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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

DEVELOPMENT AGREEMENT
312 & 313 CONSTITUTION DRIVE, MENLO PARK, CA
[APNs 055-260-210 & 220]

SEPARATE PAGE, PURSUANT TO GOVT. CODE 27361.6

THIS DEVELOPMENT AGREEMENT ("Agreement") is made and entered into as of this ___ day of _____, 2013, by and between the City of Menlo Park, a municipal corporation of the State of California ("City") and Giant Properties, LLC, a Delaware limited liability company ("Owner"), pursuant to the authority of California Government Code Sections 65864-65869.5 and City Resolution No. 4159.

RECITALS

This Agreement is entered into on the basis of the following facts, understandings and intentions of the City and Owner:

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 65864-65869.5 authorizing the City to enter into development agreements in connection with the development of real property within its jurisdiction by qualified applicants with a requisite legal or equitable interest in the real property which is the subject of such development agreements.

B. As authorized by Government Code Section 65865(c), the City has adopted Resolution No. 4159 establishing the procedures and requirements for the consideration of development agreements within the City.

C. Owner owns those certain parcels of real property collectively and commonly known as 312 and 313 Constitution Drive, in the City of Menlo Park, California ("Property" or "West Campus") as shown on Exhibit A attached hereto and being more particularly described in Exhibit B attached hereto.

D. Owner intends to demolish all existing structures on the Property and to construct the Project (as defined in this Agreement) on the Property in accordance with the Project Approvals and any other Approvals.

E. Owner (and/or its affiliates) intends to occupy the Property in accordance with the Project Approvals and any other Approvals (as such terms are defined in this Agreement).

F. The City examined the environmental effects of the redevelopment of the West Campus and the Facebook East Campus Project (as defined in this Agreement) in an Environmental Impact Report ("EIR") prepared pursuant to the California Environmental Quality Act ("CEQA"). On May 29, 2012, the City Council of the City reviewed and certified the EIR. Following such certification, Owner redesigned the West Campus program analyzed in the certified EIR and the City prepared an Addendum to the EIR (as defined in this Agreement) pursuant to CEQA to examine the environmental

effects of the Project that resulted from the redesign. On March 19, 2013, the City Council of the City considered the Addendum to the EIR and made findings that a subsequent or supplemental environmental impact report was not required.

G. The City has determined that the Project is a development for which a development agreement is appropriate. A development agreement will eliminate uncertainty in the City's land use planning for, and secure orderly development of, the Project and otherwise achieve the goals and purposes for which Resolution No. 4159 was enacted by City. The Project will generate the public benefits described in this Agreement, along with other fees for the City. Owner will incur substantial costs in order to comply with the conditions of the Approvals and otherwise in connection with the development of the Project. In exchange for the public benefits and other benefits to the City and the public, Owner desires to receive vested rights, including, without limitation, legal assurances that the City will grant permits and approvals required for the development, occupancy and use of the Property and the Project in accordance with the Existing City Laws (as defined in this Agreement), subject to the terms and conditions contained in this Agreement. In order to effectuate these purposes, the City and Owner desire to enter into this Agreement.

H. On February 25, 2013, after conducting a duly noticed public hearing pursuant to Resolution No. 4159, the Planning Commission of the City recommended that the City Council approve this Agreement, based on the following findings and determinations: that this Agreement (1) is consistent with the objectives, policies, general land uses and programs specified in the General Plan (as defined in this Agreement); (2) is compatible with the uses authorized in and the regulations prescribed for the land use district in which the Property is located; (3) conforms with public convenience, general welfare and good land use practices; (4) will not be detrimental to the health, safety and general welfare of the City or the region surrounding the City; (5) will not adversely affect the orderly development of property or the preservation of property values within the City; and (6) will promote and encourage the development of the Project by providing a greater degree of certainty with respect thereto.

I. Thereafter, on March 19, 2013, the City Council held a duly noticed public hearing on this Agreement pursuant to Resolution No. 4159. The City Council made the same findings and determinations as the Planning Commission. On that same date, the City Council made the decision to approve this Agreement by introducing Ordinance No. ____ ("Enacting Ordinance"). A second reading was conducted on the Enacting Ordinance on April 2, 2013, at which the City Council adopted the Enacting Ordinance, making the Enacting Ordinance effective on May 2, 2013.

NOW, THEREFORE, pursuant to the authority contained in Government Code Sections 65864-65869.5 and Resolution No. 4159, and in consideration of the mutual

covenants and promises of the City and Owner herein contained, the City and Owner agree as follows:

1. Definitions. Each reference in this Agreement to any of the following terms shall have the meaning set forth below for each such term. Certain other terms shall have the meaning set forth for such term in this Agreement.

1.1. Approvals. Any and all permits or approvals of any kind or character required under the City Laws in order to authorize and entitle Owner to complete the Project and to develop and occupy the Property in accordance with the terms of the Project including, but not limited to, the items described in the Project Approvals (as defined in this Agreement).

1.2. City Laws. The ordinances, resolutions, codes, rules, regulations and official policies of the City governing the permitted uses of land, density, design, and improvement applicable to the development of the Property. Specifically, but without limiting the generality of the foregoing, the City Laws shall include the General Plan and the City's Zoning Ordinance.

1.3. City Manager. The City Manager or his or her designee as designated in writing from time to time. Owner may rely on the authority of the designee of the City Manager.

1.4. City Wide. Any City Law, Fee or other matter that is generally applicable to one or more kinds or types of development or use of property wherever located in the City. A City Law, Fee or other matter shall not be City Wide if, despite its stated scope, it applies only to the Property or to one or more parcels located within the Property, or if the relevant requirements are stated in such a way that they apply only to all or a portion of the Project.

1.5. Community Development Director. The City's Community Development Director or his or her designee.

1.6. Conditional Development Permit. The conditional development permit approved by the City Council for the development of the Project.

1.7. Conditions. All Fees, conditions, dedications, reservation requirements, obligations for on- or off-site improvements, services, other monetary or non-monetary requirements and other conditions of approval imposed, charged by or called for by the City in connection with the development of or construction on real property under the Existing City Laws, whether such conditions constitute public improvements, mitigation measures in connection with environmental review of any project or impositions made under applicable City Laws.

1.8. Default. As to Owner, the failure of Owner to comply substantially and in good faith with any obligations of Owner under this Agreement; and as to the City, the failure of the City to comply substantially and in good faith with any obligations of City under this Agreement; any such failure by Owner or the City shall be subject to cure as provided in this Agreement.

1.9. Effective Date. The effective date of the Enacting Ordinance pursuant to Government Code Section 65867.5, as specified in Recital I of this Agreement.

1.10. Existing City Laws. The City Laws in effect as of the Effective Date.

1.11. Facebook East Campus Project. The use and occupancy of the 1 Hacker Way property (formerly known as 1601 Willow Road) pursuant to the Amended and Restated Conditional Development Permit, 1601 Willow Road Development Agreement, and other project approvals for 1 Hacker Way (formerly known as 1601 Willow Road) in the City of Menlo Park.

1.12. Fees. All exactions, costs, fees, in-lieu fees, payments, charges and other monetary amounts imposed or charged by the City in connection with the development of or construction on real property under Existing City Laws. Fees shall not include Processing Fees.

1.13. General Plan. Collectively, the General Plan for the City adopted by the City Council on November 30 and December 1, 1994, as previously amended and in effect as of the Effective Date.

1.14. Laws. The laws and Constitution of the State of California, the laws and Constitution of the United States and any state or federal codes, statutes, executive mandates or court decisions thereunder. The term "Laws" shall exclude City Laws.

1.15. Mitigation Measures. The mitigation measures applicable to the Project, developed as part of the EIR process and required to be implemented through the MMRP and the Conditional Development Permit.

1.16. MMRP. The Mitigation Monitoring and Reporting Plan adopted as part of the Project Approvals and applicable to the Project.

1.17. Mortgage. Any mortgage, deed of trust or similar security instrument encumbering the Property, any portion thereof or any interest therein.

1.18. Mortgagee. With respect to any Mortgage, any mortgagee or beneficiary thereunder.

1.19. Party. Each of the City and Owner and their respective successors, assigns and transferees (collectively, "Parties").

1.20. Processing Fee. A fee imposed by the City upon the submission of an application or request for a permit or Approval, which is intended to cover only the estimated cost to the City of processing such application or request and/or issuing such permit or Approval and which is applicable to similar projects on a City Wide basis, including but not limited to building permit plan check and inspection fees, public works, engineering and transportation plan check and inspection fees, subdivision map application, review and processing fees, fees related to the review, processing and enforcement of the MMRP, and fees related to other staff time and attorney's time incurred to review and process applications, permits and/or Approvals; provided such fees are not duplicative of or assessed on the same basis as any Fees.

1.21. Project. The uses of the Property, the site plan for the Property and the Vested Elements (as defined in Section 3.1), as authorized by or embodied within the Project Approvals and the actions that are required pursuant to the Project Approvals. Specifically, the Project includes the demolition of the existing structures on the Property and the construction of a new office building and certain onsite and offsite improvements as more particularly described in the Project Approvals.

1.22. Project Approvals. The following approvals for the Project granted, issued and/or enacted by the City as of the date of this Agreement, as amended, modified or updated from time to time: (a) this Agreement; (b) the statement of overriding considerations and adoption of the MMRP and other actions in connection with environmental review of the Project; (c) the ordinance rezoning the Property from M-2 to M-2(x); (d) the Conditional Development Permit; (d) the BMR Agreement; (e) the lot line adjustment; and (f) the heritage tree removal permits.

1.23. Public Works Director. The City's Public Works Director or his or her designee.

1.24. Resolution No. 4159. City Resolution No. 4159 entitled "Resolution of the City Council of the City of Menlo Park Adopting Regulations Establishing Procedures and Requirements for Development Agreements" adopted by the City Council of the City of Menlo Park on January 9, 1990.

1.25. Substantially Complete Building Permit Application. Owner's completed or substantially completed application for a building permit for the office building to be built as part of the Project as reasonably determined by the City's Building Official applied in a manner consistent with City's standard practices in effect at the time of building permit submittal, accompanied by (i) payment of all Processing Fees and other fees required to be submitted with such application and (ii) plans/required

submittals for all associated on-site and off-site improvements and parking associated with such building, all as described in the Conditional Development Permit.

2. Effective Date; Term.

2.1. Effective Date. This Agreement shall be dated and the rights and obligations of the Parties hereunder shall be effective as of the Effective Date. Not later than ten (10) days after the Effective Date, the City and Owner shall execute and acknowledge this Agreement, and the City shall cause this Agreement to be recorded in the Official Records of the County of San Mateo, State of California as provided for in Government Code Section 65868.5. However, the failure to record this Agreement within the time period provided for in Government Code Section 65868.5 shall not affect its validity or enforceability among the Parties.

2.2. Term. This Agreement shall terminate five (5) years from the Effective Date (subject to Section 16.1), provided that if Owner submits a Substantially Complete Building Permit Application prior to such termination and the City subsequently issues final building permit sign off allowing occupancy of the Project, then the term of this Agreement shall continue until the latest of: (a) the earlier of (i) Owner and Facebook, Inc. ("Facebook") vacating the West Campus or (ii) February 6, 2026; (b) the expiration of the Recurring Benefit Payment obligation (as defined in this Agreement); or (c) the expiration of the Property Tax Guaranty (as defined in this Agreement).

2.3. Expiration of Term. Except as otherwise provided in this Agreement or any of the Approvals, upon the expiration of the term of this Agreement, (a) this Agreement, and the rights and obligations of the Parties under this Agreement, shall terminate; (b) the Property shall remain subject to the Conditional Development Permit; and (c) Owner shall thereafter comply with the provisions of the City Laws then in effect or thereafter enacted and applicable to the Property and/or the Project, except that the expiration of the term of this Agreement shall not affect any rights of Owner that are or would be vested under City Laws in the absence of this Agreement or any other rights arising from Approvals granted or issued by the City for the construction or development of all or any portion of the Project.

3. General Development of the Project.

3.1. Project. Owner shall have the vested right to develop and occupy the Property in accordance with the terms and conditions of this Agreement and the Project Approvals, and any additional Approvals for the Project and/or the Property obtained by Owner, as the same may be amended from time to time upon application by Owner; and City shall have the right to control development of the Property in accordance with the provisions of this Agreement, so long as this Agreement remains

effective, and the Approvals for the Project and/or the Property. Except as otherwise specified herein, until the expiration or earlier termination of this Agreement, this Agreement, the Approvals and the Existing City Laws shall control the overall development, use and occupancy of the Property, and all improvements and appurtenances in connection therewith, including, without limitation, the density and intensity of use (“Vested Elements”), and all Mitigation Measures and Conditions required or imposed in connection with the Project Approvals in order to minimize or eliminate environmental impacts of the Project.

3.2. Subsequent Projects. The City agrees that as long as Owner develops and occupies the Project in accordance with the terms of this Agreement, Owner’s right to develop and occupy the Property shall not be diminished despite the impact of future development in the City on public facilities, including, without limitation, City streets, water systems, sewer systems, utilities, traffic signals, sidewalks, curbs, gutters, parks and other City owned public facilities that may benefit the Property and other properties in the City.

3.3. Other Governmental Permits. Owner or City (whichever is appropriate) shall apply for such other permits and approvals from governmental or quasi-governmental agencies other than the City having jurisdiction over the Project (e.g. the California Department of Transportation) as may be required for the development of or provision of services to the Project; provided, however, that City shall not apply for any such permits or approvals without Owner’s prior written approval. The City shall use its best efforts to promptly and diligently cooperate, at no cost to the City, with Owner in its endeavors to obtain such permits and approvals and, from time to time at the request of Owner, shall proceed with due diligence and in good faith to negotiate and/or enter into binding agreements with any such entity in order to assure the availability of such permits and approvals or services. All such applications, approvals, agreements, and permits shall be obtained at Owner’s cost and expense, including payment of City staff time in accordance with standard practices, and Owner shall indemnify City for any liabilities imposed on City arising out of or resulting from such applications, permits, agreements and/or approvals. The indemnifications set forth in this Section 3.3 shall survive the termination or expiration of this Agreement. To the extent allowed by applicable Laws, Owner shall be a party or third party beneficiary to any such agreement between City and such agencies and shall be entitled to enforce the rights of Owner or the City thereunder and/or the duties and obligations of the parties thereto.

3.4. Additional Fees. Except as set forth in this Agreement and the Project Approvals, the City shall not impose any further or additional fees (including, without limitation, any fees, taxes or assessments not in existence as of the Effective Date or not applicable to the Project in accordance with the Existing City Laws, the

Project Approvals and this Agreement), whether through the exercise of the police power, the taxing power, or any other means, other than those set forth in the Project Approvals, the Existing City Laws and this Agreement. In addition, except as set forth in this Agreement, the base or methodology for calculating all such Fees applicable to the construction and development of the Project shall remain the same for such Fees as in effect as of the Effective Date. Notwithstanding the foregoing, the following provisions shall apply:

3.4.1. If the City forms an assessment district including the Property, and the assessment district is City Wide or applies to all M-2 Zoned properties and is not duplicative of or intended to fund any matter that is covered by any Fee payable by Owner, the Property may be legally assessed through such assessment district based on the benefit to the Property (or the methodology applicable to similarly situated properties), which assessment shall be consistent with the assessments of other properties in the district similarly situated. In no event, however, shall Owner's obligation to pay such assessment result in a cessation or postponement of development and occupancy of the Property or affect in any way Owner's development rights for the Project.

3.4.2. The City may charge Processing Fees to Owner for land use approvals, building permits, encroachment permits, subdivision maps, and other similar permits and approvals which are in force and effect on a City Wide basis or applicable to all M-2 Zoned properties at the time Owner submits an application for those permits.

3.4.3. If the City exercises its taxing power in a manner which will not change any of the Conditions applicable to the Project, and so long as any new taxes or increased taxes are uniformly applied on a City Wide basis or applied uniformly to M-2 Zoned properties, the Property may be so taxed, which tax shall be consistent with the taxation of other properties in the City similarly situated.

3.4.4. If, as of the Effective Date, the Existing City Laws under which the Fees applicable to the Project have been imposed provide for automatic increases in Fees based upon the consumer price index or other method, then the Project shall be subject to any such increases in such Fees resulting solely from the application of any such index or method in effect on the Effective Date.

3.4.5. If Laws are adopted by the State of California or the federal government which impose fees on new or existing projects, such fees shall be applicable to the Project.

3.5. Effect of Agreement. This Agreement, the Project Approvals and all plans and specifications upon which such Project Approvals are based (as the same may be modified from time to time in accordance with the terms of the Project

Approvals), including but not limited to the Conditional Development Permit, shall constitute a part of the Enacting Ordinance, as if incorporated by reference therein in full.

3.6. Review and Processing of Approvals. The City shall accept, review and shall use its best efforts to expeditiously process Owner's applications and requests for Approvals in connection with the Project in good faith and in a manner which complies with and is consistent with the Project Approvals and this Agreement. The City shall approve any application or request for an Approval which complies and is consistent with the Project Approvals. Owner shall provide the City with the Processing Fees, applications, documents, plans, materials and other information necessary for the City to carry out its review and processing obligations. Owner shall submit all applications and requests for Approvals in the manner required under applicable City Laws in effect as of the time of such submittal. The Parties shall cooperate with each other and the City shall use its best efforts to cause the expeditious review, processing and issuance of the approvals and permits for the development and occupation of the Project in accordance with the Project Approvals.

4. Specific Criteria Applicable to the Project.

4.1. Applicable Laws and Standards. Notwithstanding any change in any Existing City Law, including, but not limited to any change by means of ordinance, resolution, initiative, referendum, policy or moratorium, and except as otherwise expressly provided in this Agreement, the laws and policies applicable to the Property are and shall be as set forth in Existing City Laws (regardless of future changes in Existing City Laws by the City) and the Project Approvals. Owner shall also have the vested right to develop and occupy or to cause the Property to be developed and occupied in accordance with the Vested Elements; provided that the City may apply and enforce the California Building Code as amended and adopted by the City (including the Mechanical Code, Electrical Code and Plumbing Code) and the California Fire Code as amended and adopted by the City and/or the Menlo Park Fire Protection District, as such codes may be in effect at the time Owner applies for building permits for any aspect of the Project. Without limiting the generality of the foregoing, except as otherwise expressly provided in this Agreement, during the term of this Agreement, the City shall not, without the prior written consent of Owner: (a) apply to the Project any new or amended ordinance, resolution, rule, regulation, requirement or official policy that is inconsistent with any Existing City Laws or Approvals and that would have the effect of delaying, preventing, adversely affecting or imposing any new or additional condition with respect to the Project; or (b) apply to the Project or any portion thereof any new or amended ordinance, resolution, rule, regulation, requirement or official policy that requires additional discretionary review or approval for the proposed development, use and/or occupancy of the Project.

4.2. Application of New City Laws. Nothing herein shall prevent the City from applying to the Property new City Laws that are not inconsistent or in conflict with the Existing City Laws or the intent, purposes or any of the terms, standards or conditions of this Agreement, and which do not affect the Vested Elements, impose any further or additional fees or impose any other conditions on the Project, including, without limitation, those requiring additional traffic improvements/requirements or additional off-site improvements, that are inconsistent with this Agreement or the intent of this Agreement. Any action or proceeding of the City that has any of the following effects on the Project shall be considered in conflict with this Agreement and the Existing City Laws:

4.2.1. Limiting or reducing the density or intensity of use of the Property;

4.2.2. Limiting grading or other improvements on the Property in a manner that is inconsistent with or more restrictive than the limitations included in the Project Approvals; or

4.2.3. Applying to the Project or the Property any law, regulation, or rule restricting or affecting a use or activity otherwise allowed by the Project Approvals.

The above list of actions is not intended to be comprehensive, but is illustrative of the types of actions that would conflict with this Agreement and the Existing City Laws.

4.3. Timing. Without limiting the foregoing, no moratorium or other limitation affecting the development and occupancy of the Project or the rate, timing or sequencing thereof shall apply to the Project.

4.4. Subsequent Environmental Review. The Parties acknowledge and agree that the EIR and the Addendum to EIR contain a thorough environmental analysis of the Project and the Project alternatives, and specifies the feasible Mitigation Measures available to eliminate or reduce to an acceptable level the environmental impacts of the Project. The Parties further acknowledge and agree that the EIR and Addendum to EIR provide an adequate environmental analysis for the City's decisions to authorize Owner to proceed with the Project as embodied in the Project Approvals and this Agreement and subsequent development of the Project during the term of this Agreement. The Mitigation Measures imposed are appropriate for the implementation of proper planning goals and objectives and the formulation of Project conditions of approval. In view of the foregoing, the City agrees that the City will not require another or additional environmental impact report or environmental review for any subsequent Approvals implementing the Project. Owner shall defend, indemnify and hold the City harmless from any costs or liabilities incurred by the City in connection with any

litigation seeking to compel the City to perform additional environmental review of any subsequent Approvals.

4.5. Easements; Improvements. The City shall cooperate with Owner in connection with any arrangements for abandoning existing easements and facilities and the relocation thereof or creation of any new easements within the Property or the undercrossing necessary or appropriate in connection with the development of the Project. If any such easement is owned by the City or an agency of the City, the City or such agency shall, at the request of Owner, take such action and execute such documents as may be reasonably necessary in order to abandon and relocate such easement(s) as necessary or appropriate in connection with the development of the Project in accordance with the Project Approvals. All on-site and off-site improvements required to be constructed by Owner pursuant to this Agreement, including those set forth in the Project Approvals, shall be constructed by Owner.

5. Conditions Precedent. Owner's obligations (if any) under Sections 6 through 13 inclusive are expressly conditioned on the resolution of all legal challenges, if any, to the Addendum to EIR, the Project Approvals and the Project (the "Legal Challenges Condition"), and the City's issuance of a building permit for the construction of the office building to be built as part of the Project. If no litigation or referendum is commenced challenging the Addendum to EIR, the Project Approvals and/or the Project, then the Legal Challenges Condition will be deemed satisfied 90 days after the Effective Date. If litigation or a referendum is commenced challenging the Addendum to EIR, the Project Approvals and/or the Project, then the Legal Challenges Condition will be deemed satisfied on the date of final, non-appealable resolution of all litigation in a manner that is reasonably acceptable to Owner or resolution of the referendum in a manner that is reasonably acceptable to Owner. The conditions described in this Section 5 shall, collectively, be referred to as the "Conditions Precedent".

6. One Time Public Benefit; Capital Improvement. Within 60 days of the later of (a) City sign off on final building permits allowing occupancy of the West Campus by Owner and (b) Owner's receipt of City's request for payment, Owner shall make a one-time payment of One Hundred Thousand Dollars (\$100,000) to the City for the City's unrestricted use toward capital improvement projects that benefit the adjacent Belle Haven neighborhood as determined by the City Council. The benefit under this Section 6 shall not be payable unless the City signs off on building permits allowing occupancy by Owner of the building to be built on the West Campus.

7. On-Going Public Benefits, Conditions.

7.1 Recurring Public Benefit Payment. Owner will make an annual payment of One Hundred Fifty Thousand Dollars (\$150,000.00) per year ("Recurring

Public Benefit Payment”) to the City for ten years for a total of One Million Five Hundred Thousand Dollars (\$1,500,000.00). The first payment of the Recurring Public Benefit Payment will be due and payable on July 1 of the City’s fiscal year commencing after City sign off on final building permits allowing occupancy by Owner of the building to be built on the West Campus. Subsequent payments of the Recurring Public Benefit Payment will be due and payable in full to the City on July 1 of each fiscal year thereafter for which the Recurring Public Benefit Payment is payable. The Recurring Public Benefit Payment will be payable for this ten (10) year period with no proration, reduction or suspension and shall survive the termination of this Agreement. The benefit under this Section 7.1 shall not be payable unless the City signs off on building permits allowing occupancy by Owner of the building to be built on the West Campus.

7.2 Property Tax Guaranty. Commencing with the first tax fiscal year following the initial reassessment of the Property by the San Mateo County Assessor (the “Assessor”) following completion of the Project and the initial occupancy of the West Campus by Owner, and for a total period of ten (10) years following such initial reassessment, Owner agrees to pay to the City the positive difference (if any) between (a) the real and personal property tax revenues the City would receive for a given tax fiscal year assuming the assessed value of the Property (land and improvements) and personal property and fixtures situated at the Property is the greater of \$230,085,000 or the initial reassessed value of the Property (land and improvements) and personal property and fixtures situated at the Property as determined by the Assessor following completion of the Project, and (b) the actual real and personal property tax revenue received by the City for such tax fiscal year (“Property Tax Guaranty”). For purposes of clarification, in any fiscal year during which the Property Tax Guaranty applies, no payment will be due to the City pursuant to this section if the assessed value of the Property (land and improvements) and personal property and fixtures situated at the Property in that fiscal year is greater than or equal to the greater of (i) \$230,085,000 or (ii) the initial reassessed value of the Property (land and improvements) and personal property and fixtures situated at the Property, as determined by the Assessor following completion of the Project. Nothing herein shall limit Owner’s right to challenge or appeal any assessment of the Property, any assessment of personal property situated at the Property, and/or the amount of taxes payable to the San Mateo County Tax Collector in any year. The benefit under this Section 7.2 shall not be payable unless the City signs off on building permits allowing occupancy by Owner of the building to be built on the West Campus.

7.3 Sales and Use Taxes.

7.3.1 For all construction work performed as part of the Project, Owner agrees to make diligent, good faith efforts, with the assistance of City’s designated representative to include a provision in all construction contracts for \$5 million or more

with qualifying contractors, subcontractors and material suppliers holding reseller's permits to obtain a sub-permit from the California State Board of Equalization to book and record construction materials purchases/sales as sales originating within the City. Upon request of the City Manager or the City's designated representative, Owner shall make available copies of such contracts or other documentation demonstrating compliance with these requirements. Owner shall have the right to redact unrelated portions of such contracts. The provisions of this Section 7.3.1 shall not be applicable to any subsequent remodeling or construction on the West Campus following the final building permit sign off for the initial occupancy of the building to be built as part of the Project.

7.3.2 With respect to the purchase of furnishings, equipment and personal property for the initial occupancy of the new building to be constructed as part of the Project, Owner shall cooperate with the City and its designated representative and, if the City or its designated representative identifies commercially reasonable strategies to maximize use taxes to be received by the City, to then use diligent, good faith efforts to maximize use taxes to be received by the City with respect to the purchase and use of such furnishings, equipment and personal property by acting in accordance with the commercially reasonable strategies identified by the City or its designated representative (and in any case, only to the extent allowed by applicable Laws). Notwithstanding the preceding, Owner shall not be obligated to establish a California Sales and Use Tax permit and/or a Use Tax Direct Payment Permit identifying the City as the point of sale or the point of use for allocation purposes, but shall be obligated to provide City or its designated representative with such documents as are reasonably necessary to assist City or such representative in ensuring the appropriate allocation of use taxes to the West Campus location.

7.3.3 To the extent sales and/or use taxes are not separately reported for the West Campus and the East Campus, and provided that Owner and/or Facebook occupies both the West Campus and the East Campus, there shall be an equitable apportionment of the sales and use taxes to each campus based on location of employees, square footage of buildings, point of sale or such other equitable apportionment as the Parties may determine.

8. Local Community Fund. Within one year of final building permit sign off allowing occupancy of the West Campus by Owner, Owner shall contribute an additional One Hundred Thousand Dollars (\$100,000) to the Local Community Fund ("LCF") previously established and funded by Facebook; provided, however, if the LCF is depleted at the time Owner receives a building permit for the office building to be built as part of the Project, Owner will make the contribution within six months of satisfaction of the Conditions Precedent. The benefit under this Section 8 shall not be payable

unless the City signs off on building permits allowing occupancy by Owner of the building to be built on the West Campus.

9. Recycling. Owner agrees to use, or cause to be used, the City's franchisee for all trash and recycling services, provided the rates charged to Owner by such franchisee for trash and recycling removal services are the same as those charged by such franchisee to other commercial users in the City.

10. Design and Environment. Owner has entered into a contract with Gehry Partners LLP for design of the West Campus, and Owner anticipates that Gehry Partners LLP will be the registered architect for the Project. Owner will design the West Campus so that the roof includes living elements including trees, plant elements and other green features as generally shown and described in the Project Approvals. Owner will design the building located at the West Campus to perform to LEED Building Design and Construction (BD+C) Gold equivalency. Owner may satisfy this obligation by delivering a report from its LEED consultant to the City demonstrating satisfaction with this condition. That report will be subject to approval by the City (not to be unreasonably withheld or conditioned).

11. Public Access. Owner will allow public access to the landscaped area on the West Campus that is adjacent to the undercrossing (note this public access is in addition to the dedicated access easement to the undercrossing that Facebook previously agreed to provide and does not modify or alter the requirement that Facebook and/or Owner improve and dedicate a public access easement from Willow Road, under Bayfront Expressway and connecting to the Bay Trail). This area is adjacent to the dedicated easement that will connect the segment of the Bay Trail that is adjacent to Bayfront Expressway with Willow Road and the segment of the Bay Trail that is east of Willow Road. Owner, in Owner's reasonable discretion, will install benches, art or other amenities in this area for the benefit of the public. The public access right to the additional landscaped area will be a right to pass by permission and Owner will have the right to implement rules and regulations governing such access.

12. Future Pedestrian/Bike Access. Owner agrees that (a) if a public transit agency begins operating service (whether by train or bus) on the rail spur adjacent to the West Campus and locates a transit stop at or near the intersection of Willow Road and the rail spur (the "Willow Stop"), (b) if there is not an alternative stop that would conveniently serve people that occupy the properties located immediately adjacent to Bayfront Expressway and between Chilco Street and the West Campus (collectively, the "Tyco Properties"), and (c) if the City wishes to provide a pedestrian/bike route between the Willow Stop and the Tyco Properties, then, upon the City's request, Owner will reasonably cooperate with the City and explore whether a pedestrian/bike route between the Willow Stop and the Tyco Properties could be placed on the West

Campus. In addition, Owner agrees that if, following the City's request, Owner determines that a pedestrian/bike route can be placed on the West Campus without negatively impacting Owner's operations there, Owner will allow the City to construct such a pedestrian/bike access route in a location determined by Owner (in its reasonable discretion).

13. Facebook East Campus Public Benefits. If the commitments and obligations under the Housing (Section 9), Local Community Fund (Section 10), Bay Trail Gap (Section 11), Utility Undergrounding (Section 12), Jobs (Section 13), Environmental Education (Section 16), Local Purchasing (Section 18), Transportation Demand Management Information Sharing (Section 19) and Volunteerism (Section 20) sections of the 1601 Willow Road Development Agreement terminate due to (a) Facebook vacating the East Campus or (b) the early termination of the lease for the East Campus, then Owner will agree to continue to satisfy such commitments and obligations until the earlier of (i) Owner and Facebook vacating the West Campus or (ii) February 6, 2026.

14. Indemnity. Owner shall indemnify, defend and hold harmless City, and its elective and appointive boards, commissions, officers, agents, contractors, and employees (collectively, "City Indemnified Parties") from any and all claims, causes of action, damages, costs or expenses (including reasonable attorneys' fees) arising out of or in connection with, or caused on account of, the development and occupancy of the Project, any Approval with respect thereto, or claims for injury or death to persons, or damage to property, as a result of the operations of Owner or its employees, agents, contractors, representatives or tenants with respect to the Project (collectively, "Owner Claims"); provided, however, that Owner shall have no liability under this Section 14 for Owner Claims arising from the gross negligence or willful misconduct of any City Indemnified Party, or for Claims arising from, or that are alleged to arise from, the repair or maintenance by the City of any improvements that have been offered for dedication by Owner and accepted by the City.

15. Periodic Review for Compliance.

15.1. Annual Review. The City shall, at least every 12 months during the term of this Agreement, review the extent of Owner's good faith compliance with the terms of this Agreement pursuant to Government Code § 65865.1 and Resolution No. 4159. Such review shall be scheduled to coincide with the City's review of compliance with the 1601 Willow Road Development Agreement. Notice of such annual review shall be provided by the City's Community Development Director to Owner not less than 30 days prior to the date of the hearing by the Planning Commission on Owner's good faith compliance with this Agreement and shall to the extent required by law include the statement that any review may result in amendment or termination of this Agreement. A

finding by the City of good faith compliance with the terms of this Agreement shall conclusively determine the issue up to and including the date of such review.

15.2. Non-Compliance. If the City Council makes a finding that Owner has not complied in good faith with the terms and conditions of this Agreement, the City shall provide written notice to Owner describing (a) such failure and that such failure constitutes a Default, (b) the actions, if any, required by Owner to cure such Default, and (c) the time period within which such Default must be cured. If the Default can be cured, Owner shall have a minimum of 30 days after the date of such notice to cure such Default, or in the event that such Default cannot be cured within such 30 day period, if Owner shall commence within such 30 day time period the actions necessary to cure such Default and shall be diligently proceeding to complete such actions necessary to cure such Default, Owner shall have such additional time period as may be required by Owner within which to cure such Default.

15.3. Failure to Cure Default. If Owner fails to cure a Default within the time periods set forth above, the City Council may amend or terminate this Agreement as provided below.

15.4. Proceeding Upon Amendment or Termination. If, upon a finding under Section 15.2 of this Agreement and the expiration of the cure period specified in such Section 15.2, the City determines to proceed with amendment or termination of this Agreement, the City shall give written notice to Owner of its intention so to do. The notice shall be given at least 30 days before the scheduled hearing and shall contain:

15.4.1. The time and place of the hearing;

15.4.2. A statement that the City proposes to terminate or to amend this Agreement; and

15.4.3. Such other information as is reasonably necessary to inform Owner of the nature of the proceeding.

15.5. Hearings on Amendment or Termination. At the time and place set for the hearing on amendment or termination, Owner shall be given an opportunity to be heard, and Owner shall be required to demonstrate good faith compliance with the terms and conditions of this Agreement. If the City Council finds, based upon substantial evidence, that Owner has not complied in good faith with the terms or conditions of this Agreement, the City Council may terminate this Agreement or, with Owner's agreement to amend rather than terminate, amend this Agreement and impose such conditions as are reasonably necessary to protect the interests of the City. The decision of the City Council shall be final, subject to judicial review pursuant to Section 1094.5 of the California Code of Civil Procedure.

15.6. Effect on Transferees. If Owner has transferred a partial interest in the Property to another party so that title to the Property is held by Owner and additional parties or different parties, the City shall conduct one annual review applicable to all parties with a partial interest in the Property and the entirety of the Property. If the City Council terminates or amends this Agreement based upon any such annual review and the determination that any party with a partial interest in the Property has not complied in good faith with the terms and conditions of this Agreement, such action shall be effective as to all parties with a partial interest in the Property and to the entirety of the Property.

16. Permitted Delays; Subsequent Laws.

16.1. Extension of Times of Performance. In addition to any specific provisions of this Agreement, (i) the deadline for Owner to submit a Substantially Complete Building Permit Application under Section 2.2 shall be extended; and (ii) the performance by any Party of its obligations under this Agreement shall not be deemed to be in Default, and the time for performance of such obligation shall be extended; where delays or failures to perform are due to war, insurrection, strikes, lockouts, riots, floods, earthquakes, fire, casualties, acts of God, acts of the public enemy, epidemics, quarantine restrictions, freight embargoes, restrictions imposed by governmental or quasi-governmental entities other than the City, unusually severe weather, acts of another Party, acts or the failure to act of any public or governmental agency or entity (except that acts or the failure to act of the City shall not excuse the City's performance) or any other causes beyond the reasonable control, or without the fault, of the Party claiming an extension of time to perform. An extension of time for any such cause shall only be for the period of the enforced delay, which period shall commence to run from the time of the commencement of the cause of the delay. If a delay occurs, the Party asserting the delay shall use reasonable efforts to notify promptly the other Parties of the delay. If, however, notice by the Party claiming such extension is sent to the other Party more than 30 days after the commencement of the cause of the delay, the period shall commence to run as of only 30 days prior to the giving of such notice. The time period for performance under this Agreement may also be extended in writing by the joint agreement of the City and Owner. Litigation attacking the validity of the EIR, the Addendum to EIR, the Project Approvals and/or the Project shall also be deemed to create an excusable delay under this Section 16.1, but only to the extent such litigation causes a delay and the Party asserting the delay complies with the notice and other provisions regarding delay set forth hereinabove. Except as expressly set forth in Section 2.2 and this Section 16.1, in no event shall the term of this Agreement be extended by any such delay without the mutual written agreement of the City and Owner.

16.2. Superseded by Subsequent Laws. If any Law made or enacted after the date of this Agreement prevents or precludes compliance with one or more provisions of this Agreement, then the provisions of this Agreement shall, to the extent feasible, be modified or suspended as may be necessary to comply with such new Law. Immediately after enactment of any such new Law, the Parties shall meet and confer reasonably and in good faith to determine the feasibility of any such modification or suspension based on the effect such modification or suspension would have on the purposes and intent of this Agreement. If such modification or suspension is infeasible in Owner's reasonable business judgment, then Owner shall have the right to terminate this Agreement by written notice to the City. Owner shall also have the right to challenge the new Law preventing compliance with the terms of this Agreement, and in the event such challenge is successful, this Agreement shall remain unmodified and in full force and effect. Notwithstanding the preceding, nothing herein shall permit the City to enact Laws that conflict with the terms of this Agreement.

17. Termination.

17.1. City's Right to Terminate. The City shall have the right to terminate this Agreement only under the following circumstances:

17.1.1. The City Council has determined that Owner is not in good faith compliance with the terms of this Agreement, and this Default remains uncured, all as set forth in Section 15 of this Agreement.

17.2. Owner's Right to Terminate. Owner shall have the right to terminate this Agreement only under the following circumstances:

17.2.1. Owner has determined that the City is in Default, has given the City notice of such Default and the City has not cured such Default within 30 days following receipt of such notice, or if the Default cannot reasonably be cured within such 30 day period, the City has not commenced to cure such Default within 30 days following receipt of such notice and is not diligently proceeding to cure such Default.

17.2.2. Owner is unable to complete the Project because of supersedure by a subsequent Law or court action, as set forth in Sections 16.2 and 22 of this Agreement.

17.2.3. Owner determines in the first five (5) years after the Effective Date, in its business judgment, that it does not desire to proceed with the construction of the Project.

17.3. Mutual Agreement. This Agreement may be terminated upon the mutual written agreement of the Parties.

17.4. Effect of Termination. If this Agreement is terminated pursuant to this Section 17, such termination shall not affect (a) any condition or obligation due to the City from Owner and arising prior to the date of termination and/or (b) the Project Approvals.

17.5. Recordation of Termination. In the event of a termination, the City and Owner agree to cooperate with each other in executing and acknowledging a Memorandum of Termination to record in the Official Records of San Mateo County within 30 days following the effective date of such termination.

18. Remedies. Any Party may, in addition to any other rights or remedies provided for in this Agreement or otherwise available at law or equity, institute a legal action to cure, correct or remedy any Default by the another Party; enforce any covenant or agreement of a Party under this Agreement; enjoin any threatened or attempted violation of this Agreement; or enforce by specific performance the obligations and rights of the Parties under this Agreement.

19. Waiver; Remedies Cumulative. Failure by a Party to insist upon the strict performance of any of the provisions of this Agreement by another Party, irrespective of the length of time for which such failure continues, shall not constitute a waiver of such Party's right to demand strict compliance by such other Party in the future. No waiver by a Party of a Default shall be effective or binding upon such Party unless made in writing by such Party, and no such waiver shall be implied from any omission by a Party to take any action with respect to such Default. No express written waiver of any Default shall affect any other Default, or cover any other period of time, other than any Default and/or period of time specified in such express waiver. All of the remedies permitted or available to a Party under this Agreement, or at law or in equity, shall be cumulative and not alternative, and invocation of any such right or remedy shall not constitute a waiver or election of remedies with respect to any other permitted or available right or remedy.

20. Attorneys' Fees. If a Party brings an action or proceeding (including, without limitation, any cross-complaint, counterclaim, or third-party claim) against another Party by reason of a Default, or otherwise to enforce rights or obligations arising out of this Agreement, the prevailing Party in such action or proceeding shall be entitled to recover from the other Party its costs and expenses of such action or proceeding, including reasonable attorneys' fees and costs, and costs of such action or proceeding, which shall be payable whether such action or proceeding is prosecuted to judgment. "Prevailing Party" within the meaning of this Section 20 shall include, without limitation, a Party who dismisses an action for recovery hereunder in exchange for payment of the sums allegedly due, performance of the covenants allegedly breached, or consideration substantially equal to the relief sought in the action.

21. Limitations on Actions. The City and Owner hereby renounce the existence of any third party beneficiary of this Agreement and agree that nothing contained herein shall be construed as giving any other person or entity third party beneficiary status. If any action or proceeding is instituted by any third party challenging the validity of any provisions of this Agreement, or any action or decision taken or made hereunder, the Parties shall cooperate in defending such action or proceeding.

22. Effect of Court Action. If any court action or proceeding is brought by any third party to challenge the Addendum to the EIR, the EIR, the Project Approvals and/or the Project, or any portion thereof, and without regard to whether Owner is a party to or real party in interest in such action or proceeding, then (a) Owner shall have the right to terminate this Agreement upon 30 days' notice in writing to City, given at any time during the pendency of such action or proceeding, or within 90 days after the final determination therein (including any appeals), irrespective of the nature of such final determination, and (b) any such action or proceeding shall constitute a permitted delay under Section 16.1 of this Agreement. Owner shall pay the City's cost and expense, including attorneys' fees and staff time incurred by the City in defending any such action or participating in the defense of such action and shall indemnify the City from any award of attorneys' fees awarded to the party challenging this Agreement, the Project Approvals or any other permit or Approval. The defense and indemnity provisions of this Section 22 shall survive Owner's election to terminate this Agreement. Notwithstanding anything to the contrary herein, Owner shall retain the right to terminate this Agreement pursuant to this Section 22 even after (a) it has vacated the Property and (b) its other rights and obligations under this Agreement have terminated.

23. Estoppel Certificate. Any Party may, at any time, and from time to time, deliver written notice to the other Party requesting such other Party certify in writing, to the knowledge of the certifying Party, (a) that this Agreement is in full force and effect and a binding obligation of the Parties, (b) that this Agreement has not been amended or modified either orally or in writing, and if so amended, identifying the amendments, (c) that the requesting Party is not in Default in the performance of its obligations under this Agreement, or if the requesting Party is in Default, the nature and amount of any such Defaults, (d) that the requesting Party has been found to be in compliance with this Agreement, and the date of the last determination of such compliance, and (e) as to such other matters concerning this Agreement as the requesting Party shall reasonably request. A Party receiving a request hereunder shall execute and return such certificate within 30 days following the receipt thereof. The City Manager shall have the right to execute any certificate requested by Owner hereunder. The City acknowledges that a certificate may be relied upon by transferees and Mortgagees.

24. Mortgagee Protection; Certain Rights of Cure.

24.1. Mortgagee Protection. This Agreement shall be superior and senior to any lien placed upon the Property, or any portion thereof, after the date of recordation of this Agreement in the San Mateo County, California Official Records, including the lien of any Mortgage. Notwithstanding the foregoing, no breach hereof shall defeat, render invalid, diminish or impair the lien of any Mortgage, and subject to Section 24.2 of this Agreement, all of the terms and conditions contained in this Agreement shall be binding upon and effective against any person (including any Mortgagee) who acquires title to the Property, or any portion thereof, by foreclosure, trustee's sale, deed in lieu of foreclosure or otherwise, and the benefits hereof will inure to the benefit of such party.

24.2. Mortgagee Not Obligated. Notwithstanding the provisions of Section 24.1 above, no Mortgagee or other purchaser in foreclosure or grantee under a deed in lieu of foreclosure, and no transferee of such Mortgagee, purchaser or grantee shall (a) have any obligation or duty under this Agreement to construct, or to complete the construction of, improvements, to guarantee such construction or completion or to perform any other monetary or nonmonetary obligations of Owner under this Agreement, and (b) be liable for any Default of Owner under this Agreement; provided, however, that a Mortgagee or any such purchaser, grantee or transferee shall not be entitled to use the Property in the manner permitted by this Agreement and the Project Approvals unless it complies with the terms and provisions of this Agreement applicable to Owner.

24.3. Notice of Default to Mortgagee; Right to Mortgagee to Cure. If the City receives notice from a Mortgagee requesting a copy of any notice of Default given Owner hereunder and specifying the address for service thereof, then City shall deliver to such Mortgagee, concurrently with service thereon to Owner, any notice of a Default or determination of noncompliance given to Owner. Each Mortgagee shall have the right (but not the obligation) for a period of 90 days after the receipt of such notice from City to cure or remedy, or to commence to cure or remedy, the Default claimed or the areas of noncompliance set forth in the City's notice. If the Default or such noncompliance is of a nature which can only be remedied or cured by such Mortgagee upon obtaining possession of the Property, or any portion thereof, such Mortgagee may seek to obtain possession with diligence and continuity through a receiver, by foreclosure or otherwise, and may thereafter remedy or cure the Default or noncompliance within 90 days after obtaining possession of the Property or such portion thereof. If any such Default or noncompliance cannot, with reasonable diligence, be remedied or cured within the applicable 90 day period, then such Mortgagee shall have such additional time as may be reasonably necessary to remedy or cure such Default or noncompliance if such Mortgagee commences a cure during the applicable 90 day period, and thereafter diligently pursues such cure to completion.

25. Assignment, Transfer, Financing.

25.1. Owner's Right to Assign. Subject to the terms of this Agreement, Owner shall have the right to transfer, sell and/or assign Owner's rights and obligations under this Agreement in conjunction with the transfer, sale or assignment of all or a partial interest in the Property. If the transferred interest consists of less than Owner's entire title to or interest in the Property, such transferee shall take such title or interest subject to all of the terms and provisions of this Agreement. Any transferee shall assume in writing the obligations of Owner under this Agreement and the Project Approvals arising or accruing from and after the effective date of such transfer, sale or assignment.

25.2. Financing. Notwithstanding Section 25.1 of this Agreement, Mortgages, sales and lease-backs and/or other forms of conveyance required for any reasonable method of financing requiring a security arrangement with respect to the development of the Property are permitted without the need for the lender to assume in writing the obligations of Owner under this Agreement and the Project Approvals. Further, no foreclosure, conveyance in lieu of foreclosure or other conveyance or transfer in satisfaction of indebtedness made in connection with any such financing shall require any further consent of the City, regardless of when such conveyance is made, and no such transferee will be required to assume any obligations of Owner under this Agreement.

25.3. Release Upon Transfer of Property.

25.3.1. Upon Owner's sale, transfer and/or assignment of all of Owner's rights and obligations under this Agreement in accordance with this Section 25, Owner shall be released from Owner's obligations pursuant to this Agreement which arise or accrue subsequent to the effective date of the transfer, sale and/or assignment.

25.3.2. Owner shall have the right to propose to the City alternative or substitute security for any of Owner's monetary obligations under this Agreement, including Owner's obligations to make the Recurring Public Benefit Payment pursuant to Section 7.1 of this Agreement. Such alternative or substitute security may consist of, without limitation, a letter of credit, a cash deposit and/or real property or personal property collateral acceptable to City in its sole discretion. If the City accepts any such alternative or substitute security, the monetary obligations of Owner for which such alternative or substitute security shall have been provided shall no longer constitute a covenant running with the land or otherwise be binding upon any owner of any portion of the Property, and shall instead be the personal obligation of Owner but with the City's recourse with respect to such monetary obligation limited to the alternative or substitute security. Owner shall pay for all City costs of considering

Owner's request for City's acceptance of such alternative or substitute security, including but not limited to cost of consultants retained to consider and advise the City Manager or City Council on such request.

26. Covenants Run With the Land. All of the provisions, agreements, rights, powers, standards, terms, covenants and obligations contained in this Agreement shall constitute covenants that shall run with the land comprising the Property, and the burdens and benefits of this Agreement shall be binding upon, and shall insure to the benefit of, each of the Parties and their respective heirs, successors, assignees, devisees, administrators, representatives and lessees, except as otherwise expressly provided in this Agreement.

27. Amendment.

27.1. Amendment or Cancellation. Except as otherwise provided in this Agreement, this Agreement may be cancelled, modified or amended only by mutual consent of the Parties in writing, and then only in the manner provided for in Government Code Section 65868 and Article 7 of Resolution No. 4159. Any amendment to this Agreement which does not relate to the term of this Agreement, the Vested Elements or the Conditions relating to the Project shall require the giving of notice pursuant to Government Code Section 65867, as specified by Section 65868 thereof, but shall not require a public hearing before the Parties may make such amendment.

27.2. Recordation. Any amendment, termination or cancellation of this Agreement shall be recorded by the City Clerk not later than 10 days after the effective date thereof or of the action effecting such amendment, termination or cancellation; provided, however, a failure of the City Clerk to record such amendment, termination or cancellation shall not affect the validity of such matter.

28. Notices. Any notice shall be in writing and given by delivering the notice in person or by sending the notice by registered or certified mail, express mail, return receipt requested, with postage prepaid, or by overnight courier to the Party's mailing address. The respective mailing addresses of the Parties are, until changed as hereinafter provided, the following:

City: City of Menlo Park
701 Laurel Street
Menlo Park, CA 94025
Attention: City Manager

With a
copy to: City Attorney
City of Menlo Park

1100 Alma Street, Suite 210
Menlo Park, CA 94025

Owner: Giant Properties LLC
c/o Facebook, Inc.
1 Hacker Way
Menlo Park, CA 94025
Attention: Director of Facilities

With a
copy to: Giant Properties LLC
c/o Facebook, Inc.
1 Hacker Way
Menlo Park, CA 94025
Attention: Real Estate Counsel

A Party may change its mailing address at any time by giving to the other Party ten (10) days' notice of such change in the manner provided for in this Section 28. All notices under this Agreement shall be deemed given, received, made or communicated on the date personal delivery is effected, or if mailed, on the delivery date or attempted delivery date shown on the return receipt.

29. Miscellaneous.

29.1. Negation of Partnership. The Parties specifically acknowledge that the Project is a private development, that no Party is acting as the agent of the other in any respect hereunder and that each Party is an independent contracting entity with respect to the terms, covenants and conditions contained in this Agreement. None of the terms or provisions of this Agreement shall be deemed to create a partnership between or among the Parties in the businesses of Owner, the affairs of the City, or otherwise, nor shall it cause them to be considered joint venturers or members of any joint enterprise.

29.2. Consents. Unless otherwise provided herein, whenever approval, consent or satisfaction (herein collectively referred to as an "approval") is required of a Party pursuant to this Agreement, such approval shall not be unreasonably withheld or delayed. If a Party shall not approve, the reasons therefor shall be stated in reasonable detail in writing. The approval by a Party to or of any act or request by the other Party shall not be deemed to waive or render unnecessary approval to or of any similar or subsequent acts or requests.

29.3. Approvals Independent. All Approvals which may be granted pursuant to this Agreement, and all Approvals or other land use approvals which have been or may be issued or granted by the City with respect to the Property, constitute

independent actions and approvals by the City. If any provisions of this Agreement or the application of any provision of this Agreement to a particular situation is held by a court of competent jurisdiction to be invalid or unenforceable, or if the City terminates this Agreement for any reason, such invalidity, unenforceability or termination of this Agreement or any part hereof shall not affect the validity or effectiveness of any Approvals or other land use approvals.

29.4. Not A Public Dedication. Nothing herein contained shall be deemed to be a gift or dedication of the Property, the Project, or any portion of either, to the general public, for the general public, or for any public use or purpose whatsoever. Owner shall have the right to prevent or prohibit the use of the Property or the Project, or any portion thereof, including common areas and buildings and improvements located thereon, by any person for any purposes inimical to the operation of a private, integrated Project as contemplated by this Agreement, except as dedications may otherwise be specifically provided in the Project Approvals.

29.5. Severability. Invalidation of any of the provisions contained in this Agreement, or of the application thereof to any person, by judgment or court order, shall in no way affect any of the other provisions hereof or the application thereof to any other person or circumstance and the same shall remain in full force and effect, unless enforcement of this Agreement as so invalidated would be unreasonable or grossly inequitable under all the circumstances or would frustrate the purposes of this Agreement. Notwithstanding the preceding, this Section 29.5 is subject to the terms of Section 16.2.

29.6. Exhibits. The Exhibits referred to herein are deemed incorporated into this Agreement in their entirety.

29.7. Entire Agreement. This written Agreement and the Project Approvals contain all the representations and the entire agreement between the Parties with respect to the subject matter hereof. Except as otherwise specified in this Agreement and the Project Approvals, any prior correspondence, memoranda, agreements, warranties or representations are superseded in total by this Agreement.

29.8. Construction of Agreement. The provisions of this Agreement shall be construed as a whole according to their common meaning and not strictly for or against any Party in order to achieve the objectives and purpose of the Parties. The captions preceding the text of each Article, Section, and Subsection are included only for convenience of reference and shall be disregarded in the construction and interpretation of this Agreement. Wherever required by the context, the singular shall include the plural and vice versa, and the masculine gender shall include the feminine or neuter genders, or vice versa. All references to "person" shall include, without limitation, any and all corporations, partnerships, limited liability companies or other legal entities.

29.9. Further Assurances; Covenant to Sign Documents. Each Party covenants, on behalf of itself and its successors, heirs and assigns, to take all actions and do all things, and to execute, with acknowledgment or affidavit if required, any and all documents and writings that may be necessary or proper to achieve the purposes and objectives of this Agreement.

29.10. Governing Law. This Agreement, and the rights and obligations of the Parties, shall be governed by and interpreted in accordance with the laws of the State of California.

29.11. Construction. This Agreement has been reviewed and revised by legal counsel for Owner and City, and no presumption or rule that ambiguities shall be construed against the drafting Party shall apply to the interpretation or enforcement of this Agreement.

29.12. Time. Time is of the essence of this Agreement and of each and every term and condition hereof. In particular, City agrees to act in a timely fashion in accepting, processing, checking and approving all maps, documents, plans, permit applications and any other matters requiring City's review or approval relating to the Project or Property.

30. Counterparts. This Agreement may be executed in any number of counterparts, each of which so executed shall be deemed an original, but all of which when taken together shall constitute but one Agreement.

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

“City”

CITY OF MENLO PARK, a municipal corporation of the State of California

By: _____
Mayor

Attest:

City Clerk

Approved as to Form:

By: _____
City Attorney

“Owner”

GIANT PROPERTIES, LLC, a Delaware limited liability company

By: _____

Name: _____

Title: _____

CERTIFICATE OF ACKNOWLEDGMENT

STATE OF CALIFORNIA)
)ss:
COUNTY OF SAN MATEO)

On _____, before me, _____, Notary Public, personally appeared _____, who proved to me on the basis of satisfactory evidence to be the person whose name is subscribed to the within instrument and acknowledged to me that he/she executed the same in his/her authorized capacity, and that by his/her signature on the instrument the person, or the entity upon behalf of which the person 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
My Commission expires: _____

STATE OF CALIFORNIA)
)ss:
COUNTY OF SAN MATEO)

On _____, before me, _____, Notary Public, personally appeared _____, who proved to me on the basis of satisfactory evidence to be the person whose name is subscribed to the within instrument and acknowledged to me that he/she executed the same in his/her authorized capacity, and that by his/her signature on the instrument the person, or the entity upon behalf of which the person 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
My Commission expires: _____

Exhibit A

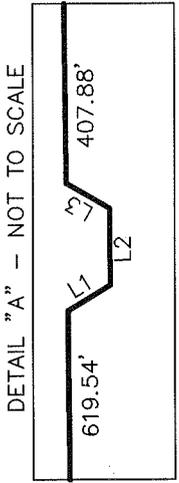
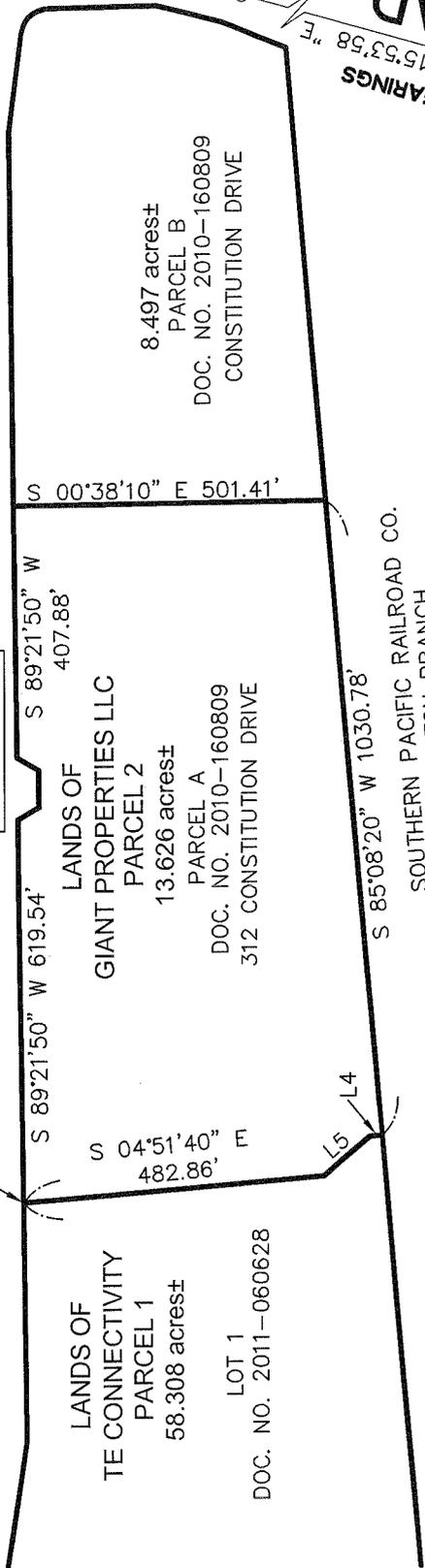
Site Plan of Property



HWY 84 - BAYFRONT EXPRESSWAY

P.O.B. GIANT PROPERTIES

SEE DETAIL "A"



LINE TABLE		
LINE	BEARING	LENGTH
L1	S 31°06'06" E	39.45'
L2	N 89°21'50" E	60.00'
L3	N 29°49'46" E	39.45'
L4	S 04°51'40" E	20.94'
L5	S 40°23'39" E	97.46'



K:\SUR1\100166.10\DWG\ILLALLA PLAT CITY EXHIBIT.DWG



4670 WILLOW RD
SUITE 250
PLEASANTON, CA 94588
925-396-7700
925-396-7799 (FAX)

Subject EXHIBIT A
GIANT PROPERTIES, LLC
 Job No. 20100166.10
 By RL Date 03/06/13 Chkd. WS
 SHEET 1 OF 1

Exhibit B

Legal Description of Property

LEGAL DESCRIPTION

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

PARCEL A:

PARCEL 2 AS SHOWN ON EXHIBIT "A" OF LOT LINE ADJUSTMENT AS EVIDENCED BY DOCUMENT RECORDED JANUARY 11, 2013 AS INSTRUMENT NO. 2013-6489 OF OFFICIAL RECORDS, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS;

BEING ALL OF PARCEL A, AS SAID PARCEL IS DESCRIBED IN THAT CERTAIN GRANT DEED, RECORDED ON DECEMBER 27, 2010 AS DOCUMENT NO. 2010-160809, SAN MATEO COUNTY RECORDS, ALSO 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, AND MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT THE INTERSECTION OF THE NORTHWESTERLY CORNER OF SAID PARCEL A 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 PARCEL A, THE FOLLOWING FIVE(5) COURSES:

- 1) NORTH 89° 21' 50" EAST, 619.54 FEET;
- 2) SOUTH 31° 06' 06" EAST, 39.45 FEET;
- 3) NORTH 89° 21' 50" EAST, 60.00 FEET;
- 4) NORTH 29° 49' 46" EAST, 39.45 FEET;
- 5) NORTH 89° 21' 50" EAST, 407.88 FEET; TO THE EASTERLY LINE OF SAID PARCEL A;

THENCE LEAVING SAID NORTHERLY LINE AND ALONG SAID EASTERLY LINE, SOUTH 00° 38' 10" EAST, 501.41 FEET TO THE SOUTHERLY LINE OF SAID PARCEL A;
THENCE LEAVING SAID EASTERLY LINE AND ALONG SAID SOUTHERLY LINE OF SAID PARCEL A, SOUTH 85° 08' 20" WEST, 981.15 FEET TO THE WESTERLY LINE OF SAID PARCEL A;
THENCE LEAVING SAID SOUTHERLY LINE AND ALONG THE SOUTHERLY LINE SAID LOT 1, SOUTH 85° 08' 20" WEST, 49.62 FEET;
THENCE LEAVING SAID SOUTHERLY LINE, NORTH 04° 51' 40" WEST, 20.94 FEET;
THENCE NORTH 40° 23' 39" WEST, 97.46 FEET;
THENCE NORTH 04° 51' 40" WEST, 51.62 FEET TO THE WESTERLY LINE OF SAID PARCEL A;
THENCE ALONG SAID WESTERLY LINE, NORTH 04° 51' 40" WEST, 431.24 FEET TO THE POINT OF BEGINNING.

PARCEL B:

A PORTION OF PARCEL 3 E, AS SAID PARCEL IS DESCRIBED IN THAT CERTAIN GRANT DEED, FILED FOR RECORD ON MARCH 27, 2002 AS DOCUMENT NUMBER 2002-059141 OF OFFICIAL RECORDS, SAN MATEO COUNTY AND BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT THE SOUTHEASTERLY CORNER OF SAID PARCEL; THENCE ALONG THE SOUTHERLY LINE OF SAID PARCEL, SOUTH 85° 08' 20" WEST, 736.25 FEET; THENCE LEAVING SAID SOUTHERLY LINE, NORTH 0° 38' 10" WEST, 501.41 FEET TO A POINT ON THE NORTHERLY LINE OF SAID PARCEL; THENCE ALONG THE NORTHERLY LINE OF SAID PARCEL NORTH 89° 21' 50" EAST, 604.95 FEET; THENCE CONTINUING ALONG SAID NORTHERLY LINE,

SOUTH 82° 24' 08" EAST, 162.24 FEET TO THE BEGINNING OF A TANGENT CURVE TO THE RIGHT; THENCE CONTINUING ALONG SAID NORTHERLY LINE AND ALONG SAID CURVE HAVING A RADIUS OF 45.00 FEET, THROUGH A CENTRAL ANGLE OF 81° 18' 03", AN ARC LENGTH OF 63.85 FEET TO THE EASTERLY LINE OF SAID PARCEL; THENCE ALONG THE EASTERLY LINE OF SAID PARCEL, SOUTH 1° 06' 05" EAST, 171.90 FEET; THENCE CONTINUING ALONG SAID EASTERLY LINE, SOUTH 14° 09' 17" WEST, 107.79 FEET; THENCE CONTINUING ALONG SAID EASTERLY LINE, SOUTH 22° 13' 35" WEST, 112.49 FEET TO THE POINT OF BEGINNING.

BEING THE PROPERTY DESCRIBED AS ADJUSTED PARCEL 3 E ON THAT CERTAIN APPROVAL OF LOT LINE ADJUSTMENT RECORDED FEBRUARY 6, 2007, INSTRUMENT NO. 2007-018809, OFFICIAL RECORDS.

PARCEL C:

EASEMENTS FOR THE PURPOSES PROVIDED FOR IN SECTIONS 6.1 AND 7.1 OF THE EASEMENT AGREEMENT AND COVENANTS RUNNING WITH THE LAND RECORD MARCH 15, 2007, INSTRUMENT NO. 2007-039705, OFFICIAL RECORDS.

APN: portion of APN 055-260-200 (Affects Parcel A); 055-260-210 (Affects Parcel A) and 055-260-220 (Affects Parcel B)

JPN: 055-26-260-12; 055-26-260-09 and 055-26-260-12.02