

2015-036278

8:08 am 04/14/15 AG Fee: 39.00

Count of Pages 9

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County of San Mateo

Mark Church

Assessor-County Clerk-Recorder



RECORDING REQUESTED BY:

City of Menlo Park

WHEN RECORDED MAIL TO:

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

THIS SPACE FOR RECORDER'S USE ONLY

ap
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Below Market Rate Housing Agreement

TITLE OF DOCUMENT

THIS PAGE ADDED TO PROVIDE ADEQUATE SPACE FOR RECORDING INFORMATION
(Additional Recording Fee Applies)
(Govt. Code 27361.6)

This document is recorded for the benefit of the City of Menlo Park and is entitled to be recorded free of charge in accordance with Sections 6103 and 27383 of the Government Code

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**RECORDING REQUESTED BY
AND WHEN RECORDED MAIL TO:**
City of Menlo Park
Attn: City Clerk
701 Laurel Street
Menlo Park, CA 94025

BELOW MARKET RATE HOUSING AGREEMENT

This Below Market Rate Housing Agreement ("Agreement") is made as of this 11th day of March, 2015 by and between the City of Menlo Park, a California municipality ("City") and Hibiscus Properties, LLC, a Delaware limited liability company ("Applicant"), with respect to the following:

RECITALS

- A. Applicant owns that certain real property located in the City of Menlo Park, County of San Mateo, State of California, consisting of approximately 58.3 acres, more particularly described in Exhibit A, attached hereto and incorporated herein by this reference, Assessor's Parcel Number: 055-260-250, and more commonly known as 300-309 Constitution Drive, Menlo Park, California ("Property").
- B. The Property currently contains multiple buildings containing a combination of manufacturing, warehouse, and office spaces, comprising approximately 971,357 square feet. The building that is the subject of the application contains 184,438 square feet of warehousing and distribution uses and is more commonly known as 300 Constitution Drive, Menlo Park, California ("Building 300").
- C. Applicant proposes to convert Building 300 from warehouse/distribution uses to office uses with possible ancillary health and fitness uses ("Project"). The Project includes the removal of approximately 4,330 square feet of mezzanine space.
- D. Applicant is required to comply with Chapter 16.96 of 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 for the City to process the 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 applications and the issuance of a building permit for the Project.

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- E. Residential use of the Property is not allowed by the applicable zoning regulations. Applicant does not own or have any rights with respect to 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. Applicant is exploring opportunities to deliver off-site units. Therefore, based on these facts, the City has found that the BMR Agreement should allow for the flexibility for Applicant to explore the provision of off-site units to meet its obligation, pay the applicable in-lieu fee, or a combination thereof.
- F. Applicant, therefore, is required to pay an in lieu fee and/or deliver off-site units as provided for in this Agreement. Applicant is willing to pay the in lieu fee and/or deliver off-site units on the terms set forth in this Agreement, which the City has found are consistent with the BMR Ordinance and Guidelines.

NOW, THEREFORE, the parties agree as follows:

1. Applicant shall satisfy its obligations under the BMR Ordinance and Guidelines ("Developer's BMR Obligations") by either (a) paying the in lieu fee, (b) delivering off-site units, or (c) paying a portion of the in lieu fee and delivering off-site units. If the applicant pays the in-lieu fee without providing any units, the estimated fee is \$1,216,071.40. For each unit that is provided by Applicant, the applicable fee would be reduced by 25 percent. If Applicant provides one unit, the applicable fee would be reduced to \$912,053.55; for two units the fee would be reduced to \$608,035.70; and for three units the fee would be reduced to \$304, 017.85. Four units would completely satisfy Applicant's obligation and therefore, no additional payment to the City would be required.

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 and the number of units provided by Applicant. The estimated in lieu fee, that does not contemplate delivery of any off-site units, is provided below.

	Use Group	Fee/SF	Square Feet	Component Fees
Existing Building - Non-Office Areas	B- Non-Office C/I	\$8.24	184,438	(\$1,519,769.10)
Proposed Buildings Office Areas	A-Office/R&D	\$15.19	180,108	\$2,735,840.50
Total Estimated In Lieu Fee				\$1,216,071.40

2. Nothing in this Agreement shall obligate Applicant to proceed with the Project. Applicant will not be obligated to pay the in lieu fee or deliver off-site units before the City issues a building permit for the Project. Instead, the Applicant will satisfy the obligations under the BMR Ordinance and Guidelines as set forth in Paragraph 3 below.
3. Within two years of the date the City issues a building permit for tenant improvements to the existing structure ("Outside Delivery Date"), Applicant shall have the right (but not the obligation) to deliver off-site units that meet the requirements of the BMR Ordinance and Guidelines to satisfy, in whole or in part, Applicant's BMR Obligations. Each off-site unit delivered by Applicant would reduce the Applicant's in-lieu fee obligation to the City by 25 percent. If Applicant delivers off-site units that satisfy Applicant's BMR Obligations prior to the Outside Delivery Date, it will have no further payment or delivery obligations under this Agreement. If Applicant does not deliver off-site units that satisfy Applicant's BMR Obligations prior to the Outside Delivery Date, then, within 30 days of the Outside Delivery Date, Applicant must pay the City an amount equal to \$1,216,071.40, adjusted annually or the appropriate fee based on the number of units provided. For purposes of clarification, (a) rental units that are maintained as BMR units in accordance with the City's BMR Guidelines for at least 55 years satisfy the BMR Ordinance and Guidelines and (b) Applicant may deliver off-site units by directly developing a residential project or having a third party deliver or agree to deliver BMR units to the City on Applicant's behalf, provided any units delivered by a third party on Applicant's behalf shall be additional BMR units for such project and shall not count toward the BMR requirement and/or any density bonus calculation for such project where the BMR units are provided.
4. Any off-site BMR units shall be restricted to Low Income Households, which shall mean those households with incomes that do not exceed eighty percent (80%) of San Mateo County median income, adjusted for family size, as established and amended from time to time by the United States Department of Housing and Urban Development.
5. 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.
6. 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.

7. 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.
8. The terms of this Agreement may not be modified or amended except by an instrument in writing executed by all of the parties hereto.
9. 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.
10. Any and all obligations or responsibilities of the Applicant under this Agreement shall terminate upon the payment of the required fee.
11. 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.

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

CITY OF MENLO PARK

By: _____

City Manager

X Alex D. McIntyre

Hibiscus Properties, LLC

By: _____

Its: _____

John Tenanes
Director Real Estate



[Notarial Acknowledgements to be added for recording purposes]

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 San Mateo

On March 9, 2015 before me, Kristen Ellering, Notary Public
(insert name and title of the officer)

personally appeared John Tenares
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 Kristen Ellering (Seal)

EXHIBIT A

Legal Description

PROPERTY ADDRESSES: 300, 301, 302, 303, 305A, B & C, 306, 307, 308, and 309 Constitution Drive

PROPERTY APN: 055-260-250

Real property in the City of Menlo Park, County of San Mateo, State of California, described as follows:

PARCEL ONE:

BEING PARCEL 1 AS SHOWN ON THAT CERTAIN APPROVAL OF LOT LINE ADJUSTMENT, FILE NUMBER LLA 12-0, RECORDED JANUARY 11, 2013 AS INSTRUMENT NO. 2013-006489 OF OFFICIAL RECORDS, DESCRIBED AS FOLLOWS:

BEING A PORTION OF LOT 1, AS SAID LOT IS DESCRIBED IN THAT CERTAIN "NOTICE OF MERGER" FILED FOR RECORD ON MAY 31, 2011 IN DOCUMENT NO. 2011-060628, SAN MATEO COUNTY RECORDS, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT THE INTERSECTION OF THE NORTHWESTERLY CORNER OF SAID LOT 1 WITH THE SOUTHERLY RIGHT-OF-WAY LINE OF HIGHWAY 84, AS SAID RIGHT-OF-WAY LINE IS SHOWN ON CALTRANS RIGHT-OF-WAY RECORD MAP R-105.2;

THENCE ALONG THE NORTHERLY LINE OF SAID LOT 1, THE FOLLOWING THREE (3) COURSES:

1. SOUTH 64°50'10" EAST, 11.22 FEET;
2. SOUTH 81°12'00" EAST, 2500.00 FEET;
3. NORTH 89°21'50" EAST, 384.14 FEET TO THE EASTERLY LINE OF SAID LOT 1;

THENCE LEAVING SAID NORTHERLY LINE AND ALONG SAID EASTERLY LINE SOUTH 04°51'40" EAST, 431.24 FEET;

THENCE LEAVING SAID EASTERLY LINE, SOUTH 04°51'40" EAST, 51.62 FEET;

THENCE SOUTH 40°23'39" EAST, 97.46 FEET;

THENCE SOUTH 04°51'40" EAST, 20.94 FEET TO THE SOUTHERLY LINE OF SAID LOT 1;

THENCE ALONG SAID SOUTHERLY LINE, THE FOLLOWING FIVE (5) COURSES:

1. SOUTH 85°08'20" WEST, 1,326.06 FEET TO THE BEGINNING OF A NON-TANGENT CURVE, CONCAVE TO THE SOUTHEAST, HAVING A RADIUS OF 231.72 FEET, FROM WHICH POINT A RADIAL LINE BEARS SOUTH 50°31'12" WEST;
2. NORTHWESTERLY AND WESTERLY ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 53°54'38", AN ARC LENGTH OF 218.03 FEET;
3. SOUTH 85°08'20" WEST, 1,370.12 FEET;
4. SOUTH 22°32'00" WEST, 42.84 FEET TO THE BEGINNING OF A NON-TANGENT CURVE CONCAVE TO THE NORTHEAST, HAVING A RADIUS OF 335.00 FEET, FROM WHICH POINT A RADIAL LINE BEARS NORTH 02°53'18" WEST;

5. NORTHWESTERLY AND NORTHERLY ALONG SAID CURVE, THROUGH A CENTRAL ANGLE OF 112°10'00", AN ARC LENGTH OF 655.82 FEET TO THE WESTERLY LINE OF SAID LOT 1;

THENCE LEAVING SAID SOUTHERLY LINE AND ALONG SAID WESTERLY LINE THE FOLLOWING TEN (10) COURSES:

1. NORTH 19°16'42" EAST, 388.09 FEET TO THE BEGINNING OF A TANGENT CURVE CONCAVE TO THE SOUTHEAST HAVING A RADIUS OF 20.00 FEET;

2. ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 93°36'25", AN ARC LENGTH OF 32.67 FEET;

3. SOUTH 67°06'53" EAST, 5.00 FEET;

4. NORTH 22°53'07" EAST, 30.00 FEET;

5. SOUTH 67°06'53" EAST, 5.63 FEET;

6. NORTH 22°53'07" EAST, 30.00 FEET;

7. NORTH 67°06'53" WEST, 5.00 FEET TO THE BEGINNING OF A TANGENT CURVE CONCAVE TO THE NORTHEAST, HAVING A RADIUS OF 20.00 FEET;

8. ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 86°23'35", AN ARC LENGTH OF 30.16 FEET;

9. NORTH 19°16'42" EAST, 238.47 FEET;

10. NORTH 22°32'00" EAST, 18.08 FEET TO THE POINT OF BEGINNING.

PARCEL TWO:

NON-EXCLUSIVE EASEMENTS FOR THE PURPOSES SET FORTH IN SECTIONS 1.1, 1.2, 5.1, 5.3, 6.1 AND 7.1 OF THAT CERTAIN EASEMENT AGREEMENT AND COVENANTS RUNNING WITH THE LAND RECORDED MARCH 15, 2007, INSTRUMENT NO. 2007-039705, OFFICIAL RECORDS OF SAN MATEO COUNTY.

APN: 055-244-010 (Portion), 055-260-080, 055-260-190 and 055-260-200 (Portion)

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 San Mateo

On March 11, 2015 before me, Pamela I. Aguilar, Notary Public
(insert name and title of the officer)

personally appeared Alex D. McIntyre
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 Pamela I. Aguilar (Seal)

