

ORDINANCE NO. 11-362

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF LOS ALTOS APPROVING A DEVELOPMENT AGREEMENT BETWEEN THE CITY OF LOS ALTOS AND THE JEFFREY A. MORRIS GROUP, INC. FOR THE PROPERTY LOCATED AT 230 FIRST STREET AND 400 MAIN STREET, LOS ALTOS, CALIFORNIA

THE CITY COUNCIL OF THE CITY OF LOS ALTOS DOES HEREBY ORDAIN AS FOLLOWS:

SECTION I. RECITALS

A. Pursuant to the City of Los Altos ("City") Resolution No. 2008-39 which sets forth the procedures and sets fees for the processing of a development agreement pursuant to California Government Code sections 65864 through 65869.5 ("State Law"), the Jeffrey A. Morris Group, Inc., a California corporation, ("Developer"), has requested a development agreement to govern construction of its project to be located on the City-owned property located at 230 First Street and 400 Main Street, Los Altos, California (the "Project").

B. A development agreement (the "Development Agreement") between the City of Los Altos and the Developer has been negotiated and prepared for the Project.

C. In accordance with the California Environmental Quality Act ("CEQA"), the City prepared a Mitigated Negative Declaration and a Mitigation Monitoring Program for the Project. The Mitigated Negative Declaration was circulated from December 15, 2010 to January 25, 2011.

D. A public hearing on the proposed Mitigated Negative Declaration and Development Agreement was held before the Planning Commission on January 6, 2011, for which public notice was given as provided by law and at which all persons desiring to be heard were given an opportunity to be heard, and following the hearing, the Planning Commission recommended adoption of the Mitigated Negative Declaration and approval of the Development Agreement.

E. A public hearing on the Mitigated Negative Declaration and Development Agreement was held before the City Council on January 25, 2011, for which public notice was given as provided by law, and at which all persons desiring to be heard were given an opportunity to be heard. The City Council has duly considered all testimony received, both oral and written.

SECTION II. FINDINGS AND DETERMINATIONS

Therefore, on the basis of the foregoing Recitals and the specific conclusions set forth below, which are based upon substantial evidence in the entire record, the City Council finds and determines that:

1. The Development Agreement is consistent with the objectives, policies, general land uses and programs specified and contained in the City's General Plan.
2. The City has taken all steps required by State Law and by CEQA in order to approve the Development Agreement.

SECTION III. APPROVAL

The City Council hereby approves entering into the Development Agreement and authorizes the Mayor to execute the Development Agreement between the City of Los Altos and the Jeffrey A. Morris Group, Inc., a copy of which is attached hereto as Exhibit "A."

SECTION IV. EFFECTIVE DATE

This Ordinance shall take effect and be in full force thirty (30) days from and after its adoption, and on that same date, the Development Agreement shall take effect.

SECTION V. RECORDATION

Not later than ten (10) days after the City's execution and acknowledgment of the Development Agreement, the City Clerk shall submit the Development Agreement to the County Recorder for recordation.

The foregoing ordinance was duly and regularly introduced at a meeting of the City Council of the City of Los Altos on January 25, 2011 and was thereafter, at a regular meeting held on April 12, 2011 passed and adopted by the following vote:

AYES: PACKARD, CARPENTER, FISHPAW, SATTERLEE
NOES: NONE
ABSTAIN: NONE
ABSENT: CASAS

Attest:



Lee Price, MMC, CITY CLERK

Date: 4/25/11



Ronald D. Packard, MAYOR

EXHIBIT "A"
to Ordinance No. 2011-362

DEVELOPMENT AGREEMENT

THIS AGREEMENT REGARDING PROPOSED DEVELOPMENT (this "Agreement") is made as of January 25, 2011, by and between The City of Los Altos, a municipal corporation of the State of California ("City"), and The Jeffrey A. Morris Group, Inc., a California corporation, or its assignee ("Developer"); individually, a "Party", and collectively, the "Parties."

R E C I T A L S

A. The City is the owner of that certain real property located at First and Main Streets in the City of Los Altos, California, as more particularly described in Exhibit A attached hereto and incorporated herein (the "Property").

B. The City has entered into that certain Option Agreement with Developer dated as of September 15, 2010 ("Option Agreement") regarding Developer's proposed purchase and development of the Property.

C. The City has agreed in the Option Agreement to grant Developer an option to purchase the Property (the "Option") and, upon Developer's exercise of the Option Developer shall have agreed to purchase the Property, for the purpose of developing a mixed-use commercial building (the "Building") on the Property, together with parking and related exterior improvements (collectively, the "Project").

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as set forth below.

1. Site Plan. City and Developer agree that the Project will be situated approximately as shown on the preliminary site plan attached hereto as Exhibit B.

2. Public Benefits of Project. The City and Developer have entered into certain discussions regarding the proposed Project and its Improvements, with reference to the proposed utilization of the Property, and the public benefits contemplated to obtain from the proposed development.

- A. High quality architectural project at key entry into downtown Los Altos;
- B. Extension of retail development along First Street frontage in support of the City's Downtown Design Plan, the recently adopted retail zoning and vision for First Street, and the First Street streetscape improvements currently being planned; and
- C. Construction of Developer's pro-rata share of property frontage streetscape improvements.

3. Specific Uses of Portions of the Project. Uses permitted at the Project shall consist of those uses identified in Municipal Code Chapter 14.48 - Commercial Retail Sales District.

4. Parking. The Development Approvals shall provide that the parking ratios for the Project shall be no more, and no less, than as provided in Exhibit B. Exhibit B identifies twelve (12) parking stalls which are designated as two rows of six (6) stalls each and are designated as "Tandem Parking". The Tandem Parking is located behind a row of six (6) parking stalls. If Tandem Parking

is pursued in the final design plans, these Tandem Parking spaces shall be dedicated to employee parking as determined pursuant to a parking plan approved through the Project design review process.

5. Frontage Improvements. Developer agrees that it shall be responsible for performing improvements fronting the Property, to the extent required in connection with the City's approval process for the Project. The City agrees that, as a condition of Developer's obligation, detailed plans and specifications and scope of work for such offsite improvements will be developed by the City and provided to Developer as part of the City's formal project approval process of the overall Project (i.e., so that Developer may make an informed decision regarding the time and cost of such offsite improvements as part of Developer's overall approval of the Project pursuant to the terms and conditions of the Purchase Agreement).

Developer acknowledges that under current zoning no structure shall exceed a maximum height of thirty (30) feet, unless a development incentive is granted to construct a taller building pursuant to Municipal Code Chapter 14.48 - Commercial Retail Sales District. The ground floor of the Building shall have a minimum interior ceiling height of twelve (12) feet to accommodate retail use, shall be limited to either retail or restaurant uses pursuant to the Commercial Retail Sales District zoning, and the floor level shall be no more than one (1) foot above sidewalk level.

6. Project Subject to City Approval. Notwithstanding that the City is the seller of the Property and has an interest in promoting the sale and development thereof, Developer agrees and acknowledges that the Project is subject to the standard Community Development Department review and approval process with final approval by the City Council, as more particularly set forth in the Option Agreement. Accordingly, Developer agrees that the City does not guaranty that it will approve a Project satisfying the requirements set forth in this Agreement; instead, such requirements are provided in order to establish the minimum "Project Approvals" (as defined in the Purchase Agreement) that would be acceptable to Developer in its capacity as "Buyer" under the Purchase Agreement. Likewise, City agrees that the final Project Approvals remain subject to Developer's approval, in its sole and absolute discretion, under the Purchase Agreement, and this Agreement shall not oblige Developer to approve Project Approvals satisfying the requirements of this Agreement if Developer disapproves of the same pursuant to the Purchase Agreement.

7. Development of the Project.

A. Cost of Construction. If and when Developer exercises the Option and the Closing occurs under the Option Agreement, all costs of site preparation, obtaining necessary easements, demolition, planning, designing and constructing the Improvements and developing the Project on the Property shall be borne solely by Developer.

B. Performance of Construction. After commencement of construction of the Project, Developer shall undertake its best efforts to diligently pursue the Project to completion, and all work of Improvements shall be performed in a good and workmanlike manner, substantially in accordance with the plans and specifications for the Project approved by the City and per the terms contained in the Option to Purchase Agreement dated September 15, 2010.

C. Compliance with Laws. Upon commencement of construction of the Project, Developer shall carry out the work of Improvements in conformity with the final Development Approvals and all applicable laws, including all applicable state labor laws and standards; the City's

zoning and development standards; building, plumbing, mechanical and electrical codes; all other provisions of the City Municipal Code; and all applicable disabled and handicapped access requirements, including the Americans With Disabilities Act, 42 U.S.C. Section 12101, *et seq.*, Government Code Section 4450, *et seq.*, Government Code Section 11135, *et seq.*, and the Unruh Civil Rights Act, Civil Code Section 51, *et seq.*

D. Taxes and Assessments. During its period of ownership of the Project, Developer shall pay prior to delinquency all ad valorem real estate taxes and assessments on the Project, subject to Developer's right to contest in good faith any such taxes.

8. Relationship Between City and Developer. It is hereby acknowledged that the relationship between City and Developer is not that of a partnership or joint venture and that City and Developer shall not be deemed or construed for any purpose to be the agent of the other. Accordingly, except as expressly provided herein or in the Attachments hereto, City shall have no rights, powers, duties or obligations with respect to the development, operation, maintenance or management of the Property or the Project. Developer agrees to indemnify, hold harmless and defend City and City Parties from any Claims made against City arising from a claimed relationship of partnership or joint venture between City and Developer with respect to the development, operation, maintenance or management of the Property or the Project.

9. Computation of Time. The time within which any act is to be done under this Agreement is computed by excluding the first day (such as the day escrow opens), and including the last day, unless the last day is a holiday or Saturday or Sunday, and then that day is also excluded. The term "holiday" shall mean all holidays as specified in Sections 6700 and 6701 of the California Government Code. If any act is to be done by a particular time during a day, that time shall be Pacific Time Zone time.

10. Nonliability of Officials and Employees of City and Developer. No member, official or employee of City shall be personally liable to Developer, or any successor in interest, in the event of any Default by City or for any amount which may become due to Developer or its successors, or on any obligations under the terms of this Agreement. Developer hereby waives and releases any claim it may have against the members, officials or employees of City with respect to any Default by City or for any amount which may become due to Developer or its successors, or on any obligations under the terms of this Agreement.

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

12. Legal Advice. Each party represents and warrants to the other the following: they have carefully read this Agreement, and in signing this Agreement, they do so with full knowledge of any right that they may have; they have received independent legal advice from their respective legal counsel as to the matters set forth in this Agreement, or have knowingly chosen not to consult legal counsel as to the matters set forth in this Agreement; and, they have freely signed this Agreement without any reliance upon any agreement, promise, statement or representation by or on behalf of the other party, or their respective agents, employees, or attorneys, except as specifically set forth in this Agreement, and without duress or coercion, whether economic or otherwise.

13. Enforced Delay; Extensions of Time for Performance. Subject to the limitations set forth below, performance by either party hereunder shall not be deemed to be in Default, and all performance and other dates specified in this Agreement shall be extended, where delays or Defaults are due to: war; insurrection; strikes; lockouts; riots; floods; earthquakes; fires; casualties; acts of God; acts of the public enemy; epidemics; quarantine restrictions; freight embargoes; governmental restrictions or priority; litigation; unusually severe weather; or acts or omissions of the other party. An extension of time for any such cause shall be for the period of the enforced delay and shall commence to run from the time of the commencement of the cause (but in any event shall not exceed a cumulative total of one hundred twenty (120) days), if Notice by the party claiming such extension is sent to the other party within thirty (30) days of the commencement of the cause. Times of performance under this Agreement may also be extended in writing by the mutual agreement of City and Developer. Developer expressly agrees that adverse changes in economic conditions, either of Developer specifically or the economy generally, changes in market conditions or demand, and/or Developer's inability to obtain financing or other lack of funding to complete the work of Improvements shall not constitute grounds of enforced delay pursuant to this Section 14. Developer expressly assumes the risk of such adverse economic or market changes and/or inability to obtain financing, whether or not foreseeable as of the Date of Agreement.

14. Remedies. It is acknowledged by the parties that City would not have entered into this Agreement if City were to be liable in damages under, or with respect to, this Agreement or the application thereof. City shall not be liable in damages to Developer, or to any assignee, transferee or any other person, and Developer covenants not to sue for or claim damages. Developer's sole and exclusive remedy in the event of City's default shall be the remedy of specific performance. Upon Developer's material default, City shall be entitled to initiate legal proceedings to specifically enforce this Agreement or to terminate it. City may terminate this Agreement due to default without legal action.

15. Notices, Demands and Communications Between the Parties. Any approval, disapproval, demand, document or other notice ("Notice") which either party may desire to give to the other party under this Agreement must be in writing and may be given by any commercially acceptable means, including via facsimile or via overnight courier, to the party to whom the Notice is directed at the address of the party as set forth below, or at any other address as that party may later designate by Notice.

To City: City of Los Altos
One North San Antonio Road
Los Altos, CA 94022
Attention: City Manager
Facsimile: (650) 947-2731

With a copy to: Berliner Cohen
10 Almaden Boulevard, 11th Floor
San Jose, CA 95113-2233
Attention: Jolie Houston, Esq.
Facsimile: (408) 998-5388

To Developer: THE JEFFREY A. MORRIS GROUP, INC.
2500 Sand Hill Road, Suite 240
Menlo Park, CA 94025
Attention: Jeffrey A. Morris
Fax: (650) 854-2594
Phone: (650) 854-1123

Any written notice, demand or communication shall be deemed received immediately if delivered by hand, on the third day from the date it is postmarked if delivered by first class mail, postage prepaid, upon receipt of verification of transmission if sent via facsimile provided a copy is sent the same day via first-class mail, and on the next business day if sent via nationally recognized overnight courier. Notices sent by a party's attorney on behalf of such party shall be deemed delivered by such party.

16. City Approvals and Actions. Whenever a reference is made herein to an action or approval to be undertaken by City, the City Manager or his or her designee is authorized to act on behalf of the City unless specifically provided otherwise or the context should require otherwise.

17. Cooperation. Each party agrees to cooperate with the other in this transaction and, in that regard, shall execute any and all documents which may be reasonably necessary, helpful, or appropriate to carry out the purposes and intent of this Agreement.

18. Time for Acceptance by City. This Agreement, when executed by Developer and delivered to City, must be authorized, executed and delivered by City on or before thirty (30) days after signing and delivery of this Agreement by Developer or this Agreement shall be void, except to the extent that Developer shall consent in writing to a further extension of time for the authorization, execution and delivery of this Agreement.

19. Governing Law. This Agreement shall be governed by and construed under the laws of the State of California without regard to choice of law rules.

20. Successors and Assigns. Each and all of the covenants and conditions of this Agreement will inure to the benefit of and be binding upon the successors in interest of City and the successors, heirs, representatives and assigns of Developer. City acknowledges that Developer has certain assignment rights under the Option Agreement, and agrees that any assignment of the Option Agreement shall automatically effect an assignment of the rights of "Developer" hereunder to the assignee under the Option Agreement. As used in this Section, "successors" means successors to the Parties' interest in the Property, successors to all or substantially all of the Parties' assets, and successors by merger or consolidation.

21. Severability. If any phrase, clause, sentence, paragraph, section, article or other portion of this Agreement is held by any court of competent jurisdiction to be illegal, null or void or against public policy, the remaining portions of this Agreement will not be affected thereby and will remain in force and effect to the fullest extent permissible by law.

22. Entire Agreement. This Agreement constitutes the entire agreement between the Parties pertaining to the subject matter of this Agreement, and all prior and contemporaneous agreements, representations, negotiations and understandings of the Parties, oral or written, are hereby superseded and merged herein. No modification, waiver, amendment, discharge or change of this

Agreement shall be valid unless it is in writing and signed by the Party against which the enforcement of such modification, waiver, amendment, discharge or change is or may be sought.

23. Counterparts. This Agreement may be executed in counterparts, each of which, when taken together, will constitute a fully executed original.

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

CITY:

CITY OF LOS ALTOS,

a municipal corporation of the State of California

By: _____

Print Name: _____

Title: _____

DEVELOPER:

THE JEFFREY A. MORRIS GROUP, INC.,

a California corporation

By: _____

Jeffrey A. Morris, President

EXHIBIT A

LEGAL DESCRIPTION OF THE PROPERTY

LEGAL DESCRIPTION

Real property in the City of LOS ALTOS, County of SANTA CLARA, State of CALIFORNIA, described as follows:

PARCEL ONE:

BEGINNING AT A POINT ON THE SOUTHWESTERLY LINE OF FIRST STREET, DISTANT THEREON NORTH 32° 03' WEST 85 FEET FROM THE SOUTHWESTERLY PROLONGATION OF THE NORTHWESTERLY LINE OF MAIN STREET, AS SHOWN ON MAP NO. 1 OF LOS ALTOS, WHICH MAP WAS FILED IN THE OFFICE OF THE RECORDER OF THE COUNTY OF SANTA CLARA, STATE OF CALIFORNIA IN BOOK "L" OF MAPS, AT PAGE 99; THENCE FROM SAID POINT OF BEGINNING NORTH 32° 03' WEST, ALONG THE SOUTHWESTERLY LINE OF FIRST STREET 200 FEET; THENCE SOUTH 57° 57' WEST 75.00 FEET; THENCE SOUTH 32° 03' EAST 200 FEET; THENCE NORTH 75° 57' EAST 75.00 FEET TO THE POINT OF BEGINNING.

PARCEL TWO:

BEGINNING AT THE NORTHWESTERLY TERMINUS OF THAT CERTAIN COURSE SHOWN AS HAVING A BEARING OF SOUTH 32° 01' 04" EAST AND A DISTANCE OF 200.00 FEET UPON SHEET 5 OF THAT CERTAIN MAP ENTITLED, "RECORD OF SURVEY, FOOTHILL EXPRESSWAY, ETC.," WHICH MAP WAS FILED FOR RECORD IN THE OFFICE OF THE RECORDER OF THE COUNTY OF SANTA CLARA, STATE OF CALIFORNIA ON MARCH 12, 1964 IN BOOK 175 OF MAPS, AT PAGES 5 TO 9 INCLUSIVE; THENCE FROM SAID POINT OF BEGINNING SOUTH 32° 01' 04" EAST 283.18 FEET TO AN ANGLE POINT IN THE BOUNDARY LINE OF THAT CERTAIN PARCEL OF LAND SHOWN AND DESIGNATED AS PARCEL KK UPON THE AFORESAID MAP; THENCE ALONG THE EASTERLY LINE OF SAID PARCEL KK THE FOLLOWING COURSES AND DISTANCES: SOUTH 80° 58' 03" WEST 23.63 FEET; THENCE ALONG THE ARC OF A CURVE TO THE RIGHT, WITH A RADIUS OF 40.00 FEET, THROUGH A CENTRAL ANGLE OF 65° 18' 24" AN ARC DISTANCE OF 45.59 FEET; THENCE NORTH 33° 43' 33" WEST 204.09 FEET; THENCE NORTH 32° 02' 28" WEST TO THE POINT OF INTERSECTION OF THE EASTERLY LINE OF SAID PARCEL KK WITH THE SOUTHWESTERLY PROLONGATION OF THE NORTHWESTERLY LINE OF THAT CERTAIN PARCEL OF LAND DESCRIBED IN THE DEED TO GEORGE B. RAMSEY, ET UX, WHICH DEED WAS FILED FOR RECORD IN THE OFFICE OF THE ABOVE SAID RECORDER ON OCTOBER 8, 1946 IN BOOK 1391 OF OFFICIAL RECORDS, PAGE 158; THENCE LEAVING SAID EASTERLY LINE OF SAID PARCEL KK AND ALONG THE SAID SOUTHWESTERLY PROLONGATION NORTHEASTERLY TO THE POINT OF BEGINNING.

PARCEL THREE:

AN EASEMENT FOR ROADWAY PURPOSES AND INGRESS AND EGRESS, DESCRIBED AS FOLLOWS:

BEGINNING AT A POINT IN THE SOUTHWESTERLY LINE OF FIRST STREET, DISTANT THEREON NORTH 32° 03' WEST 285.0 FEET FROM THE SOUTHWESTERLY PROLONGATION OF THE NORTHWESTERLY LINE OF MAIN STREET, AS SHOWN ON MAP NO. 1 OF LOS ALTOS, RECORDED IN BOOK L OF MAPS, AT PAGE 99, RECORDS OF SANTA CLARA COUNTY; THENCE NORTH 32° 03' WEST ALONG SAID LINE OF FIRST STREET 30.0 FEET; THENCE SOUTH 57° 57' WEST 75.0 FEET; THENCE SOUTH 32° 03' EAST 30.0 FEET; THENCE NORTH 57° 57' EAST 75.0 FEET TO THE POINT OF BEGINNING.

PARCEL FOUR:

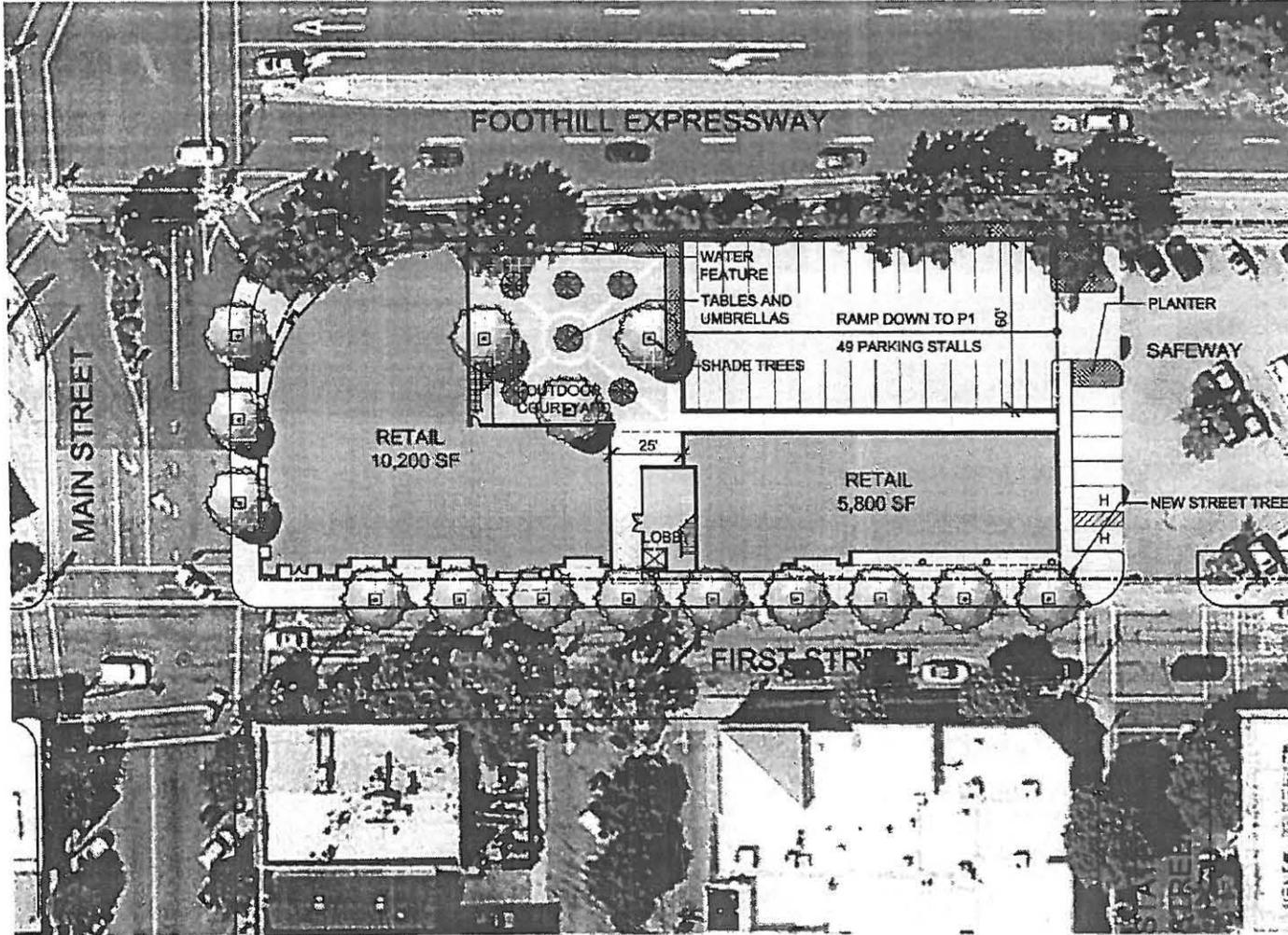
BEGINNING AT THE POINT OF INTERSECTION OF THE SOUTHWESTERLY LINE OF FIRST STREET WITH THE SOUTHWESTERLY PROLONGATION OF THE NORTHWESTERLY LINE OF MAIN STREET, AS SAID STREETS ARE SHOWN ON MAP NO. 1 OF LOS ALTOS RECORDED IN BOOK "L" OF MAPS, PAGE 99; THENCE N. 32° 03' W. 85 FEET; THENCE S. 57° 57' W. 75 FEET; THENCE S. 32° 03' E. 85 FEET; THENCE N. 57° 57' E. 75 FEET TO THE POINT OF BEGINNING, AND BEING A PORTION OF THE SOUTHEAST ¼ OF SECTION 30, T. 6 S.R., 2 W., M.D.B. & M.

APN: 167-39-146 (PARCELS ONE & TWO) AND 167-39-056 (PARCEL FOUR)

ARB: 167-39-055 & 109 (PARCELS ONE & TWO)

EXHIBIT B

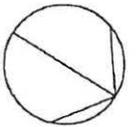
PRELIMINARY SITE PLAN



TABULATION

SITE AREA:	34,695 SF (.80 AC)
MINIMUM BUILDING AREA:	31,000 SF
POSSIBLE ALLOCATION:	
RETAIL:	16,000 SF
OFFICE:	15,000 SF
FAR	.89
PARKING PROVIDED:	134 STALLS
RAMP:	49 STALLS
P1:	85 STALLS
PARKING REQUIRED:	
RETAIL:	80 (5.0/1000)
OFFICE:	50 (3.3/1000)
TOTAL:	130 STALLS

PRELIMINARY DEVELOPERS
SITE PLAN
09.1.10

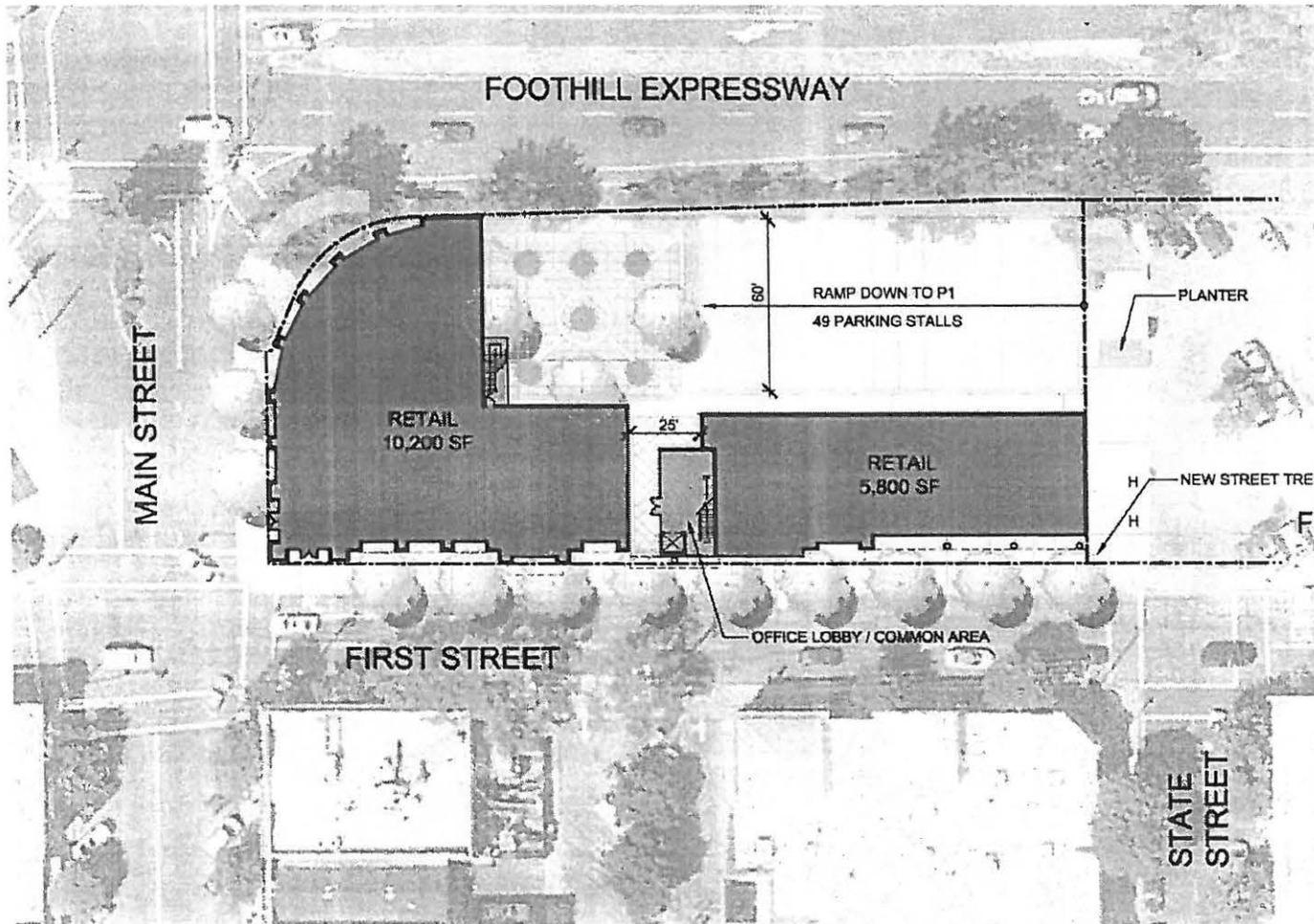


A1

FIRST AND MAIN STREET DEVELOPMENT

MINIMUM PROJECT PARAMETERS
LOS ALTOS, CALIFORNIA

THE JEFFEREY MORRIS GROUP, INC.
KENNETH RODRIGUES & PARTNERS, INC.



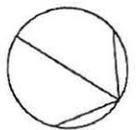
FIRST FLOOR AREA: 16,000 SF

FIRST AND MAIN STREET DEVELOPMENT

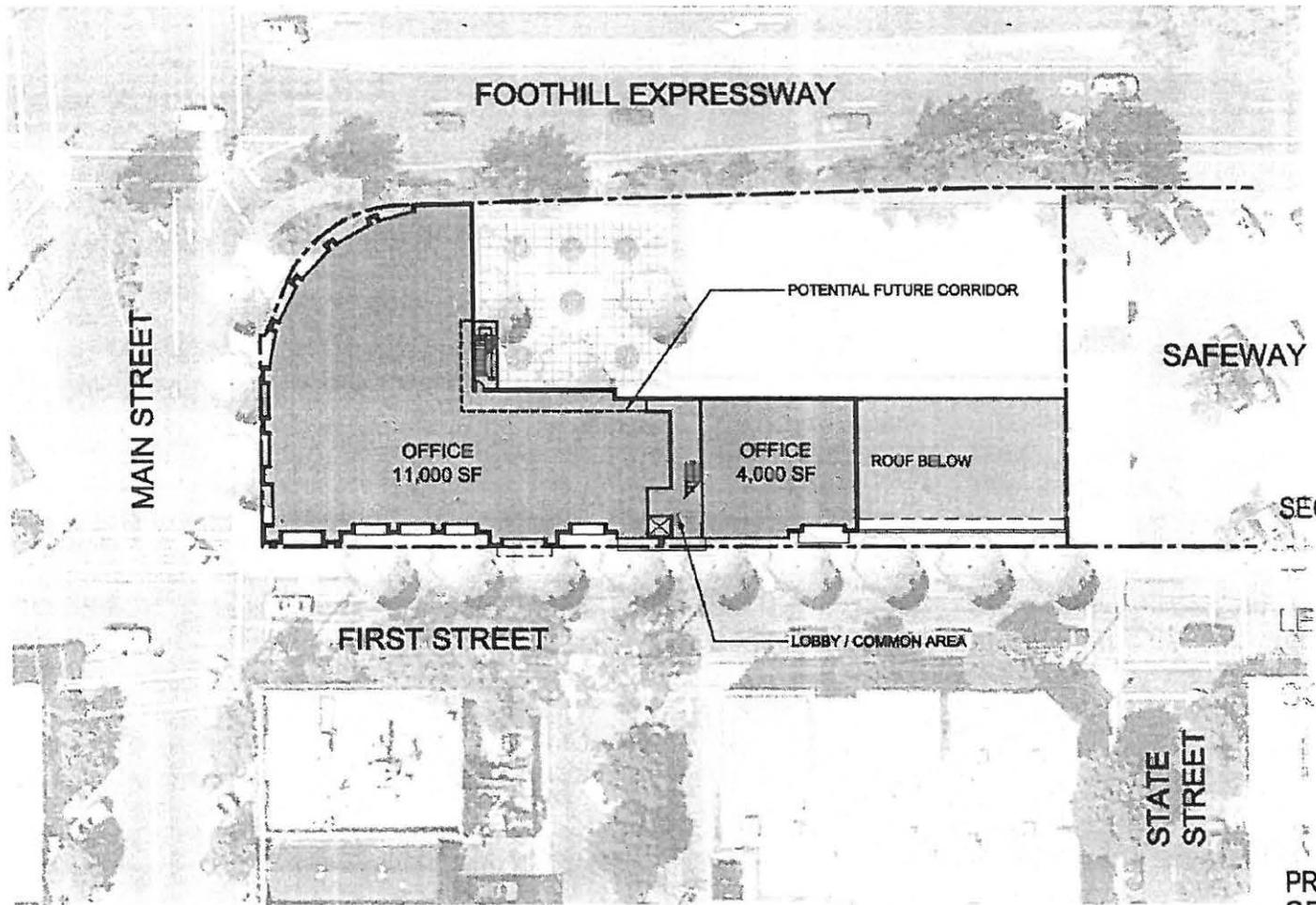
MINIMUM PROJECT PARAMETERS
LOS ALTOS, CALIFORNIA

THE JEFFEREY MORRIS GROUP, INC.
KENNETH RODRIGUES & PARTNERS, INC.

PRELIMINARY DEVELOPERS
FIRST FLOOR PLAN
09.1.10



A2



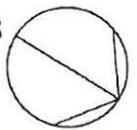
SECOND FLOOR AREA: 15,000 SF

FIRST AND MAIN STREET DEVELOPMENT

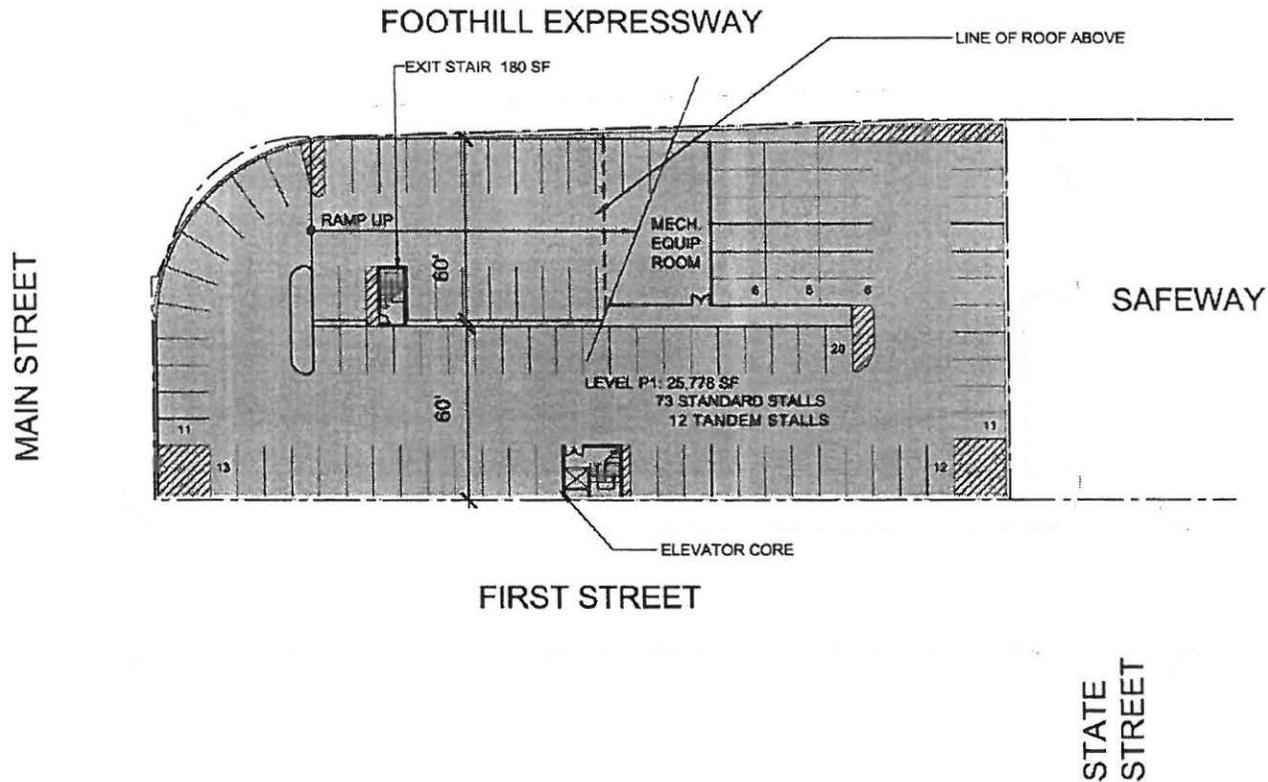
MINIMUM PROJECT PARAMETERS
LOS ALTOS, CALIFORNIA

THE JEFFEREY MORRIS GROUP, INC.
KENNETH RODRIGUES & PARTNERS, INC.

PRELIMINARY DEVELOPERS
SECOND FLOOR
PLAN
09.1.10



A3

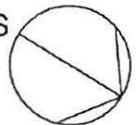


FIRST AND MAIN STREET DEVELOPMENT

MINIMUM PROJECT PARAMETERS
LOS ALTOS, CALIFORNIA

THE JEFFEREY MORRIS GROUP, INC.
KENNETH RODRIGUES & PARTNERS, INC.

PRELIMINARY DEVELOPERS
BASEMENT
PARKING PLAN (P1)
09.1.10



A4