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# MEMORANDUM OF UNDERSTANDING

**By and Between**

## THE CITY OF MORGAN HILL

## "CITY"

**and**

## OAK MEADOW PLAZA, LLC, DR. STEVEN SPISAK AND RAELENE SPISAK AND DR. BILLY HUKILL AND DR. JULIANA HUKILL

## "DEVELOPERS"

**for the**

## SUNSET, EDMUNDSON, DE WITT AVENUES PROJECT

# MEMORANDUM OF UNDERSTANDING

THIS MEMORANDUM OF UNDERSTANDING ("MOU") is entered into as of the ____ day of _____, 2015, by and between the CITY OF MORGAN HILL (the "City") and OAK MEADOW PLAZA LLC, a California limited liability company ("Oak Meadow"), DR. BILLY HUKILL and DR. JULIANA HUKILL (the "Hukills"), and DR. STEVEN SPISAK AND RAELENE SPISAK (the "Spisaks"). Oak Meadow, the Hukills and the Spisaks are sometimes hereafter collectively referred to as the "Developers". For purposes of this MOU, the City and the Developers are sometimes referred to collectively as "the parties" or individually as "a party." The City and the Developers agree as follows:

## I. [§ 100] SUBJECT OF MOU

### A. [§ 101] Purpose and Limitations of this MOU

Developers collectively own 117.5 acres of land comprised of 11 separate parcels (the "Developers Parcels"). A small portion of that land (0.52 acres) is located within the City limits, but the majority is located in unincorporated Santa Clara County, California. The unincorporated parcels are located within the City's Sphere of Influence. Adjacent to the Developers Parcels is a City-owned parcel which includes a City water tank.

The purpose of this MOU is to establish a common understanding for the envisioned reconfigurations and title transfers of the Developers Parcels for the purpose of open space preservation, annexation and development. The parties agree that this MOU is non-binding and creates no obligations or vested development rights and that the performance of its provisions would require voluntary actions by the Developers and discretionary legislative actions by the City, the Local Agency Formation Commission ("LAFCO") and other governmental and regulatory agencies, which actions may or may not be taken.

Subject to the terms and conditions set forth below, Developers, as their interests may be, are willing (a) to pursue development of a concentrated number of single family residential units on a portion of the site which is proximate to existing subdivisions within the City; (b) to limit the number of housing units on other properties and locate them so as to minimize their visibility from public rights of way; (c) to establish permanent private open space easements over portions of certain parcels; and (d) to convey in fee title a certain part of one of Oak Meadow's Parcels on DeWitt to the City in exchange for the City's conveyance of a like amount of City property to Oak Meadow.

### B. [§ 102] The Site

The site (the "Site") is depicted on the Map of the Site (Attachment No. 1).

**1. [§ 102A] Parcels Comprising the Site.**

For purposes of this MOU, the Site consists of the following parts:

(a) Oak Meadow owns six parcels located on or near Sunset Road, being Lots 39 (portion), 40 (portion), 50, 51, 52 and 53 as depicted on the Map. The Hukills own a parcels depicted on the Map as Lot 48. The Spisaks own a parcel depicted on the Map as Lot 49. An approximately 66 acre portion of the Subject Property consisting of Lots 39 (portion), 40 (portion), 50, 51, 52 and 53 is sometimes collectively referred to as the "Sunset Property". A small portion (0.52 acres) of Lots 39 and 40 is already annexed to the City of Morgan Hill, and is within the City's Urban Growth Boundary, Urban Limit Line, and Urban Service Area. An approximately 25 acre portion of the Subject Property consisting of Lots 48 and 49 is sometimes collectively referred to as the "Edmundson Property". Oak Meadow also owns three parcels comprising approximately 29 acres and depicted on the Map as Lots 36, 37 and 38 (the "DeWitt Property").

(b) City owns the roughly 36 acre parcel depicted on the Map as portions of Lots 38, 39, 40 and 41 (the "City Parcel").

**2. [§ 102B] Reconfiguration of Site.**

Subject to the terms and conditions set forth in this MOU, the parties have indicated an interest in pursuing a reconfiguration of the Site as depicted on Attachment No. 2, regarding which the anticipated future segregated land areas are referred to hereinafter as "Lots". Such reconfiguration would require that:

(a) The City convey certain portions of the City Parcel (Lot 10) to Oak Meadow in exchange for conveyance of certain portions of Lot 7 of the DeWitt Property by Oak Meadow to the City, as more fully set forth in Section 201.

(b) The Developers establish private open space easements over certain portions of the Developers Parcels as more fully set forth in Section 202.

(c) The City grant to the applicable developers an access easement across the City Parcel (Lot 10) to benefit the restricted residential development on certain Developer Parcels (Lot 7, and if applicable, Lot 6) as more fully set forth in Section 203.

(d) Oak Meadow to complete a merger to merge Lots 7, 8 and 9 into a single parcel.

**D. [§ 103] The Project**

On April 19, 2006, the City amended it General Plan to designate Lot No. 1 as depicted on Attachment No. 2 to Single Family Low Density Residential and Lot No. 2 as depicted on Attachment No. 2 to Open Space, relocated its

Urban Growth Boundary and Urban Limit Line to include said Lot No. 1. Consistent with these prior actions of City, the project that the parties desire to explore and pursue (the "Project") includes the following:

(a) Reconfiguration of the Site as described in Section 102 and depicted on Attachment No. 2.

(b) Application by Oak Meadow for a pre-annexation zoning as "Single Family – R-1 12000 – Planned Development" on the portion of the Sunset Property depicted on Attachment No. 2 as Lot No. 1, including but not limited to a minimum of 40 units and a maximum of 48 units.

(c) Application by the City (at Developers' cost) to LAFCO to extend the City's Urban Service Area to the 19.99 acre portion of the Sunset Property depicted on Attachment No. 2 as Lot No. 1, consistent with the City's Infill Policy. It is the intent of the parties that the permanent private open space easements and other limitations on the portions of the Sunset Property annexed but not added to the City's Urban Service Area would provide the required community benefit for inclusion of the 19.99 acre portion of the Sunset Property in the Urban Service Area as "desirable infill" pursuant to City's General Plan and Zoning Code.

(d) Upon approval of the expansion of the City's Urban Service Area by LAFCO, application by Oak Meadow to the City for annexation of the Sunset Property, consistent with the City's Infill Policy.

(e) Application by Oak Meadow for residential unit development allotments pursuant to the RDCS process for the portion of the Sunset Property identified on Attachment No. 2 as Lot No. 1. Oak Meadow agrees that such application would include, among other things, a height restriction on all homes proposed to be constructed on the annexed and General Plan LDR-designated portion of what is currently Lot 51 so that the maximum elevation of those homes would not exceed the maximum elevation of any immediately adjacent homes on what is currently Lot 52 as measured from sea level.

(f) Construction of homes and associated permitted structures only below the 10% slope line on the Developer Parcels identified on Attachment No. 2 as Lot Nos. 3 and 4. It is understood and agreed between the parties that a material consideration of City's in being willing to consider approval of the Project would be the siting of structures on these two lots below the 10% slope line to minimize visibility of the development from public rights of way and preserve hillside open space.

It is the intent of the parties that, because Lot Nos. 3 and 4 are contemplated to be annexed into the City but not into the Urban Service Area, the construction of one home and associated structures on each of the said Lots Nos. 3 and 4 could be allowed, provided that the structures are located in the building envelopes indicated on

Attachment No. 2, and that open space easements are recorded over all portions of those lots outside the building envelopes.
Alternatively to developing a single home on each of Lot Nos. 3 and 4 while those Lots are outside the Urban Service Area, the parties agree that Developers may, at some future date, seek to annex into the City's Urban Service Area the portions of those Lots Nos. 3 and 4 which are below the 10% line and develop those annexed portions at residential densities and in manners consistent with the applicable zoning regulations at the time of development.

(g) Construction of only one home and associated permitted structures on each of the three Developers Parcels identified on Attachment No. 2 as Lot Nos. 5, 6 and 7 within the building envelopes designated on Attachment No. 2. It is agreed between the parties that a material consideration of City's being willing to consider approval of the Project would be the siting of structures on Lot Nos. 6 and 7 within their individual building envelopes to minimize visibility of the development from public rights of way and preservation of hillside open space.

Excluding Lot No. 5, regarding which Building Site Approval has already been obtained from the County of Santa Clara by Spisak, as part of this Developer covenant, the applicable Developer would ensure that City is timely provided a copy of any application to the County for a building permit for a new home on its Lot with sufficient opportunity to the City to review the permit and comment in advance of any action by the County of Santa Clara to issue a building permit.

The parties intend and envision that City would agree not to object to the construction of one home and associated structures on each of the said Lots, provided that the structures are located in the building envelopes indicated on Attachment No. 2, that the home on Lot 6 is not significantly visible from Edmundson Avenue, and that the home on the Lot No. 7 is not significantly visible from DeWitt Avenue and that private open space easements are recorded over all portions of Lots 5, 6 and 7 outside the building envelopes, over the entirety of Lot 8, and over the portion of Lot 9 above the 10% line, all as shown on Attachment No. 2.

(h) Application by the Hukills to the County of Santa Clara and a covenant by the Hukills to use their best reasonable efforts to obtain access to the home constructed on Lot No. 6 (as identified on Attachment No. 2) from DeWitt Avenue. The Hukills would represent to and covenant with the City that they would only seek access to Lot No. 6 from Edmundson Avenue if the County determines access from DeWitt Avenue is infeasible or otherwise will not permit it.

As part of this covenant, the Hukills would ensure that the City is provided timely information of any discussions with the County of Santa Clara relating to obtaining necessary access so the City is able to participate in those discussions as may be appropriate.

(i) Construction by Oak Meadow (and the Hukills if the County approves their access from DeWitt Avenue) of a driveway to be used for access to the residence of the homeowner(s) of Lot No(s). 7 (and 6, if applicable) and to be used for access by the City to the City's water tank located on Lot No. 10. Design and construction of the driveway and any electronic gate would require prior approval of the City Public Works Director and would be done at the sole cost of Oak Meadow (and the Hukills if the County approves their access from DeWitt Avenue).

The parties contemplate that the costs of maintaining of the driveway would be shared equitably by all property owners using the driveway as set forth in an access easement agreement recorded against all of the affected properties, whereby City would grant to each of the Lots using the driveway an ingress, egress and utility easement subject to the terms and conditions stated therein. Costs of maintaining the electronic gate would be borne by the affected property owners except for the City.

(j) In addition, the Developers agree that the following would be components of the Project, and receive credits in the Measure C competition as applicable:

a. The Project would have no gates at roadways;

b. Oak Meadow would provide trail easements across its private property per the City's Trail Master Plan (identified on Attachment No. 3) and as well as a trail easement from the City's water tank property southerly to Edmundson Avenue. In addition, Oak Meadow would provide a trail easement along Edmundson Avenue toward Community Park;

c. The Project would construct improvements, including the trail in accordance with the City's Trail Master Plan over said easements.

d. The Project would incorporate and construct trail heads into the development;

e. Clustering, open space, and the establishment of view sheds would be incorporated into design of 19.99 acre portion of Project within the Urban Service Area;

f. Development of design guidelines (discussing height, etc.);

g. Oak Meadow would dedicate Right-of-Way for the straightening of DeWitt Avenue per County Roads and Airports realignment project; and

h. Oak Meadow would relocate a major 10" water main currently without physical access for maintenance, to an accessible location under a paved street within the Project.

## II. [§ 200] PROPERTY TRANSFERS AND EASEMENTS

### A. [§ 201] Exchange of Portion of City Parcel for a Portion of DeWitt Parcel.

The parties also envision and intend that Oak Meadow would acquire from the City and the City would convey to Oak Meadow the portion of the City Parcel designated as Lot No. 10 on Attachment No. 2 in exchange for City's agreement to

acquire from Oak Meadow and Oak Meadow's agreement to convey to the City a portion of Oak Meadow's Parcel designated as Lot No. 7 on Attachment No. 2.

### B. [§ 202] Establishment of Private Open Space Easements.

The parties further envision and intend that the Developers would establish permanent private open space easements restricting the use of all of Lot 8, the shaded portions of Lots 2, 3, 4 and 9 (generally above the 10% slope line) and the shaded portions of Lot Nos. 5, 6 and 7 (located outside of the building envelopes) reflected on Attachment No. 2. The easements would generally prohibit construction of structures and prohibits grading beyond that which is necessary for normal hillside agricultural operations, provided that backyard landscaping and fences, and those uses permitted on private open space describe in Section 2.20.070.B.5 of the Santa Clara County Zoning Ordinance, would be allowed whether the open space was located in the City or in the unincorporated County.

Notwithstanding the fact that the open space easements are referred to herein as "permanent", the open space easements would provide that, in the event that Lot No. 1 is removed from the Urban Service Area after the easements are recorded, all of the open space easements on the Developer Parcels would terminate and be of no further force or effect.

### C. [§ 203] Grant of Access and Utility Easement from City.

Additionally, the parties envision and intend that City would convey, and Oak Meadow as the owner of Lot 7 (and the Hukills as the owner of Lot 6, if applicable) would acquire, without compensation to City an easement across City Parcel for the benefit of the owner of Lot No. 7 (and for the benefit of Lot 6, if applicable) for ingress, egress and utilities serving each applicable owner's single family; provided however that such easement would be extinguished if the County does not permit the use of said easement for said purposes.

## III. [§ 300] GENERAL PROVISIONS

### A. [§ 301] Applicable Law

The laws of the State of California shall govern the interpretation of this MOU.

### B. [§ 302] Conflicts of Interest

No member, official or employee of the City shall have any personal interest, direct or indirect, in this MOU, nor shall any such member, official or employee participate in any decision relating to this MOU which affects his personal interests or the interests of any corporation, partnership or association in which he is directly or indirectly interested.

Each Developer warrants that it has not paid or given, and will not pay or give, any third person any money or other consideration for obtaining this MOU.

C. **[§ 303] <u>Distinction from Regulatory Authority of the City and City</u>**

Developers understand and agree that this MOU does not and shall not be construed to indicate or imply that the City acting as a regulatory or permitting authority has hereby granted or is obligated to grant any approval or permit required by law for the development of the Project on the Site as contemplated by this MOU.

## IV [§ 400] EFFECTIVE DATE

The effective date of this MOU shall be the date when this MOU has been approved by action of the City Council, or if the City Council authorizes the City Manager to negotiate and execute this MOU, when the City Manager signs this MOU.

CITY OF MORGAN HILL, a municipal corporation

By: _____
Steve Tate, Mayor

Attest

By: _____
Irma Torrez, City Clerk

APPROVED AS TO FORM:

By: _____
City Attorney

OWNERS

Oak Meadow Plaza LLC,
a California limited liability company

By: _____
Bethany S. Liou, Managing Member

_____
Dr. Steven Spisak

_____
Raelene Spisak

_____
Dr. Billy Hukill

_____
Dr. Juliana Hukill