provide high quality architecture consistent with the City's Architectural Design Guidelines. The project will also be

Attachment: AAE19-10 PCReso [Revision 3] (2532 : AAE2019-0010 E. Dunne-Young)

consistent with state and local laws.

SECTION 7. The Development Agreement Amendment will be non-detrimental to the public health, safety and general welfare of persons residing or working in the neighborhood and to property and improvements in the neighborhood.

The project's construction would adhere to state, local and federal laws. The project is residential apartments that would include the normal daily operations of other residential sites.

PASSED AND ADOPTED THIS 12th DAY OF NOVEMBER 2019, AT A REGULAR MEETING OF THE PLANNING COMMISSION BY THE FOLLOWING VOTE:

AYES: COMMISSIONERS:

NOES: COMMISSIONERS:

ABSTAIN: COMMISSIONERS:

ABSENT: COMMISSIONERS:

ATTEST: **APPROVED:**

JENNA LUNA, Deputy City Clerk **JUAN MIGUEL MUNOZ-MORRIS, Chair**

Attachment: AAE19-10 PCReso [Revision 3] (2532 : AAE2019-0010 E. Dunne-Young)

RECORDING REQUESTED BY AND
WHEN RECORDED MAIL TO:

City of Morgan Hill
Community Development Agency
17575 Peak Avenue
Morgan Hill, CA 95037

RECORDING FEES EXEMPT
PURSUANT TO GOVERNMENT
CODE SECTION 27383

AMENDMENT TO DEVELOPMENT AGREEMENT

THIS AMENDMENT TO DEVELOPMENT AGREEMENT ("**Amendment**") is entered into as of the ____day of _____, 2019, by and among Diana Dunne Investors, LLC a California limited liability company ("**Developer**") and CITY OF MORGAN HILL, a municipal corporation of the State of California ("**City**").

RECITALS

A. Developer entered into a Development Agreement (DA) with City adopted by the City Council on January 23, 2019 as Ordinance No. 2294, to facilitate the development of that certain real property owned by Developer within the City of Morgan Hill, State of California, which is legally described in Exhibit A to the Development Agreement ("**Property**") for the Andalusia Residential development Project ("Project"). Capitalized terms used but not otherwise defined herein shall have the meaning ascribed to such terms in the Development Agreement.

B. On July 23, 2019, the Planning Commission awarded 15 ongoing allotments to the project for FY 2020/21.

C. On _____, the City Council approved the transfer of 11 allotments from the Monterey- Lucky Shing project to this Project.

D. Developer and City desire to enter into this Amendment to incorporate an additional 26 allotments for this ongoing project.

AGREEMENT

NOW, THEREFORE, Developer and City hereby agree as follows:

1. <u>Amendment to the Development Agreement</u>

a. Exhibit B of the Development Agreement is hereby amended to incorporate 26 additional allotments as follows:

DESCRIPTION OF PROJECT

PHASE 1 (20 UNITS) OF RDCS APPLICATION 2017-0012: E. DUNNE YOUNG.

Attachment: DA Amendment (2532 : AAE2019-0010 E. Dunne-Young)

PHASE 2 (15 UNITS) OF RDCS APPLICATION 2017-0012: E. DUNNE YOUNG.

PHASE 3 (11 UNITS) OF RDCS APPLICATION 2017-0012: E. DUNNE YOUNG.

b. The first paragraph of Exhibit C of the Development Agreement is hereby amended to reference the additional phases of the project for the allotments incorporated in Exhibit B as follows:

The following restriction and requirements apply to Phase 1 (20 units), *Phase 2 (15 units) and Phase 3 (11 units)* of the Development proposed in RDCS application 2017-0012 E. Dunne - Young and shall apply to that portion of the Property included in the said phases of the development on the Property. The following chart describes the applicable reference in the Morgan Hill Municipal Code to the requirement, a description of the commitments specific to the Project, the requirement timing of the implementation and the total estimated costs of improvement or applicable fee commitment. These commitments are IN ADDITION to any mitigation requirements pursuant to CEQA, impact fees, in-lieu fees or other requirements pursuant to federal or state laws, or the Morgan Hill Municipal Code (See Section 2.03 of the Agreement)

c. The first three paragraphs of the "Public Benefit/Commitment" column in Subsection 3 "Development of Affordable Units" of Section 3 "Affordable Housing" shall be amended to read as follows:

Developer committed to 4 BMR's - 3 at 80% AMI and 1 at 90% AMI. Phase 1 BMR's will be located in Bldg #2 - unit #7 and Bldg #4 - unit #15. *Phase 2 BMR will be located in Bldg #6- unit #1. Phase 3 BMR will be located in Bldg #12 - unit #10.* Unit type for BMR's is AZ – approximately 1428 sq feet (the same size as Unit type A - Market Rate Units)

The Project shall provide ~~in Phase 1~~ at least ~~2~~ *4* units for participation in a Below Market Rate (BMR) for sale program approved by the Community Development Department. The BMR units shall be approved by the City of Morgan Hill Planning Commission and Site and Architectural Review process.

Applicant commits ~~as part of phase one, two (2),~~ *four (4)* low income BMR(s): 3-bedroom, 2 bath and approximately1428 sq. ft of living area.

d. The "Public Benefit/Commitment" column in Subsection 3 "Variation in Housing Sizes" of Section 4 "Housing Diversity" shall be amended to read as follows:

~~10~~ *22* units will be 2 bedroom and approximately1428 sq. ft.
~~3~~ *7* units will be 3 bedroom and approximately1850 sq. ft.
~~7~~ *17* units will be 4 bedroom and approximately1725-1845 sq. ft.

e. The "Public Benefit/Commitment" column in Subsection 6 "On-Site Recreational Amenities" Category/Criteria of Section 5 "Parks and Open Space" shall be amended to read as follows:

As part of phase one (20 units) project shall provide one of the two tot lots each with a minimum of three age-appropriate activities. *As part of phase two (15 units), project shall provide second tot lot with minimum of three age appropriate activities and a small gathering area equipped with benches, tables and shade arbor.*

Attachment: DA Amendment (2532 : AAE2019-0010 E. Dunne-Young)

f. The "Implementation" column in Subsection 7 "Amenities for Age Group" Category/Criteria of Section 5 "Parks and Open Space" shall be amended to read as follows:

~~Future~~ Phase~~s~~ *two*

g. The "Implementation" column in Subsection 10 "Open Space Design" Category/Criteria of Section 5 "Parks and Open Space" shall be amended to read as follows:

~~Future~~ Phase~~s~~ *two*

2. Development Agreement in Full Force and Effect. Except as specifically provided herein with respect to the assignment, all the terms, covenants, conditions and provisions of the Development Agreement shall remain in full force and effect.

3. Recording. City shall cause this Amendment to be recorded in the Official Records of Santa Clara County.

4. Severability. Except as otherwise provided herein, if any provision(s) of this Amendment is (are) held invalid, the remainder of this Amendment shall not be affected, except as necessarily required by the invalid provisions, and shall remain in full force and effect unless amended or modified by mutual consent of the Parties.

5. Counterparts. This Amendment may be executed in one or more counterparts, each of which shall be deemed to constitute an original, but all of which, when taken together, shall constitute one and the same instrument, with the same effect as if all of the Parties to this Amendment had executed the same counterpart.

6. Effective Date/Amendments. The Effective Date of this Amendment shall be the date upon which this Amendment is approved by the City of Morgan Hill City Council. This Amendment shall not be amended except by an agreement in writing signed by the parties hereto or their respective successors-in-interest.

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[Signature Page Follows]

Attachment: DA Amendment (2532 : AAE2019-0010 E. Dunne-Young)

IN WITNESS WHEREOF, Developer and City have entered into this Agreement as of the date first above written.

"CITY"

CITY OF MORGAN HILL

_____
Christina J. Turner
City Manager

Approved as to form:

_____
Donald A. Larkin
City Attorney

Date: _____

"DEVELOPER"

DIANA DUNNE INVESTORS, LLC
A CALIFORNIA LIMITED LIABILITY COMPANY

By_____

Name_____

Its_____

Date: _____

(ALL SIGNATURES, EXCEPT CITY ATTORNEY, MUST BE ACKNOWLEDGED BEFORE A NOTARY)

Attachment: DA Amendment (2532 : AAE2019-0010 E. Dunne-Young)

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

STATE OF CALIFORNIA)
) ss.
COUNTY OF _____)

On _____, before me, _____

_____ (*insert name and title of the officer*)

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

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

WITNESS my hand and official seal.

Signature _____ (Seal)

Attachment: DA Amendment (2532 : AAE2019-0010 E. Dunne-Young)

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

STATE OF CALIFORNIA)
) ss.
COUNTY OF _____)

On _____, before me, _____

_____ (*insert name and title of the officer*)

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

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

WITNESS my hand and official seal.

Signature _____ (Seal)

Attachment: DA Amendment (2532 : AAE2019-0010 E. Dunne-Young)

DIANA DUNNE INVESTORS, LLC
385 WOODVIEW AVE., SUITE 100
MORGAN HILL, CA 95037
408-779-5900 FAX 408-779-3840
roliver@dividendhomes.com
mfrankel@dividendhomes.com

October 16, 2019

Ms. Terry Linder
City of Morgan Hill, Planning Department
17575 Peak Avenue
Morgan Hill, CA 95037

Re: Development Agreement Amendment, Andalusia Project, RDCS2017-0012 E. Dunne-Young and Request for Transfer of 11 Allotments from Manzanita Park to Andalusia

Dear Ms. Linder:

We have attached hereto, our application for a Development Agreement Amendment for the above referenced Project for the purpose of including into the Development Agreement the remaining units in Phase2 (15) and in Phase 3 (11 units), so that the project can be constructed and completed in one larger Phase. The final working drawings for the project have been submitted to Building for plan check.

Phase 2 (for 15) allocations for Andalusia as an "On-Going Project" were confirmed by the City Council on September 5, 2019. We hereby request the transfer of 11 allocations (in order to expedite the completion of the Andalusia Project) from the Manzanita Park , RDCS 20192019-0005, pursuant to Subsection M of IV. RDCS Implementation Policies. Because of the pending changes to the California Building Codes, that are to be effective January 1, 2020, the working drawings, including all the solar requirements, for the project would have to substantially revised for the 11 units in Phase 3, unless we are able to complete plan check process prior to the end of December 2019. The changes required could be substantial and make it difficult to meet the new requirements with the current plans.

Both applicants are related entities to Dividend Homes, Inc. and we can meet the four requirements set forth in Subsection M, Transfer of Allotments. A separate letter, signed by both controlling entities, agreeing to this Transfer is also attached.

We understand and accept that all the provisions of the existing Development Agreement for the Andalusia Project would be applicable to all three Phases of the Andalusia Project, as part of the Development Agreement Amendment

Very truly yours,

Dianna Dunne Investors, LLC

By: James A. Pedicini
Vice-President

Attachment: Request for Transfer of Allotments (Andalusia) (2532 : AAE2019-0010 E. Dunne-Young)

NORTH CORRIDOR INVESTORS LLC
385 WOODVIEW AVE., SUITE 100
MORGAN HILL, CA 95037
408-779-5900 FAX 408-79-3840
roliver@dividendhomes.com
mfrankel@dividedendhomes.com

October 17, 2019

Ms. Gina Paolini
City of Morgan Hill Planning Department
17575 Peak Ave.
Morgan Hill, CA 95037

Re: Transfer of Allotments – Manzanita Park RDCS 2019-0005

Dear Ms. Paolini:

Our Manzanita Park Project received 24 building allotments, as confirmed by the City Council on September 5th which would be Phase One for the project. Since we would need an additional three allocations to complete the construction of all unit on the south side of the extension of Tilton Ave., we would delay the start of construction until almost a year later, when we could reasonably expect to be awarded another 15 ongoing allocations. Thus, the transfer of 11 allocations from Manzanita Park Project to the Andalusia Project would not adversely or unreasonably delay the Manzanita Park Project but would expedite the completion of the entire Andalusia Project.

Manzanita Park Project still has to process a PD Permit, which would in any case push the processing of Manzanita Park into 2020. Given the recent signing of SB 330 by the Governor of California, which will now pre-empt Measure S, that transfer of 11 units from Manzanita Park now will not have any adverse impact on Manzanita Park which could request all the allotments as a compliant project, but it will have a significant positive impact on Andalusia allowing that project's completion be expedited without further delay and without the necessity to redesign plans to comply with new building codes.

Reference is made to the attached Request by Diana Dunne Investors LLC for Transfer of Allocations along with their request for a Development Agreement Amendment to implement this transfer. We hereby consent to the requested Transfer of Allocations, as provided for in Subsection M of IV. RDCS Implementation Policies, which provisions are still applicable up December 31, 2019.

Respectfully submitted:

North Corridor Investors LLC

By: Mary Beth Long, VP

Respectfully accepted:

Diana Dunne Investors LLC

By: James A. Pedicini, President

Attachment: Transfer Authorization (Manzanita Park) (2532 : AAE2019-0010 E. Dunne-Young)

24133963

Regina Alcomendras
Santa Clara County - Clerk-Recorder

03/13/2019 02:20 PM

Titles: 1 Pages: 42

Fees: $0.00
Taxes: $0
Total: $0.00

RECORDING REQUESTED BY AND
WHEN RECORDED MAIL TO:

City of Morgan Hill
Development Services Department
17575 Peak Avenue
Morgan Hill, CA 95037

RECORDING FEES EXEMPT
PURSUANT TO GOVERNMENT
CODE SECTION 27383

168-04-19-010

DEVELOPMENT AGREEMENT

BY AND BETWEEN

THE CITY OF MORGAN HILL

AND

DIANA DUNNE INVESTORS LLC

REGARDING

ANDALUSIA RESIDENTIAL DEVELOPMENT PROJECT

Attachment: Recorded DA (2532 : AAE2019-0010 E. Dunne-Young)

RESIDENTIAL DEVELOPMENT AGREEMENT
BY AND BETWEEN
THE CITY OF MORGAN HILL
AND
DIANA DUNNE INVESTORS LLC REGARDING THE ANDALUSIA RESIDENTIAL DEVELOPMENT PROJECT

This Development Agreement ("**Agreement**") is entered into on the below-stated "**Effective Date**" by and between the City of Morgan Hill, a California municipal corporation, (hereinafter "**City**"), and Diana Dunne Investors LLC, a **California limited liability company,** and its successor and assigns (hereinafter, collectively, "**Developer**"), pursuant to Section 65864 *et seq*. of the Government Code of the State of California and City's police powers. City and Developer are, from time to time, also hereinafter referred to individually as a "**Party**" and collectively as the "**Parties**."

NOW, THEREFORE, in consideration of the mutual covenants and promises contained herein and other considerations, the value and adequacy of which are hereby acknowledged, the Parties hereby agree as follows:

RECITALS

A. To strengthen the public planning process, encourage private participation in comprehensive planning and reduce the economic risk of development, the Legislature of the State of California adopted Government Code Sections 65864 *et seq*. ("**Development Agreement Statute**"), which regulates development agreements with any person having a legal or equitable interest in real property providing for the development of that property and establishes certain development rights in the property. In accordance with the Development Agreement Statute, and by virtue of its police powers, City has the authority to enter into development agreements, and has reflected that authority in its Morgan Hill Municipal Code (Chapter 18.116 *et seq*.) ("**Enabling Ordinance**"). This Agreement has been drafted and processed pursuant to the Development Agreement Statute and the Enabling Ordinance.

B. Developer currently has a legal and/or equitable interest in the Property.

C. Developer proposes to plan, develop, construct, operate and maintain the Project on the Property (as such terms are defined herein).

D. As of the Effective Date, various land use regulations, allotments, entitlements, grants, permits and other approvals have been adopted, issued, and/or granted by City relating to the Project (collectively "**Existing Approvals**"), including without limitation, all of the following:

1. **RDCS Application:** RDCS 2017-0012: E. Dunne-Young, 20 FY 2019-20 allotments
2. **EA 2018-0014: E. Dunne-Young**;
3. **SD 2018-0004: E. Dunne-Young**;

Attachment: Recorded DA (2532 : AAE2019-0010 E. Dunne-Young)

E. For the reasons recited herein, Developer and City have determined that the Project is the type of development for which this Agreement is appropriate. This Agreement will help to eliminate uncertainty in planning, provide for the orderly development of the Project consistent with the planning goals, policies, and other provisions of the City's General Plan and City's Municipal Code, and otherwise achieve the goals and purposes for which the Development Agreement Statute was enacted.

F. On June 20, 2018, the Morgan Hill City Council awarded an allotment for the Project as set forth in the Developer's application for residential allotments pursuant to Chapter 18.156 ("**Residential Development Control System", or "RDCS"**) of the Morgan Hill Municipal Code ("**Code**"). This Agreement serves to secure in a permanent and enforceable manner the public benefits and commitments included in the Developer's application as required under Section 18.156.120.J of the Code.

G. On October 23, 2018, November 13 and November 27, 2018, following a duly noticed and conducted public hearing, the Planning Commission of the City ("**Planning Commission**") considered the Development Agreement for recommendation to the City Council, and determined that the Development Agreement is consistent with the goals, objectives, policies, general land uses and programs specified in the General Plan and any applicable specific plan; is compatible with the uses authorized in the zoning district in which the real property is located; duly considers City mitigation programs in effect at the time of execution of the agreement; will be non-detrimental to the public health, safety and general welfare of persons residing or working in the neighborhood and to property and improvements in the neighborhood; complies with the provisions of the California Environmental Quality Act and City's procedures adopted pursuant thereto; and will not adversely affect the orderly development of property or the preservation of property values.

ARTICLE 1
ADMINISTRATION

1.01 Effective Date. Following a duly noticed and conducted public hearing, the Morgan Hill City Council ("City Council") introduced an ordinance ("**Ordinance**"), accepting the recommendation of the Planning Commission, finding that this Agreement's provisions are consistent with the General Plan and any applicable specific plan, approving this Agreement, and directing this Agreement's execution by City. The City adopted the Ordinance, and the Ordinance became effective thirty (30) days later. The "Effective Date" in this Agreement shall be the date that the Ordinance became effective.

1.02 Definitions.

(a) The following terms, phrases and words shall have the meanings and be interpreted as set forth in this Section:

(1) **"Allotments"** shall mean those residential allotments awarded Developer through the Residential Development Control System

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(2) **"Applicable Law"** shall have that meaning set forth in Section 2.01(a) of this Agreement.

(3) **"Commitments"** shall have that meaning set forth in Section 2.04(a) of this Agreement.

(4) **"Director"** shall mean the Director of Community Development, and his or her designee.

(5) **"Existing Approvals"** shall have that meaning set forth in paragraph D of the Recitals of this Agreement.

(6) **"Existing City Laws"** shall mean all City ordinances, resolutions, rules, regulations, guidelines, motions, practices and official policies governing land use, zoning and development, RDCS, permitted uses, density and intensity of use, maximum height, bulk and size of proposed buildings, and other City land use regulations in force and effect on the Effective Date of this Agreement.

(7) **"Impact Fees"** shall mean those fees imposed so that developments bear a proportionate share of the cost of public facilities and service improvements that are reasonably related to the impacts and burdens of the Project, adopted pursuant to Morgan Hill Municipal Code Chapter 3.56 and California Government Code Section 66001 et seq.

(8) **"Legal Effect"** shall mean the ordinance, resolution, permit, license or other grant of approval that has been adopted by City and has not been overturned or otherwise rendered without legal and/or equitable force and effect by a court of competent jurisdiction, and all applicable administrative appeal periods and statutes of limitations have expired.

(9) **"New City Laws"** shall mean any and all City ordinances, resolutions, orders, rules, official policies, standards, specifications and other regulations, whether adopted or enacted by City, its staff or its electorate (through their powers of initiative, referendum, recall or otherwise) that is not a Subsequent Approval, that takes "Legal Effect" after the Effective Date of this Agreement, and that applies City wide.

(10) **"Project"** means the development containing 20, three story, condominium units and .83 acres of open space, as more particularly described in Exhibit B. Any reference in this Agreement to the "Project" shall mean and include the "Property".

(11) **"Project Approvals"** mean, collectively, the Project's Existing Approvals and the Subsequent Approvals.

(12) **"RDCS"** means the Residential Development Control System set forth in Chapter 18.156 of the Morgan Hill Municipal Code.

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(13) **"Second Notice"** shall have that meaning set forth in Section 4.07(c) of this Agreement.

(14) **"Subdivision Document"** means, pursuant to Government Code Section 66452.6(a) and this Agreement, any tentative map, vesting tentative map, parcel map, or final map, or any such new map or any amendment to any such map, or any resubdivision.

(15) **"Subsequent Approvals" and "Subsequent Approval"** mean those City permits, entitlements, approvals or other grants of authority (and all text, terms and conditions of approval related thereto), that may be necessary or desirable for the development of the Project, that are sought by Developer, and that are granted by City after the City Council adopts the Ordinance, including without limitation, subdivision maps and building permits.

(b) To the extent that any defined terms contained in this Agreement are not defined above, then such terms shall have the meaning otherwise ascribed to them elsewhere in this Agreement, or if not in this Agreement, by controlling law, including the Morgan Hill Municipal Code.

1.03 Term.

(a) The term (**"Term"**) of this Agreement shall commence on the Effective Date, and then shall continue (unless this Agreement is otherwise terminated or modified as provided in this Agreement) until the earliest of (1) the loss of all residential allotments for the Project pursuant to the RDCS, if applicable, (2) the issuance of a certificate of occupancy for all units in the Project or (3) ten (10) years plus one day after the Effective Date; provided however that Developer's obligations pursuant to Sections 2.03 and 2.04 shall survive the termination of this Agreement until such obligations are fully performed and completed in accordance with this Agreement.

(b) If any **"Third-Party Challenge"** (as that term is defined in Section 4.06(a) of this Agreement) is filed, then the Term of this Agreement shall be tolled for the period or periods of time from the date of the filing of such litigation until the conclusion of such litigation by dismissal or entry of a final judgment (**"Litigation Tolling"**). Notwithstanding the foregoing, regardless of the number of Third-Party Challenges that may be filed during the Term of this Agreement, the sum total of such Litigation Tolling shall not exceed five (5) years. The filing of any Third-Party Challenge shall not delay or stop the development, processing or construction of the Project, or the approval or issuance of any Project Approvals, unless enjoined or otherwise controlled by a court of competent jurisdiction. The Parties shall not stipulate to the issuance of any such order unless mutually agreed to.

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ARTICLE 2
APPLICABLE LAW

2.01 Applicable Law—Generally.

(a) As used in this Agreement, "**Applicable Law**" shall mean the rules, regulations, official policies, standards, and specifications applicable to the development of the Property listed below in this Section 2.01. The order of their importance is the order in which they are listed (with highest importance listed first, second most important listed second, etc.); in the event of a conflict between them, their order shall determine which one controls (the one listed higher controlling over the one listed lower):

(1) All the provisions, terms and conditions of this Agreement.

(2) Existing Approvals.

(3) The Subsequent Approvals provided such Subsequent Approvals are:

(i) In compliance with all controlling California law;

(ii) Mutually agreed to by the Parties;

(iii) In compliance with this Agreement; and

(iv) Duly enacted by City.

(4) The "Existing City Laws" that are not in conflict with this Agreement and the Project Approvals.

(5) Any "New City Laws" Developer is subject to as provided in Section 2.09 of this Agreement.

(b) The Parties shall cooperatively assemble all of the necessary documents to memorialize, to the best of their abilities, the Project Approvals, Existing City Laws, and the terms and conditions contained in this Agreement to assist Developer to maintain the documents assembled and to provide a continuing reference source for the approvals granted and the ordinances, policies and regulations in effect on the Effective Date of this Agreement.

2.02 Vested Right to Applicable Law.

(a) During the Term of this Agreement, Developer shall have the vested right to develop the Project subject only to, and in accordance with, the Applicable Law, and during the Term of this Agreement, City shall have the right to regulate the development and use of the Project subject only to, and in accordance with, the Applicable Law.

(b) Nothing contained herein will give Developer a vested right to obtain a sewer connection for said Project in the absence of sewer capacity available to the Project.

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(c) Pursuant to this Agreement, the Applicable Law will be an expanding body of law, such as, for example, when Subsequent Approvals are granted by City, and/or when Developer becomes subject to a New City Law pursuant to this Agreement.

(d) The vested rights to develop the Project in accordance with Applicable Law and this Agreement shall be vested only to those residential units having an RDCS residential allotment. Nothing contained herein shall give Developer a vested right to develop the described Project absent valid RDCS residential allotments.

(e) Developer agrees that the terms and conditions of this Agreement and conditions of approval issued pursuant to this Agreement shall govern and dictate the vesting of the Developer's right to develop in lieu of any other instrument of vesting, including any vesting tentative map or any other agreement, instrument or document purporting to vest any right of development. Developer agrees to waive any vesting rights by operation of any otherwise applicable City, state or federal law.

2.03 Project Impacts and Costs.

(a) Agreement Subject to Project Mitigation Requirements. Notwithstanding any other express or implied term or condition of this Agreement (or the Approvals) to the contrary, throughout the Term of this Agreement, the full and complete mitigation of all environmental (including any mitigation measure adopted pursuant to CEQA), physical, fiscal and other impacts of the Project and the Property on the community and on the City of Morgan Hill and its services, facilities, operations and maintenance (collectively, "**Project Mitigation**") shall be borne by and shall be the sole and exclusive responsibility of the Developer. Such Project Mitigation may be conditions of any Applicable Law or Project Approval and may include a mix of different approaches, including without limitation, Developer construction of and/or financing of such services, facilities, operations and maintenance through the payment of impact fees or other fees, taxes, levies, assessments, or other financing mechanisms including without limitation, reimbursement agreements, Landscaping and Lighting Districts, Mello-Roos Districts, Community Facilities Districts, Assessment Districts, Tax-Exempt and Taxable Financing Mechanisms, Maintenance Districts, Homeowners Associations, and participation in the Statewide Communities Infrastructure Program (collectively, "**Financing Mechanisms**"). The necessary scope and extent of such Project Mitigation, and which combination of Financing Mechanisms should be employed relating to such Project Mitigation to assure success of the Project Mitigation, shall be determined by City, in its sole and exclusive discretion, pursuant to appropriate City ordinance, resolution, regulations or procedures, taking into account and guided by the pre-existing rights of others in the existing and future public services and facilities (including their operations and maintenance) that Developer may seek to use. If no Financing Mechanism is available to fund the Project Mitigation, then the Project shall not progress forward.

(b) Impact Fees. In addition to any agreed-upon Project-specific requirements as set forth in Section 2.04 and as part of the Developer's sole and exclusive obligation to cover Project Mitigation, Developer shall pay all Impact Fees and in the amounts in legal effect at the time any such Impact Fees become due and payable as provided for in the City's Municipal Code.

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(c) Processing Fees. In addition to any agreed-upon Project-specific requirements as set forth in Section 2.04, the Project (including Developer as owner of same) shall be responsible for the costs to City of processing any and all Developer-requested land use approvals, including without limitation, building permits, plan checks, and environmental studies required pursuant to CEQA and other similar requests for City permits and entitlements, when such costs are incurred by City. City shall impose those funding requirements needed to ensure that the processing costs to the City are fully covered by the Developer. Further, if additional, accelerated, or more frequent inspections are requested by Developer of City than would otherwise take place in City's ordinary course of business, then City may either hire additional contract inspectors, plan checkers, engineers or planners, or City may hire a full or part time employee. If City hires additional contractors, then Developer shall reimburse City, on a monthly basis in arrears, the cost to City of hiring such additional contract inspectors, plus Developer shall pay to City an additional ten percent (10%) of such cost to City on the same payment schedule. City shall use such additional 10% to defray administrative costs. If City hires a full or part time employee, then Developer shall reimburse City, on a monthly basis, in arrears, for a pro rata share of the total cost to the City of such employee, plus ten percent (10%) for administrative costs, for the period from hire to the end of the Term of this Agreement.

2.04 RDCS and Other Specific Project-Specific Requirements.

(a) The Specific Restrictions and Requirements set forth in Exhibit Care public benefit commitments ("**Commitments**") voluntarily assumed by Developer in return for benefits derived from the City's RDCS allotment approval program. These requirements are not Project Mitigation within the meaning of Section 2.03 of this Agreement. Developer hereby agrees that these requirements are not subject to credit, refund or reimbursement or prohibition pursuant to otherwise applicable City, state or federal law and hereby waives any such right to credit, refund, reimbursement or prohibition. These Commitments are voluntarily assumed by Developer in return for benefits derived from the RDCS. Pursuant to the RDCS, awarding of residential allotments to new development is a competitive process based on a point system. Additional points can be awarded to a development proposal that voluntarily commits towards providing a public benefit contribution in addition to those already required to mitigate its impacts. The Commitments result in additional points, thereby allowing the development proposal to secure a higher score pursuant to the RDCS, which in turn may provide a high enough score for the development proposal to secure residential allotments. The Commitments set forth in Exhibit C, derived from that RDCS process, are enforced through this Agreement.

(b) Substitution of Commitments within the same Objective may be allowed in limited circumstances, as provided in Section IV. F of the RDCS Competition Manual, with approval of the Community Development Director documented through an Administrative Amendment as provided in Section 3.05 of this Agreement. Substitution may be allowed only if the proposed changes result in the project receiving the same or higher score within each Objective, maintain or improve the quality of the project, and would result in the same or greater value to the City or its future residents. No changes which would subject the Project to further environmental review under CEQA shall be approved. In circumstances in which Substitution within the same Objective is not possible, Substitution may be allowed only by resolution of the Planning Commission.

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(c) The Developer's RDCS application – RDCS 2017 – 0012: E. Dunne-Young approved on June 20, 2018, by the City Council and approval actions (as reflected in the official records, including agendas and minutes of the City Planning Commission and City Council) shall be incorporated into this Agreement by this reference.

2.05 Construction Codes.

With respect to the development of any or all of the Project or the Property, Developer shall be subject to the California Building Code and all those other State-adopted construction, fire and other codes applicable to improvements, structures, and development, and the applicable version or revision of said codes by local City action (collectively referred to as "**Construction Codes**") in place at that time that a plan check application for a building, grading or other permit subject to such Construction Codes is submitted to City for approval, provided that such Construction Codes have been adopted by City and are in effect on a City-wide basis.

2.06 Timing of Development.

(a) Securing Building Permits and Beginning Construction. Developer is required to obtain any approvals or permits for the development of the Project in accordance with this Agreement, the Applicable Law, and the Project Approvals. However, any Subsequent Approval initiated by Property Owner which substantially changes the permitted uses or substantially increases the height, and density or floor area allowed under the Project Approvals, shall be subject to the rules, regulations, ordinances and official policies of the City then in effect. Developer agrees to secure building permits and to begin construction of the Project in accordance with the time requirements set forth in the Construction Codes and the RDCS, if applicable. In the event Developer fails to comply with the above permit issuance and beginning construction dates, and satisfactory progress towards completion of the project in accordance with the Construction Codes, Project Approvals, and RDCS, Developer shall be in default of this Agreement, and must cure said default as provided in section 4.01 of this Agreement.

(b) Progress Reports Until Construction of Project is Complete. Developer shall make reports regarding the progress of construction in such detail and at such time as the Community Development Director of the City of Morgan Hill reasonably requests.

(c) City of Morgan Hill to Receive Construction Contract Documents. If the City reasonably requests copies of construction, off-site and landscaping contracts or documents, Developer agrees to furnish such documents to the City.

(d) Certificate of Completion. Within thirty (30) days after completion to the City's satisfaction of 100% of the total number of units in the Project, the City shall provide Developers with an instrument in recordable form certifying completion of the entire project.

2.07 Improvements.

In any instance where Developer is required to install improvements (including those set forth in Exhibit C), Developer shall obtain City approval of the plans and specifications and the timing and manner of the installation of improvements and provided Developer has supplied all

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information required by City, City shall review and act on the application for such approval with good faith and in a reasonable manner. Where the actual cost of any improvement exceeds Developer's estimated cost or commitment, Developer shall be solely responsible for all improvement costs in excess of those approved by City unless otherwise provided for in a reimbursement agreement.

2.08 Overcapacity, Oversizing.

(a) City may require Developer to construct on-site and off-site improvements in a manner that provides for oversizing or overcapacity so that the constructed improvement will serve other development or residents or facilities and services outside of the Project ("**Oversizing**"). Such Oversizing shall be reasonable in scope. The Parties recognize that the City shall not require any Oversizing from Developer except in connection with the Project Approvals and in accordance with provisions of the Subdivision Map Act and Applicable Law.

(b) Unless no credit or reimbursement is owed to Developer pursuant to Section 2.04 of this Agreement, Developer's right to receive credits and reimbursements for Oversizing or excessive payment or performance shall be determined and processed pursuant to the City's Municipal Code and controlling practices (relative to credits and reimbursements) on the Effective Date.

2.09 New City Laws.

(a) City may apply any New City Law to the Project that is not in conflict with this Agreement and the Applicable Law it describes. City shall not apply any New City Law to the Project that is in conflict with this Agreement and the Applicable Law it describes, nor otherwise reduces the development rights or assurances provided by this Agreement. City shall not apply to the Project nor Property any no-growth or slow-growth ordinance, measure, policy, regulation or development moratorium either adopted by City or by a vote of the electorate and whether or not by urgency ordinance, interim ordinance, initiative, referendum or any other change in the laws of the City by any method or name which would alter the Applicable Law that may stop, delay, or effect the rate, timing or sequence of development.

(b) Without limiting the generality of the foregoing, and except as otherwise provided in this Agreement, a New City Law shall be deemed to be in conflict with this Agreement or the Applicable Law or to reduce the development rights provided hereby if the application to the Project would accomplish any of the following results, either by specific reference to the Project or as part of a general enactment which affects or applies to the Project:

(1) Change any land use designation or permitted use of the Property allowed by the Applicable Law or limit or reduce the density or intensity of the Project, or any part thereof, or otherwise require any reduction in the total number of residential dwelling units, square footage, floor area ratio, height of buildings, or number of proposed non-residential buildings, or other improvements;

(2) Limit or control the availability of public utilities, services, or facilities otherwise allowed by the Applicable Law;

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(3) Limit or control the rate, timing, phasing or sequencing of the approval, development, or construction of all or any part of the Project in any manner, or take any action or refrain from taking any action that results in Developer having to substantially delay construction of the Project or require the acquisition of additional permits or approvals by the City other than those required by the Applicable Law;

(4) Limit or control the location of buildings, structures, grading, or other improvements of the Project in a manner that is inconsistent with or more restrictive than the limitations in the Existing Approvals.

(c) If City determines that it has the right pursuant to this Agreement to impose and apply a New City Law on the Property and Project, it shall send written notice to Developer of that City determination (**"Notice of New City Law"**). Upon receipt of the Notice of New City Law, if Developer believes that such New City Law is in conflict with this Agreement, Developer may send written notice to the City of the alleged conflict within thirty (30) days of receipt of City's Notice of New Law (**"Objection to New City Law"**). Developer's Objection to New City Law shall set forth the factual and legal reasons why Developer believes City cannot apply the New City Law to the Property/Project. City shall respond to Developer's Objection to New City Law (**"City Response"**) within thirty (30) days of receipt of said Developer Objection to New City Law. The City Response shall set forth the factual and legal reasons why City believes it can apply the New City Law to the Project. Thereafter, the Parties shall meet and confer within thirty (30) days of the date of Developer's receipt of the City Response (the **"Meet and Confer Period"**) with the objective of attempting to arrive at a mutually acceptable solution to this disagreement. Within fifteen (15) days of the conclusion of the Meet and Confer Period, City shall make its determination, and shall send written notice to Developer of that City determination. If City determines to "impose/apply" the New City Law to the Project, then Developer shall have a period of ninety (90) days from the date of receipt of such City determination within which to file legal action challenging such City action. In other words, a 90-day statute of limitations regarding Developer's right to judicial review of the New City Law shall commence upon Developer's receipt of City's determination following the conclusion of the Meet and Confer Period. If upon conclusion of judicial review of the New City Law (at the highest judicial level sought and granted), the reviewing court determines that Developer is not subject to the New City Law, such New City Law shall cease to be a part of the Applicable Law, and City shall return Developer to the position Developer was in prior to City's application of such New City Law (*e.g.*, City return fees, return dedications, etc.). The above-described procedure shall not be construed to interfere with City's right to adopt or apply the New City Law with regard to all other areas of City (excluding the Project).

(d) Developer in its sole and absolute discretion may elect to have applied to the Project a New City Law that is not otherwise a part of the Applicable Law, subject to the limitations set forth in this subdivision (d). In the event Developer so elects to be subject to a New City Law that is not otherwise a part of the Applicable Law, Developer shall provide notice to City of that election and thereafter such New City Law shall be part of the Applicable Law. In no event shall any New City Law become part of the Applicable Law if it would relieve Developer from, or impede Developer's compliance with, Developer's obligations pursuant to this Agreement, including without limitation Developer's obligations of full "Project Mitigation" pursuant to Section 2.03 or the "RDCS and Other Project Specific Requirement" pursuant to Section 2.04.

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Further, for the purposes of this Agreement, the "New City Laws" Developer may elect to be subject to pursuant to this Section shall not mean nor include any or all individual development agreements with other developers (including without limitation such development agreements' term and conditions, exhibits, etc.) executed before or after the Effective Date of this Agreement.

(e) City shall not be precluded from adopting and applying New City Laws to the Project to the extent that such New City Laws are specifically required to be applied by State or Federal laws or regulations, and implemented through the Federal, State, regional and/or local level ("**Mandated New City Laws**"), including without limitation those provisions in the Development Agreement Statute, or that such New City Laws are necessitated by or arise from a declaration of City, local, state or federal declaration of a state of emergency.

(f) In the event that an administrative challenge and/or legal challenge (as appropriate) to a Mandated New City Laws preventing compliance with this Agreement is brought and is successful in having the Mandated New City Law determined to not apply to this Agreement, this Agreement shall remain unmodified and in full force and effect.

ARTICLE 3
PROCESSING

3.01 Processing.

(a) This Agreement does not provide Developer with any right to the approval of Subsequent Approvals nor to develop or construct the Project beyond that which is authorized in the Existing Approvals. This Agreement simply provides a process by which such Subsequent Approvals may be processed by Developer, and later added to this Agreement, if and only if such Subsequent Approvals are compliant with all controlling California law (including Planning and Zoning Law and CEQA), and are adopted/approved by City, which shall retain all lawful discretion in this regard. The public review process is ongoing, and following the City's adoption of this Agreement, that public review process shall continue. Nothing in this Agreement shall be construed to limit the authority or obligation of City to hold necessary public hearings, or to limit the discretion of City or any of its officers or officials with regard to the Project Approvals that legally require the exercise of discretion by City. City's discretion as to the granting of Subsequent Approvals shall be the discretion afforded by the Applicable Law. The Parties agree that this Agreement does not modify, alter or change the City's obligations pursuant to CEQA and acknowledge that Subsequent Approvals may require additional environmental review pursuant to CEQA.

(b) Upon submission by Developer of any and all necessary and required applications for Subsequent Approvals and payment of any and all appropriate processing and other fees as provided in this Agreement, City shall use its best efforts to promptly commence and diligently complete all steps necessary to acting on the requested Subsequent Approvals, including, but not limited to, (i) the holding of any and all required public hearings and notice for such public hearings, and (ii) the granting of the requested approval to the extent that it is consistent with Applicable Law.

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3.02 Significant Actions by Third Parties Necessary to Implement the Existing Approvals.

(a) At Developer's sole discretion, Developer shall apply for such other permits, grants of authority, agreements, and other approvals from other private and/or public and quasi-public agencies, organizations, associations or other entities ("Other Entity") as may be necessary to the development of, or the provision of services and facilities to, the Project ("Other Permits").

(b) City shall cooperate with Developer in its endeavors to obtain any Other Permits and shall, from time to time, at the request of Developer, join with Developer in the execution of such permit applications and agreements as may be required to be entered into with any such other agency.

(c) In the event that any such Other Permit is not obtained from an Other Entity within the time permitted by law for such other entity to act and such circumstance materially deprives Developer of the ability to proceed with development of the Project or any portion thereof, or materially deprives City of a bargained-for public benefit of this Agreement, then, in such case, and at the election of either party, Developer and City shall meet and confer with the objective of attempting to mutually agree on solutions that may include alternatives, Subsequent Approvals, or an amendment(s) to this Agreement to allow the development of the Project to proceed with each Party substantially realizing its bargained-for benefit therefrom.

3.03 Establishment and Extension of Residential Development Control System Building Allotments.

Allotments shall be exercised pursuant to Section 18.156.160 of the Morgan Hill Municipal Code and Section IV.J of the RDCS Competition Manual. The City may approve an extension to the date by which an allotment must be exercised only as allowed by Section 18.156.170 of the City of Morgan Hill Municipal Code and Section IV.L of the RDCS Competition Manual. Extensions shall be processed by Planning Commission resolution as provided in Section IV.H of the RDCS Competition Manual.

3.04 Amendments.

This Agreement may be amended from time to time by mutual consent in writing of the Parties to this Agreement in accordance with Government Code Section 65868. Any request by Developer for an amendment or modification to this Agreement or a Project Approval shall be subject to the applicable substantive and procedural provisions of the City's General Plan, zoning, subdivision, and other applicable land use ordinances and regulations (i.e., City review and approval) in effect when such an amendment or modification request is approved.

No amendment to this Development Agreement shall be necessary to extend the RDCS exercise of allotment date as provided in Section 3.03, nor to substitute an RDCS Commitment as provided in Section 2.04(b) of this Agreement. Future minor amendments, such as allotment adjustments for ongoing projects, shall be approved by Planning Commission resolution.

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3.05 Administrative Amendment

Upon the written request of, and payment of the established fee by, Developer, Substitution of Commitments within the same criteria category may be processed administratively by the Community Development Director. Any Administrative Amendment must be made in writing approved by the Director and approved by the City Attorney and signed by the Developer.

ARTICLE 4
DEFAULT, VALIDITY PROVISIONS, ASSIGNMENT

4.01 Defaults.

(a) Any failure by City or Developer to perform any material term or provision of this Agreement, which failure continues uncured for a period of sixty (60) days (or 150 days for a Mortgagee (as that term is defined in Section 4.10(a)) following written notice of such failure from the other Party (unless such period is extended by written mutual consent) ("**Notice of Default**"), shall constitute a default pursuant to this Agreement ("**Default**"). Any Notice of Default shall specify the nature of the alleged failure and, where appropriate, the manner in which such alleged failure satisfactorily may be cured. If the nature of the alleged failure is such that it cannot reasonably be cured within such 60-day period (or 150 days for a Mortgagee), then the commencement of the cure within such time period, and the diligent prosecution to completion of the cure thereafter, shall be deemed to be a cure within such 60-day period (or 150 days for a Mortgagee). If the alleged failure is cured, then no Default shall exist, and the noticing Party shall take no further action. If the alleged failure is not cured, then a Default shall exist pursuant to this Agreement and the non-defaulting Party may exercise any of the remedies available pursuant to this Article.

(b) No failure or delay in giving notice of default shall constitute a waiver of default; provided, however, that the provision of written notice and opportunity to cure shall nevertheless be a prerequisite to the enforcement or correction of any default. Waiver of a breach or default pursuant to this Agreement shall not constitute a continuing waiver or a waiver of a subsequent breach of the same or any other provision of this Agreement.

4.02 Actions During Cure Period.

(a) During any cure period and during any period prior to any delivery of notice of failure or default, the Party charged shall not be considered in default for purposes of this Agreement. If there is a dispute regarding the existence of a default, the Parties shall otherwise continue to perform their obligations hereunder to the maximum extent practicable in light of the disputed matter and pending its resolution, or formal termination of the Agreement, as provided herein.

(b) City will continue to process in good faith development applications during any cure period but need not approve any such application if it relates to an alleged default of Developer hereunder.

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4.03 Resolution of Disputes.

(a) In the event either Party is in default pursuant to the terms of this Agreement, the other Party may elect, in its sole and absolute discretion, to pursue any of the following courses of action: (i) waive such default; (ii) pursue administrative remedies as provided herein; (iii) pursue judicial remedies as provided for herein; and/or (iv) terminate this Agreement.

(b) Except as otherwise specifically stated in this Agreement, either Party may, in addition to any other rights or remedies, institute legal action to cure, correct, or remedy any default by another Party to this Agreement, to enforce any covenant or agreement herein, to enjoin any threatened or attempted violation hereunder, or to seek specific performance. It is expressly understood and agreed that the sole legal remedy available to Developer for a breach or violation of this Agreement by City shall be a legal action in mandamus, specific performance, and/or other injunctive or declaratory relief to enforce the provisions of this Agreement, and that Developer shall not be entitled to bring an action for damages including, but not limited to, lost profits, consequential damages or other economic damages. For purposes of instituting a legal action pursuant to this Agreement, any City Council determination pursuant to this Agreement shall be deemed a final agency action.

(c) If any dispute arises between or among the Parties as to interpretation or application of any of the terms of this Agreement, the Parties shall attempt to resolve the dispute in accordance with this Agreement prior to third party mediation, arbitration, or formal court action. As to any such dispute, the Parties shall first meet and confer in good faith to resolve the matter between themselves. Each Party shall make all reasonable efforts to provide to the other Party or Parties all information relevant to the dispute, to the end that all Parties will have appropriate and adequate information to resolve the dispute. Should the Parties not resolve the dispute informally, the Parties agree to meet and confer in an effort to agree on utilizing Judicial Arbitration Mediation Services ("JAMS") for Alternative Dispute Resolution ("ADR"). However, no party shall be required to use JAMS or ADR.

4.04 Periodic Review.

(a) The City shall review this Agreement at least once annually to assure compliance with the RDCS, at which time the Developer is required to demonstrate good faith compliance with the terms of this Agreement.

(b) If, as a result of such annual review, the City finds and determines, on the basis of substantial evidence, that Developer has not complied in good faith with the terms or conditions of this Agreement, the City may rescind all or part of the allotments awarded pursuant to the RDCS, in addition to all other legally available remedies.

4.05 Force Majeure Delay, Extension of Times of Performance.

(a) Performance by any Party hereunder shall be excused, waived or deemed not to be in default where delays or defaults are due to acts beyond a Party's control such as war, insurrection, strikes, walkouts, riots, floods, earthquakes, fires, casualties, acts of God,

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unexpected acts of governmental entities other than City, including revisions to capacity ratings of the wastewater plant by the Regional Water Quality Control Board, the State Water Resources Board, enactment of conflicting State or Federal laws or regulations, or litigation (including without limitation litigation contesting the validity, or seeking the enforcement or clarification of this Agreement whether instituted by the Developer, City, or any other person or entity) (each a "**Force Majeure Event**").

(b) Any Party claiming a delay as a result of a Force Majeure Event shall provide the other Party with written notice of such delay and an estimated length of delay. Upon the other Party's receipt of such notice, an extension of time shall be granted in writing for the period of the Force Majeure Event, or longer as may be mutually agreed upon by the Parties, unless the other Party objects in writing within ten (10) days after receiving the notice. In the event of such objection, the Parties shall meet and confer within thirty (30) days after the date of objection to arrive at a mutually acceptable solution to the disagreement regarding the delay. If no mutually acceptable solution is reached, any Party may take action as permitted in this Agreement.

4.06 <u>Third Party Legal Actions</u>.

(a) In the event of any administrative, legal or equitable action or other proceeding instituted by any person, entity or organization (that is not a Party to this Agreement) challenging the validity of this Agreement, any Project Approvals, or the sufficiency of any environmental review pursuant to CEQA ("**Third-Party Challenge**"), the Parties shall cooperate with each other in good faith in the defense of any such challenge.

(b) City shall have the option to defend such Third-Party Challenge or to tender the complete defense of such Third-Party Challenge to the Developer ("**Tender**"). If City chooses to defend the Third-Party Challenge or Developer refuses City's Tender, City shall control all aspects of the defense and Developer shall pay City's attorneys' fees and costs (including related court costs).

(c) If Developer accepts City's Tender, Developer shall control all aspects of the defense and shall pay its own attorneys' fees and costs (including related court costs) and shall indemnify and hold harmless City against any and all third-party fees and costs arising out of such Third-Party Challenge. If City wishes to assist Developer when Developer has accepted the Tender, Developer shall accept that assistance and City shall pay City's own attorneys' fees and costs (including related court costs) ("**City Costs**"), and Developer shall pay its own attorneys' fees and costs (including related court costs), and shall indemnify and hold harmless City against any and all third-party fees and costs arising out of such Third Party Challenge (such third party fees and costs shall not include City Costs).

(d) If any part of this Agreement or any Project Approval is held by a court of competent jurisdiction to be invalid, the City shall: (1) use its best efforts to sustain and/or re-enact that part of this Agreement and/or Project Approval; and (2) take all steps possible to cure any inadequacies or deficiencies identified by the court in a manner consistent with the express and implied intent of this Agreement, and then adopting or re-enacting such part of this

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Agreement and/or Project Approval as necessary or desirable to permit execution of this Agreement and/or Project Approval.

4.07 Estoppel Certificate.

(a) Any Party may, at any time, and from time to time, deliver written notice to any other Party, and/or to the Developer's lender, requesting such Party to certify in writing that, to the knowledge of the certifying Party:

(1) This Agreement has not been amended or modified either orally or in writing or if so amended, identifying the amendments.

(2) The Agreement is in effect and the requesting Party is not known to be in default of the performance of its obligations pursuant to this Agreement, or if in default, to describe therein the nature and amount of any such defaults.

(b) This written certification shall be known as an "**Estoppel Certificate.**" A Party receiving a request hereunder shall execute and return such Estoppel Certificate within ten (10) days following the receipt of the request, unless the Party, in order to determine the appropriateness of the Estoppel Certificate, promptly commences and proceeds to conclude an Annual Review. The Parties acknowledge that an Estoppel Certificate may be relied upon by Assignees and other persons having an interest in the Project, including holders of mortgages and deeds of trust. The City Manager shall be authorized to execute an Estoppel Certificate for City.

(c) If a Party fails to deliver an Estoppel Certificate within the ten (10) day period, as provided for in Section 4.07(b) above, the Party requesting the Estoppel Certificate may deliver a second notice (the "**Second Notice**") to the other Party stating that the failure to deliver the Estoppel Certificate within ten (10) working days following the receipt of the Second Notice shall constitute conclusive evidence that this Agreement is without modification and there are no unexcused defaults in the performance of the requesting Party. Failure to deliver the requested Estoppel Certificate within the ten (10) working day period shall then constitute conclusive evidence that this Agreement is in full force and effect without modification and there are no unexcused defaults in the performance of the requesting Party.

4.08 Assignment/Covenants Run with the Land.

(a) Right to Assign. Developer shall have the right to sell, assign, or transfer this Agreement with all its rights, title and interests therein to any person, firm or corporation acquiring an interest in the Project or Property (or portion thereof associated with the Project) at any time during the term of this Agreement ("**Assignee**"). Developer shall provide City with written notice of any assignment or transfer of all or a portion of the Property no later than thirty (30) days prior to such action, which notice shall include specific portions of the Project or Property to be assigned and the proposed form of assignment. Any proposed assignment shall be subject to the express written consent of City, which consent shall not be unreasonably withheld, delayed or conditioned. City's approval of a proposed assignment or transfer shall be based upon the proposed assignee's reputation, experience, financial resources and access to credit and capability to successfully carry out the development of the Property to completion. The written

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assignment, assumption or release of rights or obligations with respect to a portion of the Project or of the Property shall specify the portion of the Project or Property and the rights assigned and obligations assumed and shall be approved by the City Attorney. The express written assumption by an Assignee of the obligations and other terms and conditions of this Agreement with respect to the Property or such portion thereof sold, assigned or transferred shall relieve Developer of such obligations so assumed. Any such assumption of Developer's obligations pursuant to this Agreement shall be deemed to be to the satisfaction of the City Attorney if executed in the form as may be approved by the City Attorney.

(b) Release Upon Assignment. Upon assignment, in whole or in part, and the express written assumption by the Assignee of such assignment, of Developer's rights and interests pursuant to this Agreement, Developer shall be released from its obligations with respect to the Property/Project (or any portion thereof), and any lot, parcel, or portion thereof so assigned to the extent arising subsequent to the effective date of such assignment. A default by any Assignee shall only affect that portion of the Property/Project owned by such Assignee and shall not cancel or diminish in any way Developer's rights or obligations hereunder with respect to the assigned portion of the Property/Project not owned by such Assignee. The Assignee shall be responsible for the reporting and annual review requirements relating to the portion of the Property/Project owned by such Assignee, and any amendment to this Agreement between City and Assignee shall only affect the portion of the Property/Project owned by such Assignee.

(c) Covenants Run with the Land. This Agreement and all of its provisions, agreements, rights, powers, standards, terms, covenants and obligations shall be binding upon the Parties and their respective heirs, successors (by merger, consolidation, or otherwise) and assigns, devisees, administrators, representatives, lessees, and all other persons or entities acquiring the Project and/or Property, any lot, parcel or any portion thereof, or any interest therein, whether by sale, operation of law or in any manner whatsoever, 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 Agreement shall be enforceable during the Term as equitable servitudes and constitute covenants running with the land pursuant to applicable law, including, but not limited to Civil Code Section 1468. This Agreement shall not be binding upon any consumer, purchaser, transferee, devisee, assignee, or any other successor of Developer acquiring a completed residential unit comprising all or part of the Project ("**Consumer**") unless such Consumer is specifically bound by a provision of this Agreement or by a separate instrument or Agreement.

4.09 Encumbrances on the Property.

The parties hereto agree that this Agreement shall not prevent or limit Developer, in any manner, at Developer's sole and absolute discretion, from encumbering the Property, or any portion thereof or any improvements thereon with any Mortgage securing financing with respect to the construction, development, use or operation of the Project. Mortgagee may require certain modifications to this Agreement, and City shall negotiate in good faith any such request for modification or subordination.

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4.10 Obligations and Rights of Mortgage Lenders.

(a) The holder of any mortgage, deed of trust or other security arrangement with respect to the Property, or any portion thereof ("**Mortgagee**"), shall not be obligated pursuant to this Agreement to construct or complete improvements or to guarantee such construction or completion, but shall otherwise be bound by all of the terms and conditions of this Agreement that pertain to the Property or such portion thereof in which it holds an interest.

(b) Each Mortgagee shall be entitled to receive written notice from City of results of the annual review to be done pursuant to Section 4.04 and any default by Developer pursuant to this Agreement, provided such Mortgagee has informed City of its address for notices. Each Mortgagee shall have a further right, but not an obligation, to cure such default in accordance with the default and default cure provisions in Sections 4.01, 4.02, and 4.03 of this Agreement. In the event Developer (or any permitted Assignee) becomes subject to an order for relief pursuant to any chapter of Title 11 of the United States Code (the "**Bankruptcy Code**"), the cure periods provided for a Mortgagee in Section 4.01(a) of this Agreement shall be tolled for so long as the automatic stay of Section 362 of the Bankruptcy Code remains in effect as to Developer (or any permitted Assignee); provided, however, if City obtains relief from the automatic stay pursuant to Bankruptcy Code Section 362 to declare any default by or exercise any remedies against Developer (or any permitted Assignee), the tolling of any Mortgagee's cure period shall automatically terminate on the earlier of: (i) the date that is sixty days after entry of the order granting City relief from the automatic stay, or (ii) the date of the entry of an order granting Mortgagee relief from the automatic stay. Each Mortgagee shall be entitled to receive written notice from City of the filing of any motion by City in which City seeks relief from the automatic stay of Section 362 of the Bankruptcy Code to declare any default by or exercise any remedies against Developer (or any permitted Assignee).

(c) Any Mortgagee who comes into possession of the Property, or any portion thereof, pursuant to a foreclosure of a mortgage or a deed of trust, or deed in lieu of such foreclosure, shall take the Property, or such portion thereof, subject to any pro rata claims for payments or charges against the Property, or such portion thereof, that have accrued prior to the time such holder comes into possession. In addition, any Mortgagee who comes into possession of the Property or any portion thereof, pursuant to a foreclosure of mortgage or deed of trust, or deed in lieu of such foreclosure, shall, subject to Section 4.10(a) above, be a permitted Assignee and, as such, shall succeed to all the rights, benefits and obligations of Developer pursuant to this Agreement.

(d) Nothing in this Agreement shall be deemed to be construed to permit or authorize any such holder to devote the Property, or any portion thereof, to any uses, or to construct any improvements thereof, other than those uses and improvements provided for or authorized by this Agreement, subject to all of the terms and conditions of this Agreement.

4.11 Termination.

This Agreement shall terminate upon the expiration of the Term, as set forth in Section 1.03(a), or at such other time as this Agreement is terminated in accordance with the terms hereof, whichever occurs first. Upon termination of this Agreement, the City shall record a notice

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of such termination, in a form satisfactory to the City Attorney that the Agreement has been terminated.

ARTICLE 5
GENERAL PROVISIONS

5.01 Miscellaneous.

(a) Preamble, Recitals, Exhibits. References herein to "this Agreement" shall include the Preamble, Recitals and all of the exhibits of this Agreement.

(b) Requirements of Development Agreement Statute. The permitted uses of the Property; density and/or intensity of use of the Property; the maximum height and size of proposed buildings and other structures; provisions for reservation or dedication of land for public purposes; location of public improvements; and other terms and conditions applicable to the Project shall be those set forth in the Applicable Law.

(c) Governing Law and Attorneys' Fees. This Agreement shall be construed and enforced in accordance with the laws of the State of California and legal actions commenced pursuant to or pursuant to this Agreement shall be brought in Santa Clara Superior Court. Should any legal action be brought by a Party for breach of this Agreement or to enforce any provision herein, the prevailing party of such action shall be entitled to reasonable attorneys' fees, court costs, and such other costs as may be fixed by the court.

(d) Project as a Private Undertaking. No partnership, joint venture, or other association of any kind between Developer, on the one hand, and City on the other hand, is formed by this Agreement. The development of the Property is a separately undertaken private development. The only relationship between City and Developer is that of a governmental entity regulating the development of private Property and the owners of such private Property.

(e) Indemnification. Developer shall hold City, its elective and appointive boards, commissions, officers, agents, and employees, harmless from any liability for damage or claims for damage for personal injury, including death, as well as from claims for property damage which may arise from Developer's contractors, subcontractors', agents' or employees' operations on the Project, whether such operations be by Developer or by any Developer's contractors, subcontractors, or by any one or more persons directly or indirectly employed by, or acting as agent for Developer or any of Developer's contractors or subcontractors. Developer shall indemnify and defend City and its elective and appointive boards, commissions, officers, agents and employees from any suits or actions at law or in equity for damages caused, or alleged to have been caused, by reason of any of the aforesaid operations and Developer shall pay all reasonable attorney's fees and costs that the City may incur. City does not, and shall not, waive any rights against Developer which it may have by reason of the aforesaid hold-harmless requirement of Developer because of the acceptance of improvements by City, or the deposit of security with City by Developer. The aforesaid hold-harmless requirement of Developer shall apply to all damages and claims for damages of every kind suffered, or alleged to have been suffered, by reason of any of the aforesaid operations referred to in this subsection, regardless of whether or not City has

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prepared, supplied or approved of, plans and/or specifications for the subdivision. Notwithstanding anything herein to the contrary, Developer's indemnification of City shall not apply to the extent that such action, proceedings, demands, claims, damages, injuries or liability is based upon the active negligence of the City.

(f) Insurance. Developer shall, during the life of this Agreement take out and maintain insurance coverage with an insurance carrier authorized to transact business in the State of California as will protect the Developer or any Contractor or any Subcontractor or anyone directly or indirectly employed by any of them or by anyone for whose acts any of them may be liable, from claims for damages because of bodily injury, sickness, disease, or death of their employees or any person other than their employees, or for damages because of injury to or destruction of tangible property, including loss of use resulting therefrom. The minimum limits of liability for such insurance coverage which shall include comprehensive general and automobile liability, including contractual liability assumed pursuant to this Agreement, shall be as follows:

Limit of Liability for Injury or Accidental Death:
Per Occurrence $1,000,000
Limit of Liability for Property Damage:
Aggregate Liability for Loss $1,000,000

Such liability insurance policies shall name the City as an additional insured, by separate endorsement, and shall agree to defend and indemnify the City against loss arising from operations performed pursuant to this agreement and before permitting any Contractor or Subcontractors to perform work pursuant to this agreement, the Developer shall require Contractor or Subcontractors to furnish satisfactory proof that insurance has been taken out and is maintained similar to that provided by the Developer as it may be applied to the Contractor's or Subcontractor's work.

(g) Interpretation/Construction. This Agreement has been reviewed and revised by legal counsel for both Developer and City, and any rule or presumption that ambiguities shall be construed against the drafting Party shall not apply to the interpretation or enforcement of this Agreement. The standard of review of the validity and meaning of this Agreement shall be that accorded legislative acts of City. As used in this Agreement, and as the context may require, the singular includes the plural and vice versa, and the masculine gender includes the feminine and neuter and vice versa.

(h) Notices.

(1) All notices, demands, or other communications that this Agreement contemplates or authorizes shall be in writing and shall be personally delivered or mailed, via first class mail, to the respective Party at the below listed address. Notice shall be deemed effective and received five days after the date of mailing or upon personal delivery.

If to City: City Clerk
17575 Peak Avenue
Morgan Hill, CA 95037
Tel: (408) 779-7259
Fax: (408) 779-3117

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With a Copy To: City Attorney
17575 Peak Avenue
Morgan Hill, CA 95037
Tel: (408) 779-7271
Fax: (408) 779-1592

With a Copy To: Community Development Director
17575 Peak Avenue
Morgan Hill, CA 95037
Tel: (408) 779-7271
Fax: (408) 779-1592

If to Developer: Diana Dunne Investors LLC
c/o Dick Oliver and Mary Beth Long
385 Woodview Ave, Suite 100
Morgan Hill, CA 95037

(2) Any Party may change the address stated herein by giving notice in writing to the other Parties, and thereafter notices shall be addressed and transmitted to the new address. Any notice given to the Developer as required by this Agreement shall also be given to any lender which requests that such notice be provided. Any lender requesting receipt of such notice shall furnish in writing its address to the Parties to this Agreement.

(i) Recordation. The Clerk of the City shall record, within ten (10) days after the Effective Date, a copy of this Agreement in the Official Records of the Recorder's Office of Santa Clara County. Developer shall be responsible for all recordation fees, if any.

(j) Severability. If any term or provision of this Agreement, or the application of any term or provision of this Agreement to a specific situation, is found to be invalid, void, or unenforceable, the remaining terms and provisions of this Agreement, or the application of this Agreement to other situations, shall continue in full force and effect.

(k) Jurisdiction. The interpretation, validity, and enforcement of the Agreement shall be governed by and construed pursuant to the laws of the State of California.

(l) Entire Agreement. This Agreement, including these pages and all the exhibits (set forth below) inclusive, and all documents incorporated by reference herein, constitute the entire understanding and agreement of the Parties.

(m) Signatures. The individuals executing this Agreement represent and warrant that they have the right, power, legal capacity, and authority to enter into and to execute this Agreement on behalf of the respective legal entities of Developer and City. This Agreement may be executed in multiple originals, each of which is deemed to be an original.

(n) Counterparts. This Agreement may be executed in several counterparts, each of which shall be deemed an original, and all such counterparts shall together constitute one and the same instrument.

Attachment: Recorded DA (2532 : AAE2019-0010 E. Dunne-Young)

(3) Exhibits. The following exhibits are attached to this Agreement and are hereby incorporated herein by this reference for all purposes as if set forth herein in full:

Exhibit A ***Legal Description of Lot on Which Project is to be Located.***

Exhibit B ***Description of Project.***

Exhibit C ***RDCS Specific Restrictions and Requirements.***

Signatures of all parties are on the following page.

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Attachment: Recorded DA (2532 : AAE2019-0010 E. Dunne-Young)

IN WITNESS WHEREOF, City and Developer have executed this Agreement as of the date first hereinabove written.

CITY OF MORGAN HILL:

s/_____

Christina J. Turner
City Manager

Date: 3/1/19

Attest:

s/ Michell Bigelow

3/6/19
Deputy City Clerk

Approved as to Form:

s/ Cynthia L. Hasson

Cynthia L. Hasson
for Donald A. Larkin
City Attorney

Date: 2-28-19

DEVELOPER:

Diana Dunne Investors LLC

s/_____

James Pedicini
President

Date: 2/27/19

Corporate entities must provide a second signature:
Diana Dunne Investors LLC

s/_____

Mary Beth Long, Vice President

Date: 2-27-2019

Adopted by Ordinance No. 2294
by action of City Council on
January 23, 2018 9 CH

(ALL SIGNATURES, EXCEPT CITY CLERK AND CITY ATTORNEY, MUST BE ACKNOWLEDGED BY A NOTARY)

Attachment: Recorded DA (2532 : AAE2019-0010 E. Dunne-Young)

NOTARY ACKNOWLEDGEMENT

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)

On February 27, 2019 before me, Jamie Jessel, Notary Public
(insert name and title of the officer)

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

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

WITNESS my hand and official seal.

Signature Jamie Jessel (Seal)

JAMIE JESSEL
Notary Public - California
Santa Clara County
Commission # 2156117
My Comm. Expires Jul 5, 2020

NOTARY ACKNOWLEDGEMENT

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)

On February 27, 2019 before me, Jamie Jessel, Notary Public
(insert name and title of the officer)

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

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

WITNESS my hand and official seal.

Signature Jamie Jessel (Seal)

JAMIE JESSEL
Notary Public - California
Santa Clara County
Commission # 2156117
My Comm. Expires Jul 5, 2020

Dev Agmt - MHB DD (Andalusia)

Attachment: Recorded DA (2532 : AAE2019-0010 E. Dunne-Young)

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT **CIVIL CODE § 1189**

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)

On March 01, 2019 before me, Victoria Rossi,
Date *Here Insert Name and Title of the Officer*

personally appeared Christina Turner
Name(s) of Signer(s)

,

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

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

WITNESS my hand and official seal.

VICTORIA ROSSI
Notary Public – California
Santa Clara County
Commission # 2222021
My Comm. Expires Nov 16, 2021

Signature
Signature of Notary Public

Place Notary Seal Above

OPTIONAL

Though this section is optional, completing this information can deter alteration of the document or fraudulent reattachment of this form to an unintended document.

Description of Attached Document

Title or Type of Document: Development Agreement
Document Date: March 01, 2019 Number of Pages:
Signer(s) Other Than Named Above: James Pedicini, Mary Beth Long

Capacity(ies) Claimed by Signer(s)

Signer's Name:
☐ Corporate Officer — Title(s):
☐ Partner — ☐ Limited ☐ General
☐ Individual ☐ Attorney in Fact
☐ Trustee ☐ Guardian or Conservator
☐ Other:
Signer Is Representing:

Signer's Name:
☐ Corporate Officer — Title(s):
☐ Partner — ☐ Limited ☐ General
☐ Individual ☐ Attorney in Fact
☐ Trustee ☐ Guardian or Conservator
☐ Other:
Signer Is Representing:

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EXHIBIT A

LEGAL DESCRIPTION OF THE PROPERTY ON WHICH PROJECT IS BE LOCATED

LEGAL DESCRIPTION

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

PARCEL ONE:

PARCEL "A", AS SHOWN UPON THAT CERTAIN MAP ENTITLED, "PARCEL MAP IN THE CITY OF MORGAN HILL OF THE COUNTY OF SANTA CLARA, STATE OF CALIFORNIA, PORTION OF LOT 71 MORGAN HILL RANCH, MAP NO. 1", WHICH MAP WAS FILED FOR RECORD IN THE OFFICE OF THE RECORDER OF THE COUNTY OF SANTA CLARA, STATE OF CALIFORNIA, ON MAY 21, 1986 IN BOOK 560 OF MAPS, AT PAGE 1.

PARCEL TWO:

AN EASEMENT FOR INGRESS, EGRESS AND PUBLIC UTILITIES OVER THE NORTHEAST 30 FEET OF PARCEL B, AS SHOWN ON PARCEL MAP ABOVE REFERRED TO.

APN: 726-02-007

Attachment: Recorded DA (2532 : AAE2019-0010 E. Dunne-Young)

EXHIBIT B

DESCRIPTION OF PROJECT

PHASE 1 (20 UNITS) OF RDCS APPLICATION 2017-0012: E. DUNNE YOUNG.

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EXHIBIT C

SPECIFIC RESTRICTIONS AND REQUIREMENTS

(INCLUDING RDCS REQUIREMENTS)

The following restriction and requirements apply to Phase 1 (20 units) of the Development proposed in RDCS application 2017-0012 E. Dunne -Young and shall apply to that portion of the Property included in the said phases of the development on the Property. The following chart describes the applicable reference in the Morgan Hill Municipal Code to the requirement, a description of the commitments specific to the Project, the requirement timing of the implementation and the total estimated costs of improvement or applicable fee commitment. These commitments are IN ADDITION to any mitigation requirements pursuant to CEQA, impact fees, in-lieu fees or other requirements pursuant to federal or state laws, or the Morgan Hill Municipal Code (See Section 2.03 of the Agreement)

*Contribution estimates may require augmentation for the completion of improvements. Impact fees are subject to the provisions of Section 2.03 (b) of this Agreement.

Section No.	Category/Criteria	Public Benefit/Commitment	Implementation	Estimated Contribution*
1.	**Schools**			
4.	Student Transportation Improvements	$5000 per unit to contribute to the City's Safe Access to Schools Fund	Prior to issuance of building permit	$5000/Unit
2.	**Location**			
6.a	Water distribution lines	Local water distribution lines are of sufficient size to serve the proposed project. The project does not require replacing existing local water distribution lines with larger diameter pipes. New water mains to serve the site do not need to be installed.	NA	NA
6.b	Wastewater collection	The existing wastewater collection system is sufficient to serve the proposed project. The project does not require extending or	NA	NA

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Section No.	Category/Criteria	Public Benefit/Commitment	Implementation	Estimated Contribution*
		replacing existing sewer pipes or lift stations outside of the project site.		
6.c	Off-site drainage facilities	Existing off-site storm drainage facilities are sufficient to serve the project.	NA	NA
3.	**Affordable Housing**			
2.	Voluntary Contribution to Housing Fund	NA	NA	NA
3.	Development of Affordable Units	Developer committed to 4 BMR's - 3 at 80% AMI and 1 at 90% AMI. Phase 1 BMR's will be located in Bldg #2 - unit #7 and Bldg #4 - unit #15. Unit type for BMR's is AZ – approximately 1628 sq feet (the same size as Unit type A - Market Rate Units) The Project shall provide in Phase 1 at least 2 units for participation in a Below Market Rate (BMR) for sale program approved by the Community Development Department. The BMR units shall be approved by the City of Morgan Hill Planning Commission and Site and Architectural Review process. Applicant commits as part of phase one, two (2), low income BMR(s): 3-bedroom, 2 bath and approximately1628 sq. ft of living area. BMR sales price determination is based on median income and household size. All BMR units, including Moderate BMRs are deed restricted. Final BMR sales price is based on verification	Prior to issuance of a building permit.	NA

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Section No.	Category/Criteria	Public Benefit/Commitment	Implementation	Estimated Contribution*
		of property zoning and housing types. Low Income for this BMR commitment is defined as 80% Area Median Income and Moderate Income for this BMR commitment is defined as 90% Area Median Income (as determined and updated annually by the State HCD). Individual unit prices are dependent on unit sizes/bedroom counts and subject to the prices shown in the City of Morgan Hill's "New BMR Sales Pricing Index" table. BMRs are also subject to the requirements listed under "Additional Requirements" and as referenced per the Affordable Housing Agreement (AHA). BMR units are subject to the following development standards: 1. Location. BMR units shall be distributed evenly throughout the project. 2. Lot Size. Lot size shall be at least the same size as the smallest lot of a market rate unit within the project; 3. Bedroom Count. Average bedroom count shall be the same as the average bedroom count in the market rate units in the project; 4. Exterior. Exterior trim entry door hardware, and finish to the same standard as the Market Rate 5. Minimum standards for equipment, fixtures, appliances and finishes have been established for the BMR units. All items installed by the developer shall be of good quality and in new condition. Good quality shall be deemed as entry level but generally not the lowest level of product offered for that application. All products shall offer durability, reliability and maintain a quality appearance and function that is standard to most other median priced homes in the		

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Section No.	Category/Criteria	Public Benefit/Commitment	Implementation	Estimated Contribution*
		area. The below listed items must be installed as a basic feature of each BMR home. 6. Minimum Interior standard finishes will be as follows a. All closets shall have doors b. Interior doors to be raised panel type or same as market rate c. Door hardware to be brass finish or equivalent d. Appliances shall be major brand name e. Microwave with an exhaust vent shall be installed over the range f. Kitchen counters shall be white ceramic tile g. Kitchen cabinets shall be stained wood with white melamine interiors h. Units will be roughed in for AC including electrical and line set i. Basic alarm system to secure all accessible openings to the home j. Carpet in bedrooms, hallways, family rooms k. Linoleum or tile entry, bathroom kitchens l. Laminate flooring may substitute for carpet or linoleum m. Electric garage door opener 7. Timing of Construction. BMR units shall be constructed in proportion to the BMR ownership housing requirement applicable to the project per the rules established for the RDCS. At least one (1) BMR unit shall be constructed before or concurrently with every 11th market rate unit constructed. The last two (2) market rate units to be completed in the project may not receive a certificate of occupancy until the last BMR unit has received a certificate of occupancy. The director may approve a modified schedule if the timing requirement will create unreasonable		

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Section No.	Category/Criteria	Public Benefit/Commitment	Implementation	Estimated Contribution*
		delays in the issuance of certificates of occupancy for market rate units		
4.	**Housing Diversity**			
1.	Accessory Dwelling Units	NA	NA	NA
2.	Diversity of Housing Types	Commits to two (2) different types of Housing - Triplex or Quadplex and Multi-Family	Design Permit approval	NA
3.	Variation in Housing Size	10 units will be 2 bedroom and approximately1628 sq. ft. 3 units will be 3 bedroom and approximately1850 sq. ft. 7 units will be 4 bedroom and approximately1725-1845 sq. ft.	Design Permit approval	NA
4.	Small Units	NA	NA	NA
5.	Housing Stock Diversity	100% Owner Occupied Multi-Family Housing	NA	NA
6.	Single-Story Homes	NA	NA	NA
5.	**Parks and Open Space**			
1.	Park Fund Contribution	NA	NA	NA
2.	Excess Park Land	NA	NA	NA
3.	Agricultural Conservation or Open Space Easement	NA	NA	NA
4.	Agricultural Buffer	NA	NA	NA
5.	Agricultural Preservation or Open Space Fund Contribution	The project contributes to the City's agriculture preservation or open space fund beyond the minimum requirement. The project shall pay $3,899.09 per unit.	Paid prior to unit occupancy	$3,899.09 per unit

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Section No.	Category/Criteria	Public Benefit/Commitment	Implementation	Estimated Contribution*
6.	On-Site Recreational Amenities	As part of phase one (20 units) project shall provide one of the two tot lots each with a minimum of three age-appropriate activities.	Design Permit approval	NA
7.	Amenities for Age Group	Project provides an outdoor picnic/ barbeque area for adults. The second "gathering area" would be a space for grandparents to watch their grandchildren plan. Seniors could also use the first "gathering area."	Future Phases	NA
8.	Public Gathering Places	Gathering place #1 with seat wall, trellis, wind-break, adjacent to public street, visible to Plaza, for public, residents, senior, adults and guests. Gathering Place #2 also. Cost is at least $1,000/unit.	Design Permit approval	$1000/unit
9.	Proximity to Public Parks	Project is within 1/4 mile of Diana Park and Stone Creek Park.	NA	NA
10.	Open Space Design	Project will maintain appropriate open space size, edges of Plaza are the buildings and landscaping. A plaza visible from street & at least 6-units. 2nd tot lot (for toddlers) is provided which is viewable from units and away from streets for safety. Pedestrian walks are provided for access.	Future Phases	NA
6.	**Environmental Protection**			
1.	Energy Efficiency	Project will provide a 5% reduction in its energy budget compared to the standard design building, as calculated by Title 24, Part 6 Compliance Software certified by the California Energy Commission.	Prior to issuance of a building permit.	NA
2.	On-site Solar Energy Generation	NA	NA	NA

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Section No.	Category/Criteria	Public Benefit/Commitment	Implementation	Estimated Contribution*
3.	Indoor Water Use	projects that exceed the minimum indoor water efficiency and conservation requirements by 5%. Project shall demonstrate attainment of water efficiency standards utilizing methods consistent with Cal Green and industry standards.	Prior to issuance of a building permit.	NA
4.a	Natural Turf	Less than 50% of landscaped area contains natural turf.	Prior to issuance of a building permit.	NA
4.b	No Natural Turf Outside Common Areas	Project will contain no natural turf outside common areas used for active play	Prior to issuance of a building permit.	NA
4.c	Exceeds Outdoor Water Efficiency 10%	NA	NA	NA
4.d	Exceeds Outdoor Water Efficiency 20%	NA	NA	NA
4.e	Exceeds Outdoor Water Efficiency 30%	NA	NA	NA
4.f	Subsurface Irrigation	NA	NA	NA
5.	Sustainable Site and Building Design	Project agrees to a minimum of 94 BIG points, over the minimum required by Chapter 15.65 of the City of Morgan Hill Municipal Code.	Prior to issuance of a building permit.	NA
7.	**Transportation**			
1.	Bicycle and Pedestrian Improvements	NA	NA	NA

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Section No.	Category/Criteria	Public Benefit/Commitment	Implementation	Estimated Contribution*
2.	Transit Improvements	NA	NA	NA
3.	Off-Site Street and Parking Improvements or Fund Contribution	NA	NA	NA
4.a	Transportation Demand Management fund	NA	NA	NA
4.b	Transportation Demand Management (rental projects)	NA	NA	NA
5.a	Aligns and connects streets	The project aligns and connects streets intersecting the project boundary with all adjoining streets.	Subdivision Map approval	NA
5.b	Extends Streets	The project extends streets to the adjoining undeveloped land to provide access to undeveloped land in the event of its future development.	Subdivision Map approval	NA
5.c	Off-street bicycle and pedestrian connections	The project provides off-street bicycle and pedestrian connections to adjacent destinations, including parks, open space, transit facilities, and commercial areas. Connections must be established and maintained through an easement, dedication or other similar method to guarantee it remains accessible to the general public.	Improvement Plan approval	NA
6.a	Complete Streets	The project incorporates "complete streets" that meet the needs of multiple users, including motorists, bicyclists, pedestrians, transit users, and persons of different physical capabilities.	Design Permit approval	NA

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Section No.	Category/Criteria	Public Benefit/Commitment	Implementation	Estimated Contribution*
6.b	Enhanced bicycle and pedestrian improvements	The project incorporates enhanced bicycle and pedestrian improvements such as bicycle storage facilities, traffic calming measures, intersection crossings, and wayfinding signage.	Design Permit approval	NA
6.c	Direct pedestrian connections	The project provides direct pedestrian connections from units to common open space, recreational facilities, and other project amenities.	Design Permit approval	NA
6.d	Neighborhood traffic management techniques	The project incorporates neighborhood traffic management techniques, such as traffic circles, narrow lanes, and bulb-outs, to control vehicle speeds and increase the safety of bicycle and pedestrian travel.	Design Permit approval	NA
7.	Electric Vehicle Charging Stations	Project will provide four publicly available charging stations	Design Permit approval	NA
8.	**Municipal Infrastructure**			
1.	Water Infrastructure	NA	NA	NA
2.	Wastewater Infrastructure	NA	NA	NA
3.a	Reduces off-site storm water flows	The project reduces the volume of off-site storm water flows beyond minimum requirements using low impact development (LID) techniques.	Building permit approval	NA
3.b	Off-site storm water improvements	The project provides off-site stormwater infrastructure improvements beyond minimum requirements.	Improvement Plan approval	$1000/unit
4.	Infrastructure and Services Fund Contribution	Project will contribute to the City's infrastructure and Services Fund.	NA	NA
5.a	Installs broadband conduit in public right-of-way	The project installs broadband conduit in the public right-of way.	Improvement plan approval	NA
5.b	Installs broadband conduit to	The project installs broadband conduit from the public right-of-	Building permit	NA

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Section No.	Category/Criteria	Public Benefit/Commitment	Implementation	Estimated Contribution*
	home/buildings	way to each home or occupied building in the project.	approval	
5.c	Pre-installs indoor conduit	The project pre-installs indoor conduit, wiring and other necessary infrastructure so that broadband service may be provided to each unit.	Building permit approval	NA
5.d	Provides primary broadband service	NA	NA	NA
9.	**Project Quality**			
1.a	Front Porches	A minimum of 50 percent of homes facing a street or common interior courtyard include a front porch. Porches must be part of the home's primary entrance, connected to the front yard or common interior courtyard, a minimum of 6 feet by 5 feet, and in full view of the street or common interior courtyard.	Design Permit approval	NA
1.b	Balconies Facing Street or Courtyard	A minimum of 25 percent of homes facing a street or common interior courtyard include a balcony overlooking a public space. Balconies must provide usable private outdoor space for residents, be in full view of a street or common interior courtyard, and face away from neighbors' yards to maintain privacy. 25 percent of upper floor units facing a street or common interior courtyard include a balcony.	Design Permit approval	NA
1.c	Balconies Facing Alleys	A minimum of 25 percent of homes abutting a shared alley include a balcony overlooking the alley, parking area, or drive aisle.	Design Permit approval	NA
1.d	Façade Articulation and Finishes	Front building facades feature quality façade articulation and finishes to break up blank, flat walls and provide visual interest.	Design Permit approval	NA
1.e	360-degree Architecture	The project features full and consistent articulation and design detail on all building facades.	Design Permit approval	NA

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Section No.	Category/Criteria	Public Benefit/Commitment	Implementation	Estimated Contribution*
1.f	Corner Treatments	For projects where the side or rear of a home faces a street or common courtyard street, the project incorporates enhanced treatments of these side and rear facades to support a welcoming and visually interesting public realm.	Design Permit approval	NA
1.g	Colors and Materials	The project incorporates a mix of exterior finish materials and colors that is compatible with the architecture of the homes and enhances visual interest.	Design Permit approval	NA
1.h	Multi-family Ground Level Entrances	Project provides as many private, exterior ground-level entries to individual units as possible.	Design Permit approval	NA
1.i	Individual Residences-Attached Projects	Large buildings are architecturally subdivided so that they appear as individual residences or small groups of units. Buildings incorporate features such as window bays, balconies, porches and entrance vestibules, varied color schemes, and individual roof volumes to define individual units.	Design Permit approval	NA
1.j	Residential-Scale Design Elements- Attached Projects	Buildings incorporate design details, including but not limited to porches, projections, eaves, bay windows, and other similar architectural elements, that provide residential scale and help to break up the building mass.	Design Permit approval	NA
2.a	Entrance Orientation-Collector and Residential Streets	The primary entrance of homes face streets along the project perimeter	Design Permit approval	NA
2.b	Entrance Orientation-Single-Family Detached Projects/Arterial Streets	NA	NA	NA
2.c	Variation in Building Height	The project incorporates variation in building heights to minimize monotony and enhance visual interest.	Design Permit approval	NA
2.d	Variation in Building	The project incorporates variation in building front setbacks	Design Permit approval	NA

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Section No.	Category/Criteria	Public Benefit/Commitment	Implementation	Estimated Contribution*
	Placement	and placement on lots to minimize monotony and enhance visual interest.		
2.e	Roof Line Variation	Variation in roof lines through changes in roof height and form break of building massing and create visual interest.	Design Permit approval	NA
2.f	Upper Floor Setback-Detached Homes	NA	NA	NA
2.g	Upper Floor Setback-Attached Homes	NA	NA	NA
2.h	Height and Project Edge-Attached Projects	NA	NA	NA
2.i	Separate Structures-Attached Projects	Divides units into multiple separate structures. Maximum 10 units maximum per structure	Design Permit approval	NA
2.j	Adjacent Building Types-Attached Projects	NA	NA	NA
3.a	Landscaping-Parkway Design	The project provides a landscape parkway along the street 50 percent wider than the minimum required for the street type. Street trees and pedestrian-scale lighting within or adjacent to the parkway exceed minimum requirements and help create a distinctive and memorable design environment.	Design Permit approval	NA
3.b	Landscaping-Visual Relief	Landscaping is placed and designed to minimize the appearance of building bulk and mass and to emphasize building features that create visual interest and support a pedestrian-friendly environment.	Design Permit approval	NA
3.c	Exterior Lighting	Exterior lighting fixtures are architecturally integrated with the primary building's design, style, material, and colors	Design Permit approval	NA
3.d	Entrance Pathways	No more than 50 percent of multi-family homes feature an	Design Permit approval	NA

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Section No.	Category/Criteria	Public Benefit/Commitment	Implementation	Estimated Contribution*
		identical garage configuration. Garage configuration may include front loaded attached, front loaded detached, side loaded, and rear loaded garages.		
3.e	Public/Private Transitions	NA	NA	NA
3.f	Mechanical Equipment	Parking visible from a public street is screened with fences, walls, and/or landscaping to the greatest extent possible.	Design Permit approval	NA
4.a	Garage Door Orientation	Garage doors do not face the front street. Garages are configured on the site such that garage doors face either the side or rear of the property.	Design Permit approval	NA
4.b	Garage Door Design-Minimizing Visual Dominance	NA	NA	NA
4.c	Garage Door Design-Detailing	Garage doors feature enhanced windows or architectural detailing consistent with the main dwelling.	Design Permit approval	NA
4.d	Garage Configuration	NA	NA	NA
4.e	Parking-Attached Projects	The project locates parking lots serving attached residential units at the rear or side of the site to allow a majority of dwelling units to front on the street or an internal courtyard. Parking is not located between a building and any public sidewalk or street.	Design Permit approval	NA
4.f	Screening	Parking visible from a public street is screened with fences, walls, and/or landscaping to the greatest extent possible.	Design Permit approval	NA
4.g	Landscaping-Attached Projects	The project incorporates landscaping to soften the appearance of off-street parking areas and private drive aisles in attached single family and multi-family projects	Design Permit approval	NA

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Section No.	Category/Criteria	Public Benefit/Commitment	Implementation	Estimated Contribution*
4.h	Setback Areas	NA	NA	NA
4.i	Pavement Design	Areas for vehicle parking and circulation feature enhanced paving finishes such as stone, brick, and colored and textured concrete that complement the architectural style of buildings.	Design Permit approval	NA
4.j	Cluster Units	NA	NA	NA
5.	Public Art	NA	NA	NA
6.a	Home Automation	The project installs home automation devices within units.	Prior to unit occupancy	$2000/unit
6.b	Home Automation (reduce energy)	The project installs home automation devices within units that reduce energy consumptions, such as devices that automatically adjust lighting, heating, and air conditioning.	Prior to unit occupancy	$1000/unit

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CITY OF MORGAN HILL

PLANNING COMMISSION STAFF REPORT
MEETING DATE: November 12, 2019

PREPARED BY: Gina Paolini, Interim Principal Planner
APPROVED BY: Jennifer Carman, Community Development Director

WORKSHOP: DISCUSSION OF THE CITY OF MORGAN HILL RESIDENTIAL DEVELOPMENT DESIGN AND DEVELOPMENT STANDARDS

RECOMMENDATION(S)

Planning Commission to discuss and provide comments on the draft Residential Development Design and Development Standards.

BACKGROUND:

California Senate Bill 330 (SB 330 - Government Code Section 65589.5), establishes the "Housing Crisis Act of 2019", effective January 1, 2020. The bill amends the Housing Accountability Act (HAA), making changes to the local approval process and the Permit Streamlining Act until January 1, 2025. Specifically, the bill Prohibits the City of Morgan Hill, with respect to land where housing is an allowable use, from enacting a development policy, standard, or condition that would have any of the following effects:

a) Changing the general plan land use designation, specific plan land use designation, or zoning of a parcel to a less intensive use or reducing the intensity of land use within an existing general plan land use designation, specific plan land use designation, or zoning district below what was allowed under the land use designation and zoning ordinances of the affected county or affected city as in effect January 1, 2018. Less intensive uses means reductions in height, density, floor area ratio, new or increased open space or lot size requirements, or new or increased setback requirements, minimum frontage requirements or maximum lot coverage limitations or anything that would lessen the intensity of housing.

b) Imposing a moratorium or similar restriction or limitation on housing development, including mixed-use development, within all or a portion of the jurisdiction, other than to specifically protect against an imminent threat to health and safety. An affected city or county cannot enforce a moratorium until HCD approves it.

c) Imposing or enforcing design review standards established after January 1, 2020, if the standards are not objective.

d) Limiting the number of land use approvals or permits necessary for the approval and construction of housing that will be issued or allocated within all or a portion of the affected city or county.

e) Capping the number of housing units that can be approved or constructed either annually or for some other period of time.

f) Limiting the population of the affected city or county.

WORKSHOP DISCUSSION:

The purpose of the proposed **Residential Development Design and Development Standards** (Attachment 1) is to adopt clear and objective residential design standards that respond to the requirement of SB330 to have design review standards that are objective and established prior to January 1, 2020. The proposed **Residential Development Design and Development Standards** have been developed to be consistent with the City's Zoning Code and General Plan.

Staff is requesting that the Planning Commission review the proposed draft **Residential Development Design and Development Standards** and provide comments. A Special Planning Commission Meeting has been scheduled for November 18, 2019 to consider the draft **Residential Development Design and Development Standards.** The City Council will consider the **Residential Development Design and Development Standards** on December 18, 2019.

LINKS/ATTACHMENTS:

1. Residential Development Design and Development Standards

CITY OF MORGAN HILL

RESIDENTIAL DEVELOPMENT DESIGN AND DEVELOPMENT STANDARDS

November 2019

I. PURPOSE

The purpose of the Residential Development Design and Development Standards is to articulate project design requirements for all residential and mixed-use developments. These standards will be utilized to detail the review process by clearly stating the City of Morgan Hill's objectives for high quality, residential projects that are aesthetically pleasing, livable, sustainable, well-connected to neighborhood services.

II. RELATIONSHIP TO THE ZONING CODE, GENERAL PLAN AND SPECIFIC PLANS

A. Zoning Code

The Design and Development Standards are consistent with the City's Zoning Code. These standards are intended to complement the development standards within the Zoning Code but not replace standard zoning district requirements. The Design and Development Standards shall apply to all residential development projects proposed within Residential and Mixed Use zoning districts (unless exempt).

The intent of these Design and Development Standards shall be met unless it can be demonstrated to the satisfaction of the decision-making body for the development project that meeting the intent of the Design and Development Standards is physically infeasible or detrimental to the environmental quality of the project or surrounding area. While the intent of these Design and Development Standards shall be met unless as otherwise noted. Where these Design and Development Standards are silent or perceived to be silent, the Zoning Ordinance shall govern.

B. General Plan

The General Plan establishes land use designations, densities, and a wide variety of other policies related to future development. Where there is conflict between these Objective Design and Development Standards, the General Plan governs.

C. Specific Plan

The Downtown Specific Plan (DTSP) has been developed for the Morgan Hill Downtown and provides greater detail about land use, development standards, and building design than exist in the General Plan, and serves as the zoning for the area. The Objective Design and Development Standards shall be the primary guiding document for review of residential projects within the DTSP area.

III. EXEMPTIONS

The Objective Design and Development Standards shall not apply to projects determined to be exempt from Design Review in accordance with Section 18.108.040.F (Exempt Projects).

IV. DEFINITIONS

A. **Rules of Measurement**. Refer to Chapter 18.12 of the Morgan Hill Municipal Code.

B. **Land Use Definitions.** Refer to Chapter 18.124 of the Morgan Hill Municipal Code.

C. **General Terms.** Refer to Chapter 18.28 of the Morgan Hill Municipal Code.

D. **Mixed-use Developments.** A mixed-use development shall consist of residential and nonresidential uses with at least two-thirds of the square footage designated for residential use.

V. OBJECTIVE DESIGN AND DEVELOPMENT STANDARDS

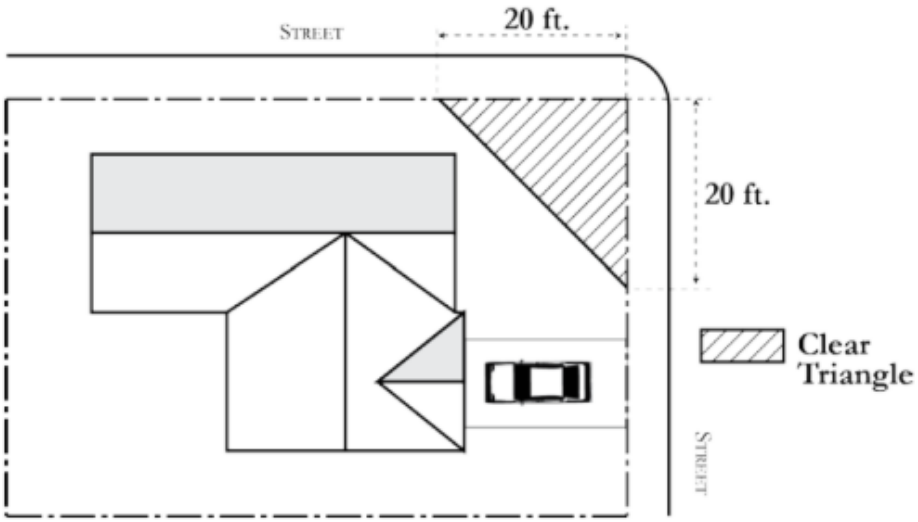
These Residential Design and Development Standards augment the standards in the City's Municipal Code and provide qualitative direction to meet the City's goal for high quality design of residential projects. Any deviation from these Design and Development Standards or the letter of these standards is a deviation from the Zoning Ordinance and requires approval of a Minor Exception as specified in Section 18.108.070 (Minor Exceptions) of the Morgan Hill Municipal Code. The Planning Commission shall review and take action on all requested exceptions.

A. Development Services Requirements

DESIGN AND DEVELOPMENT STANDARD	PROJECT COMPLIES
AFFORDABLE HOUSING AND ACCESSORY DWELLING UNITS	
Inclusionary Housing and Below Market Rate Program: The project complies with Chapter 14.04 "Inclusionary Housing" which requires at least fifteen percent of all units in residential projects be inclusionary units that shall be made available at affordable rents or affordable sales prices as established in Chapter 14.04. The inclusionary units shall be approved, and construction of the inclusionary units shall be completed not later than the times prescribed in Section 14.04.050 of the Morgan Hill Municipal Code, unless an alternative requirement is approved pursuant to Section 14.04.070 of the Morgan Hill Municipal Code. **(GP Policy HE-1rr)** Projects with two or more units shall demonstrate compliance by providing the following:	

DESIGN AND DEVELOPMENT STANDARD	PROJECT COMPLIES
· For-Sale Projects in Downtown Specific Plan (DTSP) area: Designate 10 percent of the dwelling units at affordable sales prices to moderate-income households · For-Sale Projects Outside DTSP area: Designate 15 percent of the dwelling units at affordable sales prices to moderate-income households · Rental Projects in DTSP area: Designate 10 percent of the dwelling units at affordable rents by low-income and very low-income households. At least one-half of required units to be offered to very low-income households · Rental Projects Outside the DTSP area: Designate 15 percent of the dwelling units at affordable rents by low-income and very low-income households. At least one-half of required units to be offered to very low-income households The applicant shall provide details regarding the number of inclusionary units, the level(s) of affordability, the location and type of inclusionary units, and timing of construction of inclusionary units in relation to the construction of the market-rate units contained in the development.	
Accessory Dwelling Unit (ADU) Requirements: If the project includes ADU's, the project shall comply with Chapter 18.84 Accessory Dwelling Units of the Morgan Hill Municipal Code.	
SITE PLANNING	
Zoning Compliance: Project complies with the applicable zoning district standards: a. Residential Estate Districts (RE-10, RE-2.5, RE-1). Refer to Table 18.16-2 of the Morgan Hill Municipal Code. b. Residential Detached Low and Medium Density Districts (RDL-20,000, RDL-12,000, RDM-9,000, RDM-7,000). Refer to Table 18.16-3 of the Morgan Hill Municipal Code. c. Residential Detached High Density District Development (RDH-4,500). Refer to Table 18.16-4 of the Morgan Hill Municipal Code. d. Residential Attached Low Density Districts (RAL-3,500, RAL-3,000) Refer to Table 18.18-2 of the Morgan Hill Municipal Code.	

DESIGN AND DEVELOPMENT STANDARD	PROJECT COMPLIES
e. Residential Attached Medium Density and High Density (RAM, RAH), Refer to Table 18.18-3 of the Morgan Hill Municipal Code. f. For projects that include residential units within the Mix Use Neighborhood (MU-N) and Mixed Use Flex (MU-F) Districts, refer to Table 18.22-2 of the Morgan Hill Municipal Code. g. For project that include residential units within the Downtown Specific Plan refer to the development standards provided within the Downtown Specific Plan. h. Whenever a requirement of an overlay zone or combining district conflicts with a requirement of the underlying base zone, the overlay zone or combining district requirement shall control.	
Orientation to an <u>existing</u> Street: For residential buildings adjacent to a collector or arterial street, the primary entrance of homes (front door) has been located along the street. **(GP Policy CNF-11.18)**	
Intersection Sight Distance/Clear Vision Triangle: Adjacent to pedestrian crossings or street intersections, a "Clear Vision Triangle" (see figure below) is provided to comply with the City's Municipal Code Section 18.92.080, Intersection Sight Distance. This triangular area ensures that drivers, bicyclists and pedestrians have clearer views of crossing traffic, which improves intersection safety for all parties. No structure, vehicle, object or landscaping over three feet in height may be placed within a clear vision triangle. Trees pruned at least eight feet above the established grade of the curb so as to provide clear view by motor vehicle drivers are permitted within a clear vision triangle. The areas subject to these standards are those portions of the Clear Vision Triangle areas located on private property outside the public right-of-way.	

DESIGN AND DEVELOPMENT STANDARD	PROJECT COMPLIES
	
Sound Walls: Sound walls shall be minimized and are discouraged. Where a sound wall is proposed, the project has provided an Acoustical Analysis. The project should use techniques less visually disturbing than sound walls, including but not limited to earth berms and intervening placement of non-sensitive buildings when requiring noise impact mitigation of new and/or expanded development. **(GP Policy CNF-8.14)** An Acoustical Analysis shall be provided to demonstrate need for site mitigation which includes a solid sound wall.	
Agricultural Buffer: If the project is located adjacent to an active agricultural operation, an open space easement has been provided to buffer between the active agricultural operations that are adjacent to the proposed project and new development. The size and configuration of the buffer is a minimum of 100 feet between the active agricultural operations and the nearest new structure. **GP Policy NRE-4.9)**	
On-Site Recreational Amenities: The project has provided on-site recreational amenities to serve residents based on the following table: **(GP Policy CNF-11.10)**	

NUMBER OF AMENITIES REQUIRED FROM EACH TIER BASED ON PROJECT SIZ				
Project Size	**Tier 1**	**Tier 2**	**Tier 3**	**Tier 4**

DESIGN AND DEVELOPMENT STANDARD					PROJECT COMPLIES
3 to 15 units	1	1			
16 to 50 units	2	2			
51-100 units	2	2	1		
101-150 units	2	2	1	1	
151+ units	2	3	2	1	
201+ units	2	3	2	1	

<u>Tier 1 amenities:</u>

- Shuffleboard
- Horseshoes
- Bowling green w/artificial turf
- Picnic/barbeque area

<u>Tier 2 amenities:</u>

- Cabana or shade trellis area
- Two picnic/barbeque areas
- Clubhouse
- Volleyball court and/or Bocce ball court
- Outdoor racquetball/handball tilt-up wall
- Dog Park (add one point more with dog wash station)
- Sauna and/or Jacuzzi
- Community garden plots (minimum one forty-eight-square-foot plot per each ten dwelling units) with water service located in an area that will get a minimum of six hours of direct sun when trees mature
- ½ court basketball (one hoop)
- Bridle paths
- Bocce ball
- Artificial turf putting green
- Exercise structure or complex (age appropriate play equipment/minimum three activities; can be integrated in structure)

<u>Tier 3 amenities:</u>

- Softball field
- Sports court and/or 2 1/2-court basketball courts (two hoops)
- Restroom area
- ½ scale soccer field

DESIGN AND DEVELOPMENT STANDARD	PROJECT COMPLIES
• Exercise structure or complex (age appropriate play equipment/minimum five activities; can be integrated in structure) • Jacuzzi and separate child wading pool (for projects between twenty and fifty units) • Tennis court • Recreation hall with exercise equipment and/or game equipment • Exercise room • Clubhouse w/ kitchen <u>Tier 4 amenities:</u> • Swimming pool	
Water Conservation in Landscaping: The project has provided landscape and irrigation plans demonstrating compliance with Morgan Hill Municipal Code Chapter 18.148 (Water Conservation in Landscaping). **(GP Policies NRE-6.6 and NRE-7.3)**	
Landscaping Plan: The Project is required to provide detailed landscape plans in compliance with Section 18.64.040 (Landscape Plan required) of the Morgan Hill Municipal Code. a. All required front and street side setback areas, excluding areas required for access to the property, shall be landscaped and maintained. b. Landscaping may consist of any combination of living plants, such as trees, shrubs and grass or related natural features, such as rock, stone, or mulch. Decorative hardscape featuring pervious materials is permitted within required landscaping areas. For projects with a proposed stormwater treatment facility(ies), the Landscaping Plan includes appropriate landscaping for all bioretention and other vegetated stormwater treatment facility(ies). For plant guidance, check the Central Coast Low Impact Development Initiative (LIDI) website at *https://www.centralcoastlidi.org/landscape.php.* For projects adjacent to streams, the Landscaping Plan shows the use of locally native plants for all landscaping and revegetation adjacent to a stream and within a riparian area to comply with the City's adopted Santa Clara Valley Water Resource Protection Collaborative's "Guidelines and Standards for Land Use Near Streams." A copy of the guidelines and standards can be found at *https://www.valleywater.org/contractors/doing-businesses-with-the-*	

DESIGN AND DEVELOPMENT STANDARD	PROJECT COMPLIES
district/permits-for-working-on-district-land-or-easement/guidelines-and-standards-for-land-use-near-streams.	
Wildland-Urban Interface Fire Area: New developments and projects proposed within a locally adopted Wildland-Urban Interface Fire Area shall include a plan for the protection of the community from any unreasonable risks associated with the effects of wildland and urban fires. The plan shall be based upon a site-specific wildfire risk assessment that includes considerations of location, topography, aspect, flammable vegetation, climatic conditions and fire history. The plan shall address water supply, access, building ignition and fire-resistance factors, fire protection systems and equipment, defensible space and vegetation management, evacuation routes, peak load water supply requirements, and minimum road widths, as those items relate to identified fire hazards.	
Trees: For trees to be removed, the project has obtained a Tree Removal Permit in accordance with Chapter 12.32 (Restrictions on Removal of Significant Trees) of the Morgan Hill Municipal Code. The project has identified all trees to be removed on the project landscape plan and/or grading plan, has proposed a two-to-one ratio of replacement trees, and has applied for the required Tree Removal Permit.	
Useable Private and Common Open Space: Each lot must include a private open space area, such as a private yard, porch, balcony, roof garden, or patio. Private open space must be contiguous to the unit it serves and accessible and visible from the living area of the unit. Private open space must be open air, not fully enclosed with walls. Private open space cannot be covered by a roof by more than 50 percent of the area; however, balconies can have up to 100 percent ceiling coverage. The following private open space is required per unit type: a. Single-family attached and detached units meeting the following average lot sizes shall provide useable open space as specified:	

	Average Lot Area (square feet)			
	1,440-1920	1,920-2,999	3,000,4,356	4,357-6,999
Private Open Space	60 square feet per unit	150 square feet per unit	300 square feet per unit	350 square feet per unit
Common Open Space	140 square feet per unit	150 square feet per unit	175 square feet per unit	200 square feet per unit

DESIGN AND DEVELOPMENT STANDARD	PROJECT COMPLIES
b. Single-family detached (lots 7,000 square feet and over)- 500 square feet per unit (Private Open Space) c. Multi-family residential – 48 square feet per unit (Private Open Space). Fifteen percent of the site area shall be dedicated to common open space. Private open space per unit may be reduced by up to 25 percent if off-set by the equivalent increase in common open space with amenities. **(GP Policy CNF-11.29)**	
PARKING IMPROVEMENTS	
Required On-site Parking Spaces: The project complies with the parking requirements specified in Section18.72.030 of the Morgan Hill Municipal Code.	
Parking Design and Development Standards: The project complies with the parking design and development standards specified in Section18.72.060 of the Morgan Hill Municipal Code.	
Parking Lot Layout: For multi-family projects, the parking for the project has been dispersed throughout the project in smaller segmented parking areas, rather than the creation of a large parking lot. Parking has been located interior to or at the back of the site where it is not visible to the street.	
Bicycle Parking and Storage: All multi-family developments of five units or more are required to provided bicycle parking in compliance with Section 18.72.080 of the Morgan Hill Municipal Code.	
Exterior Parking Lot Lighting: For projects with more than six parking spaces, detailed lighting information has been provided in compliance with Section 18.72.060.G of the Morgan Hill Municipal Code. Lights shall use cut-off shields and be downward directed.	
Parking Area Landscaping: Projects with six or more parking spaces must demonstrate compliance with the parking lot screening and parking lot landscaping requirements specified in Sections 18.72.060.I (Parking design) and 18.72.070 (Parking lot landscaping) of the Morgan Hill Municipal Code.	
Pedestrian Access: Parking lots with more than thirty parking spaces shall include a pedestrian walkway in compliance with ADA requirements specified in Section 18.72.060.H of the Morgan Hill Municipal Code.	
Electric Vehicle Charging Stations: Parking lots with more than twenty-five parking spaces shall incorporate electric vehicle charging stations in compliance with Section 18.72.040.C of the Morgan Hill Municipal Code.	

DESIGN AND DEVELOPMENT STANDARD	PROJECT COMPLIES
ARCHITECTURAL DESIGN FEATURES	
Front Porches: 50 percent of homes facing a street or common interior courtyard include a front porch with a minimum size of 6 feet by 5 feet.	
Balconies: 25 percent of homes facing a street, alley or common interior courtyard include a balcony overlooking a public space with a minimum size of 6 feet by 4 feet.	
Fences: All fences and walls designed for screening purposes shall be of solid material. Chain link or chain link with slats is not permitted.	
360 Degree Architecture: The project includes two of the following details: Windows, shutters, awnings, bay windows, trellis features, texture variations, stone, brick or other material enhancements. All facades (sides and rear) must have the level of detail, and materials consistent with the front façade. There shall be no blank walls. **(GP Policy CNF-11.16)**	
Exterior Treatments and Materials: At least two materials shall be used on any building facade, in addition to glazing and railings. Any one material must comprise at least 20% of any building facade, excluding windows and railings. A change in material must be offset by a minimum of six inches in depth. Exterior finish materials should be chosen and applied to not appear artificial as in the case of brick veneer applied on a single building face so that it is obviously ¼ inch thick when viewed from the side, or in the case of a trellis made of 2 inch x 2 inch or 2 inch x 4 inch members. Veneers are required to turn corners, avoiding exposed edges.	
Roof line Variation for two or more units: Roofs have been designed to incorporate a minimum of two varying roof heights and types (hip, gable, shed, flat, etc.)	
Roof Overhangs: Roof overhangs have been designed with a depth of at least 18 inches.	
Height and Project Massing: Project design minimizes bulk of the buildings by limiting building length, or designing buildings with two or more of the following special features to break up building bulk, including: a. Horizontal and vertical setbacks and stepbacks (instead of a long flat wall); b. Changes in roof form and height; or,	

DESIGN AND DEVELOPMENT STANDARD	PROJECT COMPLIES
c. Major full-height recesses (typically at least 10 feet deep) along the length of the building that successfully break the building into smaller discrete masses. **(General Plan Policy CNF 11.22)**	
Separate Structures-Attached Projects: Large projects shall be divided into separate structures. The maximum number of units per structure is as follows: a. Single-family Attached: 6 units maximum per structure b. Multi-family: 10 units maximum per structure **(General Plan Policy CNF 11.22)** **100 percent affordable projects are exempt from this requirement**	
Building Colors: The project has provided a sample color palette of complimentary colors compatible with surrounding neighborhood. The number of colors appearing on any building exterior is limited to no more than three colors or tones of the same color, including trim and accent colors. a. The use of bright and/or dark colors may only be used for accent colors on trim. b. The use of fluorescent or neon colors is prohibited.	
Window Design: The window recesses, trim and other window elements have been designed to be substantial in depth to create shadows. The project incorporates at least one of the following window features throughout the project: a. Minimum depth of at least two inches from glass to exterior of trim; b. Minimum depth of at least six inches from glass to wall edge around windows if there is no trim (this is only appropriate for certain architectural styles such as Spanish Revival or Modern); or, c. Decorative trim elements that add detail and articulation, such as window surrounds with at least a two-inch depth. They must be designed as an integral part of the design.	
Glazing: Mirrored glass is prohibited in order to minimize off-site glare and maximize transparency.	
Exterior Lighting and Illumination: Wall-mounted lights shall be provided for security purposes. Lights shall be directed down and shielded to avoid glare impacts. The project has demonstrated compliance by submittal of a photometric plan and fixture details.	

DESIGN AND DEVELOPMENT STANDARD	PROJECT COMPLIES
Equipment Screening: All exterior mechanical and electrical equipment shall be screened or incorporated into the design of buildings so as not to be visible from the public-right-of-way, common areas, or contained within an enclosed structure. Equipment to be screened includes, but is not limited to, all roof mounted equipment, air conditioners, heaters, utility meters, cable equipment, telephone entry boxes, backflow preventions, irrigation control valves, electrical transformers, pull boxes, and all ducting for air conditioning, heating, and blower systems**.** Screening materials shall be consistent with the exterior colors and materials of the building, and equipment enclosures have been screened with landscaping. Chain link fencing with wood inserts shall not be used to screen equipment.	
Residential Parking Garages: The project has been designed to reduce the prominence of garage doors through one or more of the following strategies: a. Locate the garage door behind the front porch and/or living space, relative to the front lot line; b. Design the second floor to overhang beyond the garage door; c. Locate the garage to the side or rear of building rather than at the center; or d. For garages with three or more non-tandem parked cars, the area of the front wall(s) of garage(s) shall not be more than 25 percent of the cumulative exterior front walls of two story single family residential building; no more than 50 percent of the cumulative exterior front walls of a one story single-family residential building; and at least one front wall of the a three car garage must be separated from the remaining garage front wall by at least two feet. **(GP Policy CNF-11.19)**	
Garage Door Design: The garage doors proposed within the project feature windows or other architectural design features consistent with the main dwelling.	
Driveway/Vehicle Pavement: For detached single-family projects, paved areas and hard surface for vehicle access and parking does not occupy more than 50 percent of the front and street-side setback area.	
Pavement Design: The project has incorporated decorative, pervious paving into paved and landscaped areas by 10 percent to reduce the visual impact of paved surfaces. Decorative paving includes: brick, stamped colored concrete, stone blocks or pavers, interlocking colored pavers, grasscrete, and other comparable materials. Priority locations for decorative paving may include the following:	

DESIGN AND DEVELOPMENT STANDARD	PROJECT COMPLIES
a. The first 20 feet of the driveway closest to the street; b. A four-foot wide pedestrian path along the length of the driveway, if no sidewalk is provided; c. Parking maneuvering areas; d. Parking aprons; and e. Parking areas or fire turnarounds that can also occasionally function as outdoor courtyards.	
Multi-family Ground Level Entrances: The project provides a minimum of 25 percent of the project with private, exterior ground-level entries to individual units. **(GP Policy CNF 11.24, 11.26)**	
Multi-family Wall Plane Articulation: For Multi-family projects, the ground floor wall plane articulation shall be a minimum of six to 18 inches. Windows, doors, columns, and other features shall be recessed or project forward, such that there is a six-inch difference between wall and window surfaces and a total of at least 18 inches from the window to the outermost plane of a wall or column.	
Multi-family Roof Form: The roof element of the multi-family project has been designed such that no more than two side-by-side units are covered by one unarticulated roof. Articulation may be accomplished by changing roof height, offsets, and direction of slope, and by introducing elements such as dormers, towers, or parapets. Other alternative design approaches that achieve the same goal of breaking down building masses into small individual units may also be acceptable, for example shifting the units in section and varying the design treatment for individual units. **(GP Policy CNF-11.22)**	
Massing for three story buildings or taller: Buildings three stories or taller shall have major massing breaks at least every 100 feet along any street frontage, adjacent public park, publicly accessible outdoor space, or designated open space, through the use of varying setbacks and/or building entries. Major breaks shall be a minimum of 30 inches deep and four feet wide and extend the full height of the building.	
Distinct material changes for three story buildings or taller: Buildings three stories or taller must provide a ground floor elevation that is distinctive from the upper stories by providing a material change between the first floor and upper floors along at least 75% of the building façade with frontage upon a street, adjacent public park or public open space.	

DESIGN AND DEVELOPMENT STANDARD	PROJECT COMPLIES
Trash Enclosure, Solid Waste and Recyclable Materials: Detailed enclosure plans are required for multi-family, new construction and alteration projects, and comply with the following: a. The exterior materials and colors of the enclosure walls shall match the building walls. b. Chain link fencing with or without wooden/plastic slats is prohibited. c. Roofs shall be painted with rust-inhibitive paint. d. Shall not obstruct on-site or off-site pedestrian or vehicle traffic movement. If project requires a consolidated solid waste plan, the project shall comply with the enclosure and development guidelines specified by Recology South Valley. All trash enclosure areas must meet the following structural or treatment control Best Management Practices (BMP) requirements (individual single-family residences are exempt from these requirements): a. Roof Required: Trash enclosure areas shall have an all-weather noncombustible solid roof to prevent rainwater from mixing with the enclosure's contents. b. Walls Required: Trash enclosure shall have structural walls to prevent unauthorized off-site transport of trash. c. Doors: Trash enclosure shall have door(s) which can be secured when closed. d. Grades: The pad for the enclosure shall be designed to not drain outward, and the grade surrounding the enclosure shall be designed to not drain into the enclosure. e. Drain Inlet: Within the enclosure, an area drain with an approved (Zurn) vandal proof drain shall be installed and shall be plumbed to the sanitary sewer system with grease trap. Grease trap shall be located within the trash enclosure footprint.	

B. **Engineering-Land Development Requirements**

DESIGN AND DEVELOPMENT STANDARD	PROJECT COMPLIES
SITE PLANNING	
Arterial Design and Landscaping: Development adjacent to arterial streets has been designed without fences or walls (unless required for sound mitigation as determined by an Acoustical Analysis). **(GP Policy TR-3.20)**	

DESIGN AND DEVELOPMENT STANDARD	PROJECT COMPLIES
Development adjacent to arterial streets with existing median without landscaping provides the required landscaping in the median. The median improvements will be subject to City reimbursement in the form of credits against the Traffic Impact Fees due from the project. The project shall be reimbursed the actual consultant fees, review fees, permit fees, and construction costs of construction the median improvements. Refer to the City's Median Design Guidelines. **(GP Policy CNF-8.10)**	
Street Improvements: New public and private streets serving the project are designed to be consistent with the General Plan Transportation Element as well as the Street Standard Details in the City's Standard Details. Minor variations and exceptions to the standards are subject to the approval of the City Engineer. The project installs and dedicates street improvements including, but not limited to, curb and gutter, sidewalk, compaction, street paving, oiling, storm drainage facilities, sewer and water, fire protection, undergrounding of utilities and street lighting.	
Utility Location and Easement: New utility transformers are installed underground unless precluded by physical limitations of the project site. Utility locations do not interfere with the viability of tree maturity, function of stormwater treatment facilities, or use of open space. A Public Service Easement (P.S.E.) with a minimum width of 10' is provided adjacent to all public rights-of-way for public and private utilities (including gas, electric, telephone and cable communications conduits or duct banks). All public utilities for sewer, storm, or water within the project are within a public right-of-way or within a P.S.E. granted to the City and within a minimum width of twenty (20) feet. Exceptions to the easement width are subject to the approval of the City Engineer. For individual water, sewer or storm mains, the pipe is located in the centerline of the P.S.E. A plat and legal description of the P.S.E., prepared by a licensed professional land surveyor or engineer in the State of California, are provided.	
Undergrounding Utilities: All new utility distribution and service connections are placed underground. This standard does not apply to aerial power transmission lines.	

DESIGN AND DEVELOPMENT STANDARD	PROJECT COMPLIES
All existing overhead utilities adjacent to any site boundary, within the project site, or along any street frontage are placed underground in accordance with City standards and affected utility company guidelines.	
Meter Location: Water meters are clustered in accessible locations and integrated into landscaped areas to minimize visual impact. Each unit within a multi-family development shall be required to have a separate water service connection and city meter unless private sub-meters are installed for each unit by the developer. All single-family residential units shall be required to have a separate water service connection and city meter.	
Stream Channel and Riparian Setbacks: If the project is located adjacent to a Category 1 or Category 2 stream (as verified by a biologist, hydrologist or other qualified professional) and the required setbacks have been identified on the project plans. **(GP Policy NRE-5.6)** TABLE NRE-1 REQUIRED STREAM SETBACK DISTANCES Category 1 Streams (Water Present Year Round During Normal Rain Years) / Category 2 Streams (Water Present During the Wet Season Only During Normal Rain Years) Slope / Inside Urban Service Area / Outside Urban / Inside/Outside Urban Service Area 0-30% / 100 feet / 150 feet / 35 feet >30% / 150 feet / 200 feet / 35 feet All stream channels and riparian setbacks have been identified on the Site Development Plans. Documentation shall be provided by a biologist, hydrologist or other qualified professional identifying the Category of the waterbody and the required setbacks. The project is also in substantial conformance with the adopted User's Manual of Guidelines and Standards for Land Use Near Streams (a Manual of Tools, Standards, and Procedures to Protect Streams and Streamside Resources in Santa Clara County). A copy of the manual can be viewed at	

DESIGN AND DEVELOPMENT STANDARD	PROJECT COMPLIES
https://www.valleywater.org/contractors/doing-businesses-with-the-district/permits-for-working-on-district-land-or-easement/guidelines-and-standards-for-land-use-near-streams.	
Landscaping-Parkway/Park Strip Design: A minimum 5-foot wide planted parkway (measured from face of curb) with irrigation system shall be provided between the street and sidewalk. Parkways shall be planted with street trees identified within the City of Morgan Hill Master Street Tree Plan. For parkways within a public right-of-way, the City Engineer or designee shall select the species from the applicable planting zone list of the Master Street Tree Plan.	
PEDESTRIAN, BICYCLE AND TRANSIT IMPROVEMENTS	
Projects abutting developed land: The project aligns and connects streets intersecting the project boundary with all adjoining streets. **(GP Policy CNF-11.5)**	
Projects abutting undeveloped land: The project extends streets to the adjoining undeveloped land to provide access to undeveloped land in the event of its future development. **(GP Policy CNF-11.5)** The project has provided a public access easement in private streets for sidewalks, trails, greenways, and other pedestrian and bicycle facilities.	
Off-street bicycle and pedestrian connections: The project has provided off-street bicycle and pedestrian connections in accordance with the Bikeways, Trails, Parks and Recreation Master Plan, as well as General Plan Policy CNF-11.5 Outside Connections and General Plan Policy CNF-11.6 Open Space Connections. Connections must be established and maintained through a public access easement, dedication or other similar method to guarantee it remains accessible to the general public. Off-street bicycle and pedestrian accessways are at least 15 feet wide, have no horizontal obstructions, and have a minimum of 9 feet-6 inches high vertical clearance. For off-street bicycle and pedestrian accessways that also serve as emergency vehicle accesses or utility corridors, the minimum accessway width and vertical clearance is subject to approval by the City's designated Fire Marshal. If the off-street bicycle and pedestrian accessway remains in private ownership, recordation of a maintenance agreement is required prior to acceptance of the street improvements.	

DESIGN AND DEVELOPMENT STANDARD	PROJECT COMPLIES
All easements and dedications will be required as Conditions of Approval.	
Complete Streets: The project incorporates design elements from three different categories of "Complete Street Design Elements" (shall provide a minimum of two design elements from categories a to c below) that meet the needs of multiple users, including motorists, bicyclists, pedestrians, transit users, and persons of different physical capabilities. **(GP Policy CNF-11.8)** <u>Complete Street Design Elements</u> a. Pedestrian infrastructure such as sidewalks; traditional and raised crosswalks; median crossing islands; Americans with Disabilities Act of 1990 compliant facilities including audible cues for people with low vision, pushbuttons reachable by people in wheelchairs, and curb cuts; and curb extensions. b. Traffic calming measures to lower speeds of automobiles and define the edges of automobile travel lanes, including a road diet, center medians, shorter curb corner radii, elimination of free-flow right-turn lanes, angled and face-out parking subject to approval by the City Engineer or designee. c. Bicycle accommodations, such as protected or dedicated bicycle lanes, neighborhood greenways, wide paved shoulders, and bicycle parking. d. Public transit accommodations, such as bus pullouts, transit signal priority, bus shelters, and dedicated bus lanes. Refer to the Santa Clara Valley Transportation Authority (VTA) Bus Stop and Passenger Facilities Standards for the design and placement of bus-related facilities and amenities. Transit improvements within the public right-of-way are subject to approval by the City Engineer or designee. e. Green Streets, the natural systems approach (incorporates vegetation and/or permeable pavements) to enhance pedestrian safety, reduce stormwater flow and improve water quality. Green Streets are designed to capture rainwater at its source.	
Bicycle and pedestrian improvements (Multi-family projects): The project incorporates <u>two or more</u> enhanced bicycle and pedestrian improvements such as bicycle storage facilities, traffic calming measures, intersection crossings, and wayfinding signage.	

DESIGN AND DEVELOPMENT STANDARD	PROJECT COMPLIES
(GP Goals TR-8 and TR-9)	
Internal pedestrian connections: The project provides pedestrian connections from all unit entrances to common open space, recreation facilities, and other project amenities.	
Continuous Sidewalks: The project provides continuous sidewalks along both sides of the street frontage(s). **(GP Policy CNF-11.9)** The project shall demonstrate compliance with Chapter 17.34 – Standards for Residential and Private Streets of the Morgan Hill Municipal Code by providing detached sidewalks and park strips, as required for primary residential streets, secondary residential streets and cul-de-sacs.	
Traffic Management: The project incorporates <u>one or more</u> neighborhood traffic management technique, as approved by the City Engineer or designee, such as traffic circles, narrow lanes, and bulbouts, to control vehicle speeds and increase the safety of bicycle and pedestrian travel.	
MUNICIPAL INFRASTRUCTURE	
Water Infrastructure: The project provides local water distribution lines to serve the proposed project and designed in accordance with accepted engineering principles and shall conform to the City's Design Standards and Standard Details. All unused existing water services stubbed to the property shall be abandoned at the water main pursuant to city standards. Note: For corner parcels, where existing water services are stubbed to the property along both street frontages; the water services along the secondary street shall be utilized and the remaining unused existing water services shall be abandoned at the water main pursuant to city standards. The project proposes water infrastructure improvements consistent with the City's Water System Master Plan, approved by the City Engineer or designee.	
Wastewater infrastructure: A sufficient wastewater collection system has been provided to serve the proposed project and designed in accordance with accepted engineering principles and shall conform to the City's Design Standards and Standard Details.	

DESIGN AND DEVELOPMENT STANDARD	PROJECT COMPLIES
All unused existing sewer laterals stubbed to the property shall be abandoned at the sewer main per city standards. Note: For corner parcels, where existing sewer laterals are stubbed to the property along both street frontages; the sewer lateral(s) along the secondary street shall be utilized and the remaining unused existing sewer lateral(s) shall be abandoned at the sewer main per city standards. The project proposes wastewater infrastructure improvements consistent with the City's Sewer System Master Plan, approved by the City Engineer or designee. **(GP Policy NRE-8.4)**	
Storm Drainage Infrastructure: A sufficient storm drainage collection system has been provided to serve the project and designed to be capable of handling a 10-year storm without local flooding. On-site detention facilities shall be designed to a 25-year storm capacity. Streets shall be designed to carry a 100-year storm. **(GP Policies SSI-16.2 and SSI-16.3)** The project proposes storm drainage infrastructure improvements consistent with the City's Storm Drainage Master Plan. The project has demonstrated compliance by providing a complete storm drainage study showing amount of run-off and existing and proposed drainage structure capacities reviewed and approved by the City Engineer or designee.	
Storm Water Infrastructure: If the project is creating and/or replacing 2,500 square feet or more of impervious surface, project complies with the California Regional Water Quality Control Board Central Coast Region Resolution No. R3-2013-0032 as documented by the Stormwater Management Guidance Manual for Low Impact Development and Post-Construction Requirements. A copy of the guidance manual can obtained through the following link: *https://www.morgan-hill.ca.gov/DocumentCenter/View/12671/Storm-Water-Management-Guidance-Manual?bidId=.* The project has demonstrated compliance by providing a Stormwater Runoff Management Plan/Report, Stormwater Control Plan sheet, and all applicable stormwater performance certifications pursuant to the Stormwater Management Guidance Manual and reviewed and approved by the City Engineer or designee. **(GP Policies SSI-16.2 and SSI-16.3)**	

DESIGN AND DEVELOPMENT STANDARD	PROJECT COMPLIES
Floodplain Development: If the project is located within an area identified as Special Flood Hazard Areas or Floodway areas as shown on the Federal Emergency Management Agency (FEMA) Flood Insurance Rate Maps (FRMSs), the project is subject to the floodplain management regulations specified in Chapter 15.80 (Flood Damage Prevention) of the Morgan Hill Municipal Code. The project has provided the required development review information for Floodplain Administrator review. **(GP Policies SSI-5.1, 5.2, 5.3, 5.6, 5.7 and 5.8)** The Floodplain Administrator has reviewed the required development review information and has determined that the project complies with Chapter 15.80 of the Morgan Hill Municipal Code. If the project includes the placement of fill, a flood study is submitted for review and City acceptance. Project is required to file the appropriate conditional/final FEMA Letter of Map Revision (CLOMR/LOMR or CLOMR-F/LOMR-F) as required by the results of the flood study.	
Broadband Connectivity: The project provides the following broadband connectivity to the project: a. Broadband conduit installed in the public right-of-way to serve the project. b. Broadband conduit from the public right-of-way to each home or occupied building in the project. c. Pre-install indoor conduit, wiring and other necessary infrastructure so that broadband service may be provided to each unit. **(GP Action Items SSI-18.A and SSI-18.B)**	

VI. CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA)

The City of Morgan Hill must conduct environmental analysis before a project is approved. An environmental analysis shall be completed and considered by the appropriate decision-making body prior to granting of any entitlements, including but not limited to a Tentative Map, Design Review Permit, or a building or grading permit.