

EXHIBIT E

**FORM OF EASEMENTS AND COVENANTS**

RECORDING REQUESTED BY  
AND WHEN RECORDED MAIL TO:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
Attention: \_\_\_\_\_

*Space above this line for recorder's use*

**GRANT OF EASEMENTS AND RESTRICTIVE COVENANTS**

THIS GRANT OF EASEMENTS AND RESTRICTIVE COVENANTS ("**Agreement**"), dated \_\_\_\_\_, 20\_\_, is entered into by and between MONTEREY & THIRD ASSOCIATES, LLC, a California limited liability company ("**Developer**") and the CITY OF MORGAN HILL, a municipal corporation ("**City**").

RECITALS

WHEREAS, Developer has purchased, and intends to develop, the two properties identified in Attachment A attached hereto (separately, the "**Phase 1 Development Property**" and "**Phase 2 Development Property**," and together the "**Development Property**"); and

WHEREAS, the City is constructing, or has already constructed, a parking garage ("**Garage**"), on the property adjacent to the Development Property described in Attachment B attached hereto ("**Garage Property**"), which includes (or will include) an area ("**Trash Room**") generally identified on the site map attached hereto as Attachment C ("**Site Map**") intended for temporary storage and pickup of garbage, recycling and/or composting materials, as determined by the City from time to time in its sole discretion (together, "**Trash**"); and

WHEREAS, to satisfy certain City zoning obligations and obligations under Developer's Site Development Permit, and to provide public and pedestrian access and egress between the Garage Property and Monterey Road, Developer has agreed to grant a public access easement over a portion of the Development Property between the northeasterly side of the Development Property and Monterey Road, connecting to and extending from the City Access Area (as defined below), as generally identified on the Site Map ("**Public Easement Area**"), and the City has agreed to permit public and pedestrian access and egress between the Public Easement Area and the Garage through a portion of the Garage Property, as generally described in the Site Map ("**Public Access Area**"); and

WHEREAS, the City has agreed to grant Developer and (to the extent permitted by Developer) tenants of the Development Property ("**Tenants**" and, together with Developer, "**Developer Parties**"), non-exclusive easements (i) to use the Trash Room for Trash, (ii) to allow delivery and supply of the Development Property to and from Fourth Street through the Public Access Area and other portions of the Garage Property, as generally described in the Site Map (together, the "**Service and Trash Easement Area**"), and (iii) to bring Trash and Trash containers between the Trash Room and Development Property through the Service and Trash Easement Area; and

WHEREAS, the City will provide short-term public parking in the Garage for the non-exclusive use of the Developer.

## A G R E E M E N T

NOW, THEREFORE, City and Developer hereby agree as follows:

### **1. Grant of Public Access Easement.**

(a) Developer hereby grants to the City, for the benefit of City and the public, a perpetual non-exclusive easement, appurtenant to the Garage Property, on, over and through the Public Easement Area, for public and pedestrian access, ingress and egress between the Garage Property and Monterey Road ("**Public Access Easement**").

(b) Developer, with the City's written consent which shall not be unreasonably withheld, may determine the specific location of the Public Easement Area from time to time. The Public Easement Area must permit a reasonably direct path of travel between Monterey Road and the Public Access Area, in full compliance with all applicable Laws (as defined below). For purposes of this Agreement, "**Laws**" means all laws, regulations, and permits, including without limitation zoning, the Americans With Disabilities Act (including all implementing regulations, policies and interpretations) and the City's then-applicable general and specific plans.

(c) Notwithstanding the foregoing, the Developer Parties may install movable personal property (tables, chairs, etc.) within the Public Easement Area so long as public and pedestrian access through the Public Easement Area, including without limitation sufficient and proper access in full compliance with all applicable Laws, is not materially impaired.

**2. Restrictive Covenants re Public Access Area** . City hereby covenants with Developer, and its successors and assigns, that for so long as the Public Access Easement remains in full force and effect, and during such time as the operation of the Garage, the City will permit public and pedestrian access on, over and through the Public Access Area ("**Public Access Covenant**"). However, nothing shall restrict the City from temporarily closing or restricting access to the Public Access Area in the interests of public safety, in the exercise of its governmental rights or powers, to otherwise carry out its obligations under this Agreement, or for any lawful purpose.

**3. Grant of Service, Delivery and Trash Easements**. City hereby grants to Developer, for the benefit of the Developer Parties, for so long as the Public Access Covenant remains in full force and effect, non-exclusive easements, appurtenant to the Development Property, (i) to use up to 50% of the capacity of the Trash Room for disposal of Trash generated from the Development Property ("**Trash Room Easement**"), (ii) to allow delivery and supply of the Development Property to and from Fourth Street through the Service and Trash Easement Area ("**Service Easement**") and (iii) to bring Trash and Trash containers between the Trash Room and Development Property through the Service and Trash Easement Area ("**Trash Access Easement**") and together with the Trash Room Easement and Service Easement, the "**Service and Trash Easements**").

(a) The Developer Parties' use of the Trash Room and Service and Trash Easement Area shall be subject to such rules and regulations as the City or City's representative shall determine from time to time in its reasonable discretion. The foregoing includes procedures for calculating and allocating both physical space within the Trash Room, and applicable costs (including for Trash Room cleaning and maintenance, common Trash Room equipment, outside Trash collectors, etc.) by the Developer Parties and others. The Developer Parties' use of the Trash Room and the Service and Trash Easement Area shall not unreasonably interfere with other permitted users of the Trash Room, or public and pedestrian access to the Public Access Area, other portions of the Garage Property, or Fourth Street.

(b) Nothing shall restrict the City from temporarily closing or restricting access to or use of the Trash Room, or access to the Service and Trash Easement Area, in the interests of public safety, in the exercise of its governmental rights or powers, to otherwise carry out its obligations under this Agreement, or for any lawful purpose.

4. **Parking Covenant.** City hereby agrees that for 15 years after the Garage is open for full-scale parking operations (which the City expects to occur no later than December 1, 2015), it will use diligent commercial efforts to maintain a minimum of 25% of the spaces in the Garage available only for non-exclusive Short-Term Public Parking (“**Parking Covenant**”), and all Short-Term Public Parking spaces on the Garage’s first or second floors. For purposes of this Agreement. “**Short-Term Public Parking**” means less than three hours. However, nothing in this Agreement obligates the City to take any action to assure that users of the Short-Term Public Parking spaces will be customers or invitees of the Development Property.

(a) City retains sole discretion to determine all aspects of Garage operations, including without limitation: (i) days and hours of operation; (ii) whether (and if so how much) to charge for Garage parking; (iii) restricting or designating certain spaces for any specific user, group of users or use (e.g., EV spaces, electric charging spaces, handicapped spaces, long-term spaces, etc.), subject to the Parking Covenant); and (iv) to temporarily close or restrict access to any portion of the Garage or Garage Property in the interests of public safety, in the exercise of its governmental rights or powers, to otherwise carry out its obligations under this Agreement, or for any lawful purpose.

(b) Nothing herein limits any City right to operate, clean, maintain, repair, expand, contract, or otherwise alter the Garage. When doing so, the City will exercise reasonable efforts to maintain the availability of Short-Term Public Parking in the Garage in accordance with this Agreement. In the event of a temporary or permanent reduction in the number of overall Garage parking spaces, the City will have conclusively satisfied its obligation under this Section 4 if it does not reduce the number of available Short-Term Public Parking spaces by a greater percentage than the percentage reduction of overall Garage parking spaces.

5. **City May Act Through Master Tenant.** The City may, in its sole discretion, exercise rights and obligations relating to the Garage Property, including without limitation the Trash Room, through a master tenant for the retail portion of the Garage Property, which may be Developer or an entity affiliated with Developer (“**Master Tenant**”). If the Master Tenant is not the Developer or affiliated entity, the City shall provide Developer with written notice of any provisions of this Agreement it has elected to exercise through the Master Tenant

6. **Term of Agreement.** The terms of the Public Access Easement, Public Access Covenant, Service and Trash Easements, and Parking Covenant, shall be as otherwise provided in this Agreement. Upon termination of any such matters, if requested by either City or Developer, the other party will deliver an appropriate instrument, in recordable form, to evidence the termination.

7. **Development and Maintenance of Public Easement Area, Garage Property Access Area, Garage Easement Area and Trash Room.**

(a) Developer (directly or through Developer Tenants) shall construct all hardscape, landscape, flooring and other Public Easement Area improvements on the Development Property (together, “**Public Easement Area Improvements**”), maintain, operate, insure, protect, repair and replace (together, “**Maintain**”) the Public Easement Area and all Public Easement Area Improvements and personal property located thereon, and conduct any permitted operations within the Public Easement Area, in compliance with all applicable Laws, and in good and clean order, condition and repair in conformity with customary commercial standards, but in no event less than standards maintained by comparable business operations in the Downtown Morgan Hill Area, at its sole cost and expense.

(b) To the greatest extent permitted by law, City shall have no liability or responsibility to install, locate, or construct or any Public Easement Area Improvements or personal property on the

Development Property or Public Easement Area, or Maintain the Development Property, Public Easement Area, or Public Easement Area Improvements or personal property located thereon.

(c) In any master lease with Master Tenant ("**Master Lease**"), the City may require that the Master Tenant reasonably coordinate all hardscape, landscape, flooring and other Public Access Area improvements and Service and Trash Easement Area improvements (together, "**Garage Property Improvements**") with the Public Easement Area and Public Easement Area Improvements, and Maintain the Garage Property Improvements, the Public Access Area and Service and Trash Easement Area, in accordance with all applicable Laws and this Agreement, at its sole cost and expense. At all such times where there is no Master Tenant, the City shall perform the obligations of this Section 7(c). Notwithstanding the foregoing, neither Master Tenant nor the City shall be required to modify any Garage Property Improvements, or construct any new or different Garage Property Improvements, to coordinate with Public Easement Area Improvements constructed after this Agreement is recorded.

## **8. Indemnity and Insurance.**

(a) Developer shall defend, indemnify and hold harmless the City, Master Tenant, and their officers, directors, officials, employees, contractors, vendors, suppliers, and representatives (together, "**City Indemnitees**") from and against any and all liability, damage, expense (including reasonable attorneys' fees and expenses), causes of action, suits, claims or judgments suffered by the City Indemnitees arising from personal injury, death or property damage and occurring from the exercise by the Developer and Developer Parties of their rights hereunder, the breach of any provision hereof by any Developer Party, or the negligence or willful misconduct of any Developer Party.

(b) The City shall provide in any Master Lease that the Master Tenant shall defend, indemnify and hold harmless the Developer, Developer Tenants, and their officers, directors, officials, employees, contractors, vendors, suppliers, and representatives (together, "**Developer Indemnitees**") from and against any and all liability, damage, expense (including reasonable attorneys' fees and expenses), causes of action, suits, claims or judgments suffered by the Developer Indemnitees arising from personal injury, death or property damage and occurring from the exercise by the City and Master Tenant (together, "**City Parties**") of their rights hereunder, the breach of any provision hereof by any City Party, or the negligence or willful misconduct of any City Party. At all such times where there is no Master Tenant, the City shall perform the obligations of this Section 8(b).

(c) Developer or its Tenants shall carry insurance on terms and conditions and in amounts as is reasonably required by City from time to time and with insurers reasonably acceptable to City and within commonly applicable industry standards for the type of operation, covering the use by any person of the Public Easement Area, and use by the Developer Parties, of the Trash Room and the Service and Trash Easement Area. The liability insurance shall name the City and Master Tenant (if any) as additional insureds.

(d) Similarly, Master Tenant (or if none, City) shall carry insurance on terms and conditions and in amounts as is reasonably required by Developer from time to time and with insurers reasonably acceptable to Developer and within commonly applicable industry standards for the type of operation, covering the use by any person of the Public Access Area, Trash Room and Service and Trash Easement Area. The liability insurance shall name the Developer and Tenants as additional insureds.

(e) Developer and City shall provide (or cause to be provided) the other with annual Certificates of Insurance as evidence that the required insurance is in effect.

**9. Applicability of Restrictions; Successors and Assigns.** All of the limitations, easements, uses, obligations, covenants, conditions and restrictions stated in this Agreement shall be enforceable as equitable servitudes and covenants running with the land, and shall be binding on and inure to the benefit of the parties and their successors and assigns. While Developer may permit one or more Tenants to exercise its rights and obligations under this Agreement, only a fee owner shall be considered a successor or assigns for purposes of Section 10 below.

**10. Amendments, etc.** This Agreement may be amended, altered, extended, waived, changed or terminated, or the parties may make consents relating hereto, only by a writing executed by the City and Developer, and their successors and assigns. In the event that fee title to the Development Property or Public Easement Area is divided, all fee owners must approve.

**11. Miscellaneous.** All of the recitals of and Attachments to this Agreement, and the defined terms set forth therein, are incorporated into and made a part of this Agreement by this reference. If any provision of this Agreement or any application thereof is held to be invalid, illegal or unenforceable, the validity, legality and enforceability of other provisions of this Agreement or of any other application of such provision shall not be affected thereby. The agreements contained herein shall not be construed in favor of or against any party, but shall be construed as if all parties prepared this Agreement. The waiver by any party of a right or remedy hereunder shall not be deemed to be a waiver of any other right or remedy or of any subsequent right or remedy of the same kind. This Agreement may be executed in any number of counterparts, each of which shall be deemed an original but all of which taken together shall constitute one instrument. This Agreement shall be governed by, and construed and enforced in accordance with, the internal laws of the State of California.

**DEVELOPER:**

MONTEREY & THIRD ASSOCIATES, LLC, a California  
limited liability company

By: *[form document – do not execute]*

Name: Kenneth Rodrigues, Sr.

**[SIGNATURE MUST BE NOTARIZED]**

Title: Manager

By: *[form document – do not execute]*

Name: Don Imwalle, Jr.

**[SIGNATURE MUST BE NOTARIZED]**

Title: Manager

**CITY:**

CITY OF MORGAN HILL, a municipal corporation

Dated: \_\_\_\_\_, 20\_\_

By: FORM – DO NOT SIGN

Name:

Title:

## ACKNOWLEDGEMENT

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached and not the truthfulness, accuracy, or validity of that document.

STATE OF CALIFORNIA )

COUNTY OF \_\_\_\_\_ )

On \_\_\_\_\_, 20\_\_, before me, \_\_\_\_\_, Notary Public, personally appeared \_\_\_\_\_, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature \_\_\_\_\_ (Seal)

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached and not the truthfulness, accuracy, or validity of that document.

STATE OF CALIFORNIA )

COUNTY OF \_\_\_\_\_ )

On \_\_\_\_\_, 20\_\_, before me, \_\_\_\_\_, Notary Public, personally appeared \_\_\_\_\_, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature \_\_\_\_\_ (Seal)

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached and not the truthfulness, accuracy, or validity of that document.

STATE OF CALIFORNIA )

COUNTY OF \_\_\_\_\_ )

On \_\_\_\_\_, 20\_\_\_\_, before me, \_\_\_\_\_, Notary Public, personally appeared \_\_\_\_\_, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature \_\_\_\_\_ (Seal)



# CERTIFICATE OF ACCEPTANCE

## (Easements and Covenants)

This is to certify that the interest in real property conveyed by the deed or grant dated \_\_\_\_\_, 2015, from MONTEREY & THIRD ASSOCIATES, LLC, a California limited liability company (“**Grantor**”) to the CITY OF MORGAN HILL, a California municipal corporation (“**Grantee**”), is hereby accepted by the undersigned officer or agent on behalf of the Grantee pursuant to authority conferred by Resolution No. \_\_\_\_\_, dated \_\_\_\_\_, 2015, and the Grantee consents to recordation thereof by its duly authorized officer.

Date: \_\_\_\_\_, 2015`

## “Grantee”

CITY OF MORGAN HILL, a  
California municipal corporation

Steve Rymer, City Manager

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California )  
 ) ss

County of \_\_\_\_\_)

On \_\_\_\_\_, before me, \_\_\_\_\_,  
(Name of Notary)

notary public, personally appeared \_\_\_\_\_ who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

(Notary Signature)

ATTACHMENT A TO EASEMENTS AND COVENANTS

**DEVELOPMENT PROPERTY**

**Phase 1 Developer Property**

*[to be inserted]*

**Phase 2 Developer Property**

*[to be inserted]*

ATTACHMENT B TO EASEMENTS AND COVENANTS

**GARAGE PROPERTY**

*[to be inserted]*

ATTACHMENT C TO EASEMENTS AND COVENANTS

**SITE MAP**

*[to be inserted]*

