

TOLLING AGREEMENT

This Tolling Agreement ("Agreement") is made and entered into by and between Menlo Park Fire Protection District ("MPFPD"), the City of Menlo Park ("City") and the Project applicant Greenheart Land Company, LLC ("Greenheart"). MPFPD, the City and Greenheart are hereinafter collectively referred to as the "Parties."

RECITALS

A. City has approved the 1300 El Camino Real project consisting of 420,000 square feet of mixed uses (hereinafter "Project"). On January 24, 2017, the City adopted approvals in furtherance of the Project, including certification of an Environmental Impact Report. Greenheart was the applicant for the Project and would be the real party in interest in the event of litigation challenging the Project.

B. On January 25, 2017, City filed a Notice of Determination with the Clerk of San Mateo County for the Project.

C. With respect to the limitations period that applies to any action, proceeding, cause of action or motion that MPFPD may bring to obtain judicial review under the California Environmental Quality Act ("CEQA") of the City's approval of the Project, the Parties agree that any statutes of limitations that apply to any and all CEQA actions, proceedings, causes of action or motions challenging the City's approval of the Project will be governed by this Agreement.

D. To conserve the parties' resources and to promote judicial economy, and to avoid the need for MPFPD to file potentially unnecessary litigation, the Parties desire to execute an agreement to toll the limitations period for actions, proceedings, causes of action or motions seeking judicial review under CEQA of the Project until March 22, 2017.

AGREEMENT

NOW, THEREFORE, in consideration of the mutual promises contained in this Agreement, the Parties agree as follows:

I. Each Recital set forth above is incorporated herein by reference and is made part of this Agreement.

II. The Parties hereby agree that the time limitation for MPFPD to file an action, proceeding, cause of action or motion seeking judicial review under CEQA in connection with the City's approval of the Project is tolled until March 22, 2017 notwithstanding the specific limitations period set forth in Public Resources Code section 21167.

III. If, notwithstanding the above agreement, any court of competent jurisdiction determines that the limitations period applicable to any action, proceeding, cause of action or motion seeking judicial review of the City's approval of the Project commenced before February 24, 2017, the Parties agree that the limitations period for MPFPD to file an action under CEQA challenging

Initials: City ; MPFPD ; Greenheart

the City's approval of the Project is tolled and that the statute of limitations for such a challenge by MPFPD shall not expire until March 22, 2017.

IV. The Parties agree that neither execution hereof nor performance of any of the provisions of this Agreement shall constitute or be construed as or constitute evidence of an admission on the part of any party of any liability.

V. The Parties recognize that under limited circumstances, certain statutes of limitations enacted for the benefit of the public may not be waived by agreement of the parties to an action. The Parties to this Agreement agree that no such statute of limitations is involved in or implicated by this Agreement. The City and Greenheart agree that neither will raise any defense to any action, proceeding, cause of action or motion brought by MPFPD seeking judicial review of the City's approval of the Project based on the ground that a statute of limitation enacted for the benefit of the public may not be waived by agreement of the parties.

VI. The Parties may amend this agreement, including extending the tolling of the statute of limitations for any action, proceeding, cause of action or motion seeking judicial review under CEQA of the City's approval of the Project by executing an amendment in writing signed by all Parties.

VII. This Agreement may be executed by the Parties in one or more counterparts. All counterparts of any such documents together shall constitute one and the same instrument. This Agreement is of no force or effect until all of the Parties have duly executed the Agreement. This Agreement may be executed by facsimile and a facsimile signature shall have the same force and effect as an original signature.

VIII. The individuals signing this Agreement on behalf of each Party represent and warrant that they are authorized to do so on behalf of their respective Party.

IX. This Agreement constitutes the entire agreement between the Parties hereto regarding the tolling of the statutes of limitations for any action, proceeding, cause of action or motion seeking judicial review under CEQA of the City's approval of the Project brought by MPFPD. There are no other such agreements, warranties or representations regarding the statutes of limitations other than those expressly set forth in this Agreement.

X. The Parties shall not challenge the legitimacy of this Agreement or raise as a jurisdictional issue the validity of this Agreement in any future legal action arising as a result of the termination of this Agreement and/or the filing of any action, proceeding, cause of action or motion seeking judicial review under CEQA of the City's approval of the Project brought by MPFPD.

XI. Any Party may bring an action to enforce the terms of this Agreement.

(Signatures appear on following page)

Initials: City ; MPFPD , Greenheart 

BY: Timothy D. Cremin DATE: February 23, 2017
Timothy D. Cremin, Attorney for
MPFPD

BY: [Signature] DATE: February 23, 2017

City of Menlo Park

BY: Steve Atkinson DATE: February 23, 2017
Steve Atkinson, Attorney for
Greenheart

2784991.3

Initials: City [Signature]; MPFPD [Signature]; Greenheart SA