

2006

## BELOW MARKET RATE HOUSING IN LIEU FEE AGREEMENT

This Below Market Rate Housing In Lieu Fee Agreement ("Agreement") is made as of this 21<sup>st</sup> day of November, 2016 by and between the City of Menlo Park, a California municipality ("City") and Alma Station, LLC, a Delaware limited liability company ("Applicant"), with respect to the following:

### RECITALS

- A. Applicant is the lessee under that certain Ground Lease, dated as of May 15, 2014, executed by and between Janet LaRoche and Janet Rasmussen, as successor trustees of the Robert W. Armstrong Revocable Trust dated June 15, 1984, and Applicant's predecessor in interest, Lane Partners, LLC, a California limited liability company, with respect to that certain real property in the City of Menlo Park, County of San Mateo, State of California, consisting of approximately 28,750 square feet, more particularly described as Assessor's Parcel Number: 061-412-450, more commonly known as 1010-1026 Alma Street, Menlo Park ("Property").
- B. The Property originally contained two buildings containing a combination of restaurant, personal service, and retail uses. The gross floor area of the original buildings was approximately 10,272 square feet.
- C. Applicant has demolished the original buildings, and proposes to construct a new office building with two levels of underground parking and a coffee pavilion totaling approximately 25,480 square feet (the "Project"). Applicant has applied to the City for architectural control approval at the Public Benefit Bonus level which would exceed the Base level floor area ratio (FAR) permitted for office uses on the subject site.
- D. Applicant is required to comply with Chapter 16.96 of the City's Municipal Code ("BMR Ordinance") and with the Below Market Rate Housing Program Guidelines ("Guidelines") adopted by the City Council to implement the BMR Ordinance. In order to process Applicant's application, the BMR Ordinance requires Applicant to submit a Below Market Rate Housing Agreement. This Agreement is intended to satisfy that requirement. Approval of a Below Market Rate Housing Agreement is a condition precedent to the approval of the Applicant's application and the issuance of a building permit for the Project.
- E. Residential use of the Property is allowed by the applicable zoning regulations, however, Applicant is not proposing to construct residential uses as part of the proposed Project. Site constraints due to the preservation of heritage trees limit opportunities to develop residential units as part of the Project as it is currently designed. Further, Applicant does not own any sites in the City that are available and feasible for construction of sufficient below

market rate residential housing units to satisfy the requirements of the BMR Ordinance. Based on these facts, the City has found that development of below market rate residential units on-site or off-site in accordance with the requirements of the BMR Ordinance and Guidelines is not feasible.

- F. Applicant, therefore, is required to pay an in lieu fee as provided for in this Agreement. Applicant is willing to pay the in lieu fee on the terms set forth in this Agreement, which the City has found are consistent with the BMR Ordinance and Guidelines.
- G. The City Planning Commission approved Applicant's applications on November 2, 2015, subject to the execution of this Agreement, among other conditions of approval (the "Project Approvals"). Applicant acknowledges and agrees that the Project Approvals provided adequate and proper notice pursuant to Government Code Section 66020 of Applicant's right to protest any requirements for fees, dedications, reservations, and other exactions as may be included in this Agreement, that no protest in compliance with Section 66020 was made within ninety (90) days of the date that notice was given, and that the period has expired in which Applicant may protest any and all fees, dedications, reservations, and other exactions as may be included in this Agreement.

NOW, THEREFORE, the parties agree as follows:

- 1. If Applicant elects to proceed with the Project, Applicant shall pay the City an in lieu fee as provided in the BMR Ordinance and Guidelines. Notwithstanding the proceeding, nothing in this Agreement shall obligate Applicant to proceed with the Project. The applicable in lieu fee is that which is in effect on the date the payment is made. The in lieu fee will be calculated as set forth in the table below; however, the applicable fee for the Project will be based upon the amount of square footage within Group A and Group B at the time of payment. The estimated in lieu fee is provided below.

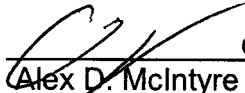
	Use Group	Fee/SF	Square Feet	Component Fees
Existing Building - Non-Office Areas	B- Non-Office	\$8.76	10,272	(\$89,982.72)
Proposed Building- Office Areas	A-Office/R&D	\$16.15	25,156	\$406,269.40
Proposed Building- Non-Office Areas	B- Non-Office	\$8.76	324	\$2,838.24
<b>Total Estimated In Lieu Fee</b>				<b>\$319,124.92</b>

2. If the Applicant elects to proceed with the Project, the Applicant shall pay the in lieu fee before the City issues a building permit for the Project. The in lieu fee may be paid at any time after approval of this Agreement by the Planning Commission. If for any reason, a building permit is not issued within a reasonable time after Applicant's payment of the in lieu fee, upon request by Applicant, City shall promptly refund the in lieu fee, without interest, in which case the building permit shall not be issued until payment of the in lieu fee is again made at the rate applicable at the time of payment.
3. This Agreement shall be binding on and inure to the benefit of the parties hereto and their successors and assigns. Each party may assign this Agreement, subject to the reasonable consent of the other party, and the assignment must be in writing.
4. If any legal action is commenced to interpret or enforce this Agreement or to collect damages as a result of any breach of this Agreement, the prevailing party shall be entitled to recover all reasonable attorney's fees and costs incurred in such action from the other party.
5. This Agreement shall be governed by and construed in accordance with the laws of the State of California and the venue for any action shall be the County of San Mateo.
6. The terms of this Agreement may not be modified or amended except by an instrument in writing executed by all of the parties hereto.
7. This Agreement supersedes any prior agreements, negotiations, and communications, oral or written, and contains the entire agreement between the parties as to the subject matter hereof.
8. Any and all obligations or responsibilities of Applicant under this Agreement shall terminate upon the payment of the required fee.
9. To the extent there is any conflict between the terms and provisions of the Guidelines and the terms and provisions of this Agreement, the terms and provisions of this Agreement shall prevail.
10. The parties agree and acknowledge that the above recitals are true and accurate, and are incorporated into this Agreement by this reference


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

[SIGNATURES APPEAR ON FOLLOWING PAGE]

CITY OF MENLO PARK

By:  Charles Taylor  
~~Alex D. McIntyre~~  
City Manager

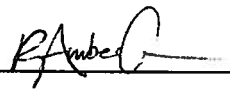
APPROVED AS TO FORM:

By:   
Name Eric S. Phillips  
Its: Contract City Attorney

ALMA STATION LLC  
a Delaware limited liability company

By: Big Hen Group I, LLC  
a Delaware limited liability company  
Its: Manager

By: Hillspire, LLC,  
a Delaware limited liability company  
Its: Manager

By:   
Name: AMBER C. AIKA  
Title: CFO, Investments