



**CONSENT CALENDAR**

**Agenda Item # 4**

**AGENDA REPORT SUMMARY**

**Meeting Date:** February 23, 2020

**Subject:** Authorize the Interim City Manager to execute the Subdivision Improvement Agreement and move to approve the Final Map for Tract Map #10553, 450 First Street

**Prepared by:** Harun Musaefendic, Assistant Engineer

**Reviewed by:** Jim Sandoval, Engineering Services Director

**Approved by:** Brad Kilger, Interim City Manager

**Attachment(s):**

1. Tract Map #10553
2. Subdivision agreement

**Initiated by:**

DD 1<sup>st</sup> Street Group LLC

**Previous Council Consideration:**

March 10, 2020

**Fiscal Impact:**

None

**Environmental Review:**

Not applicable

**Policy Question(s) for Council Consideration:**

None

**Summary:**

- Tentative map was approved on March 10, 2020
- Council to approve Tract Map #10553

**Staff Recommendation:**

Authorize the Interim City Manager to execute the Subdivision Improvement Agreement and move to approve the Tract Map #10553 of 450 First Street

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Interim City Manager

BK

**Reviewed By:**

City Attorney

JH

Deputy City Manager

JM

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**Subject:** Authorize the Interim City Manager to execute the Subdivision Improvement Agreement and move to approve the Final Map for Tract Map #10553, 450 First Street

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### **Purpose**

Authorize the Interim City Manager to execute the Subdivision Improvement Agreement and move to approve Tract Map #10553

### **Background**

On March 10, 2020, Council approved the multi-family design review application and the associated Tentative Map for the new development at 450 First Street. The recommended action will finalize the tentative map for the project.

A Tentative Map (AKA, Tentative Parcel Map or Tentative Tract Map) is a map showing the layout of a proposed Subdivision, including the general description of the associated infrastructure. The approved Tentative Map also sets conditions such as access, frontage, grading improvements, stormwater protection, and so forth which must be met before the final Parcel Map or Tract Map can be filed. An approved Tentative Map does not divide the property, rather it sets the conditions under which the division can occur. To divide the property, one must file a Parcel Map or Tract Map (i.e., Final Map).

The attached Tract Map is the instrument that divides the property. It must conform to and incorporate all the Tentative Map conditions and must also comply with the standards for Parcel Maps or Tract Maps as set forth in the State Subdivision Map Act. It must also include plans describing the various improvements to the project site and to all other affected properties, including public roadways and public and private utilities.

### **Discussion/Analysis**

Tract Map #10553 for the development at 450 First Street conforms to the Tentative Map approved on March 10, 2020. The map and survey have been checked and found satisfactory. All conditions of approval have been complied with and appropriate controls to ensure compliance have been established. All required fees and deposits have been received. The Tract Map is available in the Engineering Services Department office for inspection.

### **Options**

- 1) Authorize the Interim City Manager to execute the subdivision improvement agreement and move to approve Tract Map #10553

**Advantages:** Developer complies with the conditions of approval and can complete the building permit application



**Subject:** Authorize the Interim City Manager to execute the Subdivision Improvement Agreement and move to approve the Final Map for Tract Map #10553, 450 First Street

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**Disadvantages:** None

2) Do not authorize the Interim City Manager to execute the subdivision improvement agreement and move to not approve Tract Map #10553

**Advantages:** None

**Disadvantages:** Developer will not be able to continue construction. Council must provide reasons for disapproval.

**Recommendation**

The staff recommends Option 1.

## OWNER'S STATEMENT

WE HEREBY STATE THAT WE ARE THE OWNERS OF, OR HAVE SOME RIGHT, TITLE, OR INTEREST IN OR TO THE REAL PROPERTY INCLUDED WITHIN THE SUBDIVISION SHOWN ON THIS MAP; THAT WE ARE THE ONLY PERSONS WHOSE CONSENT IS NECESSARY TO PASS A CLEAR TITLE TO SAID REAL PROPERTY; AND THAT WE CONSENT TO THE MAKING AND RECORDATION OF THIS MAP

THE REAL PROPERTY DESCRIBED BELOW IS DEDICATED AS AN EASEMENT FOR PUBLIC PURPOSES:

- 1) WE HEREBY DEDICATE TO THE CITY OF LOS ALTOS EASEMENTS FOR PUBLIC UTILITY PURPOSES UNDER, ON, OVER, AND ACROSS THAT CERTAIN AREA OF LAND DESIGNATED AND DELINEATED HEREON AS "PUE" (PUBLIC UTILITY EASEMENT).
- 2) WE HEREBY DEDICATE TO THE CITY OF LOS ALTOS EASEMENTS FOR PUBLIC SIDEWALK AND LANDSCAPING PURPOSES WITHIN THAT CERTAIN STRIP OF LAND DESIGNATED AND DELINEATED HEREON AS "SWE" (SIDEWALK EASEMENT).
- 3) WE HEREBY DEDICATE TO THE CITY OF LOS ALTOS EASEMENTS FOR EMERGENCY ACCESS WITHIN THAT CERTAIN STRIP OF LAND DESIGNATED AND DELINEATED HEREON AS "EAE" (EMERGENCY ACCESS EASEMENT).

AS OWNER: DD 1ST STREET GROUP LLC, A CALIFORNIA LIMITED LIABILITY COMPANY

BY: [Signature]  
 NAME: Mark Yazdani  
 TITLE: Managing Member

## OWNER'S ACKNOWLEDGMENT

A NOTARY PUBLIC OR OTHER OFFICER COMPLETING THIS CERTIFICATE VERIFIES ONLY THE IDENTITY OF THE INDIVIDUAL WHO SIGNED THE DOCUMENT TO WHICH THIS CERTIFICATE IS ATTACHED, AND NOT THE TRUTHFULNESS, ACCURACY, OR VALIDITY OF THAT DOCUMENT.

STATE OF California } SS.  
 COUNTY OF Santa Clara }

ON Dec. 17, 2020, BEFORE ME, Susan Trujillo, A NOTARY PUBLIC, PERSONALLY APPEARED Mark Yazdani, 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:  
 SIGNATURE: [Signature]  
 NAME (PRINT): Susan Trujillo  
 PRINCIPAL COUNTY OF BUSINESS: Santa Clara  
 MY COMMISSION NUMBER: 2175512  
 MY COMMISSION EXPIRES: Jan. 9, 2021

## GEOTECHNICAL SOILS REPORT

A SOILS REPORT ON WAS PREPARED BY GEOFORENSICS, INC, DATED DECEMBER 26, 2018, FILE NO. 218250, SIGNED BY DANIEL F. DYCKMAN, PE, GE.

## TRUSTEE'S STATEMENT

THE UNDERSIGNED CORPORATION, AS TRUSTEE UNDER THE DEED OF TRUST RECORDED ON APRIL 24, 2019, DOCUMENT NUMBER 24163207 OF OFFICIAL RECORDS, SANTA CLARA COUNTY, CALIFORNIA; DOES HEREBY JOIN IN AND CONSENT TO THE FOREGOING OWNERS STATEMENT AND ALL DEDICATIONS SHOWN HEREIN.

ORANGE COAST TITLE COMPANY OF NORTHERN CALIFORNIA

BY: [Signature] 12 22 2020  
 TITLE: V.P. Regional Manager  
 DATE: 12-23-2020

## TRUSTEE'S ACKNOWLEDGMENT

A NOTARY PUBLIC OR OTHER OFFICER COMPLETING THIS CERTIFICATE VERIFIES ONLY THE IDENTITY OF THE INDIVIDUAL WHO SIGNED THE DOCUMENT TO WHICH THIS CERTIFICATE IS ATTACHED, AND NOT THE TRUTHFULNESS, ACCURACY, OR VALIDITY OF THAT DOCUMENT.

STATE OF California } SS.  
 COUNTY OF SACRAMENTO }

ON 12-22-2020, BEFORE ME, CHRIS CLARK, A NOTARY PUBLIC, PERSONALLY APPEARED CHRIS CLARK, 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.

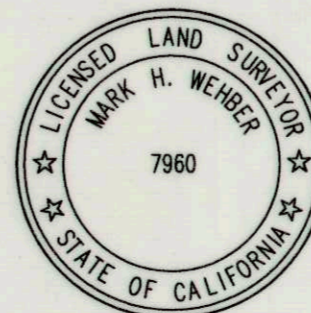
I CERTIFY UNDER PENALTY OF PERJURY UNDER THE LAWS OF THE STATE OF CALIFORNIA THAT THE FOREGOING PARAGRAPH IS TRUE AND CORRECT.

WITNESS MY HAND:  
 SIGNATURE: [Signature]  
 NAME (PRINT): CHRIS CLARK  
 PRINCIPAL COUNTY OF BUSINESS: SACRAMENTO  
 MY COMMISSION NUMBER: 2328382  
 MY COMMISSION EXPIRES: 6-3-2024

## SURVEYOR'S STATEMENT

THIS MAP WAS PREPARED BY ME OR UNDER MY DIRECTION AND IS BASED UPON A FIELD SURVEY IN CONFORMANCE WITH THE REQUIREMENTS OF THE SUBDIVISION MAP ACT AND LOCAL ORDINANCE AT THE REQUEST OF DD 1ST STREET GROUP, LLC ON MAY 1, 2020. I HEREBY STATE THAT ALL THE MONUMENTS ARE OF THE CHARACTER AND OCCUPY THE POSITIONS INDICATED OR THAT THEY WILL BE SET IN THOSE POSITIONS BEFORE DECEMBER 31, 2023, AND THAT THE MONUMENTS ARE, OR WILL BE SUFFICIENT TO ENABLE THE SURVEY TO BE RETRACED, AND THAT THIS FINAL MAP SUBSTANTIALLY CONFORMS TO THE CONDITIONALLY APPROVED TENTATIVE MAP.

12/8/2020  
 DATE



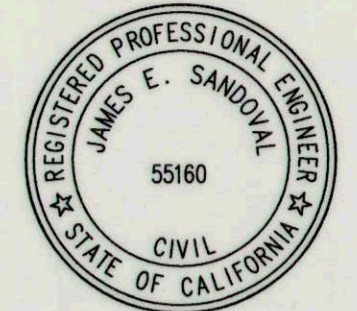
[Signature]  
 MARK H. WEHBER, P.L.S.  
 L.S. NO. 7960

## CITY ENGINEER'S STATEMENT

I HEREBY STATE THAT I HAVE EXAMINED THE WITHIN TRACT MAP ENTITLED "TRACT 10553 450 FIRST STREET", THAT THE SUBDIVISION AS SHOWN HEREON IS SUBSTANTIALLY THE SAME AS IT APPEARED ON THE VESTING TENTATIVE MAP AND ANY APPROVED ALTERATIONS THEREOF; THAT ALL PROVISIONS OF CHAPTER 2 OF THE SUBDIVISION MAP ACT AND OF ANY LOCAL ORDINANCES APPLICABLE AT THE TIME OF APPROVAL OF THE VESTING TENTATIVE MAP HAVE BEEN COMPLIED WITH.

JAMES E. SANDOVAL, RCE 55160  
 CITY ENGINEER, CITY OF LOS ALTOS, CALIFORNIA

DATE



## CITY SURVEYOR'S STATEMENT

I HEREBY CERTIFY THAT I HAVE EXAMINED THE HEREON TRACT MAP AND AM SATISFIED THAT IT IS TECHNICALLY CORRECT.

[Signature]  
 SCOTT SHORTLIDGE, LS 6441  
 ACTING CITY SURVEYOR, CITY OF LOS ALTOS

12-16-2020  
 DATE



## CITY CLERK'S STATEMENT

I HEREBY STATE THIS MAP, ENTITLED "TRACT 10553 450 FIRST STREET", CONSISTING OF THREE SHEETS, WAS APPROVED BY THE CITY COUNCIL OF THE CITY OF LOS ALTOS, CALIFORNIA AT A MEETING OF SAID COUNCIL HELD ON THE \_\_\_\_\_ DAY OF \_\_\_\_\_, 2021 AND THAT SAID COUNCIL ACCEPTED ON BEHALF OF THE PUBLIC ALL EASEMENTS OFFERED FOR DEDICATION FOR PUBLIC USE IN CONFORMITY WITH THE TERMS OF THE OFFER OF DEDICATION.

JOHN MAGINOT  
 CITY CLERK, CITY OF LOS ALTOS, CALIFORNIA

DATE

## COUNTY RECORDER'S STATEMENT

FILED THIS \_\_\_\_\_ DAY OF \_\_\_\_\_, 2021, AT \_\_\_\_\_ IN BOOK \_\_\_\_\_ OF MAPS, AT PAGE \_\_\_\_\_, AT THE REQUEST OF \_\_\_\_\_

FILE NO. \_\_\_\_\_

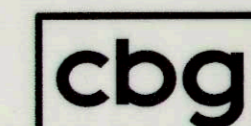
REGINA ALCOMENDRAS, COUNTY RECORDER

FEE \_\_\_\_\_

BY: \_\_\_\_\_  
 DEPUTY COUNTY RECORDER

# TRACT 10553 450 FIRST STREET

CONSISTING OF 3 SHEETS  
 A ONE LOT SUBDIVISION FOR CONDOMINIUM PURPOSES (27 UNITS)  
 BEING A SUBDIVISION OF LOTS 2 AND 3 AS SHOWN ON THAT RECORD OF SURVEY  
 RECORDED IN BOOK 108 OF MAPS, AT PAGE 9, SANTA CLARA COUNTY RECORDS  
 CITY OF LOS ALTOS, SANTA CLARA COUNTY, CALIFORNIA



SAN RAMON • (925) 866-0322  
 SACRAMENTO • (916) 375-1877  
 WWW.CBANDG.COM

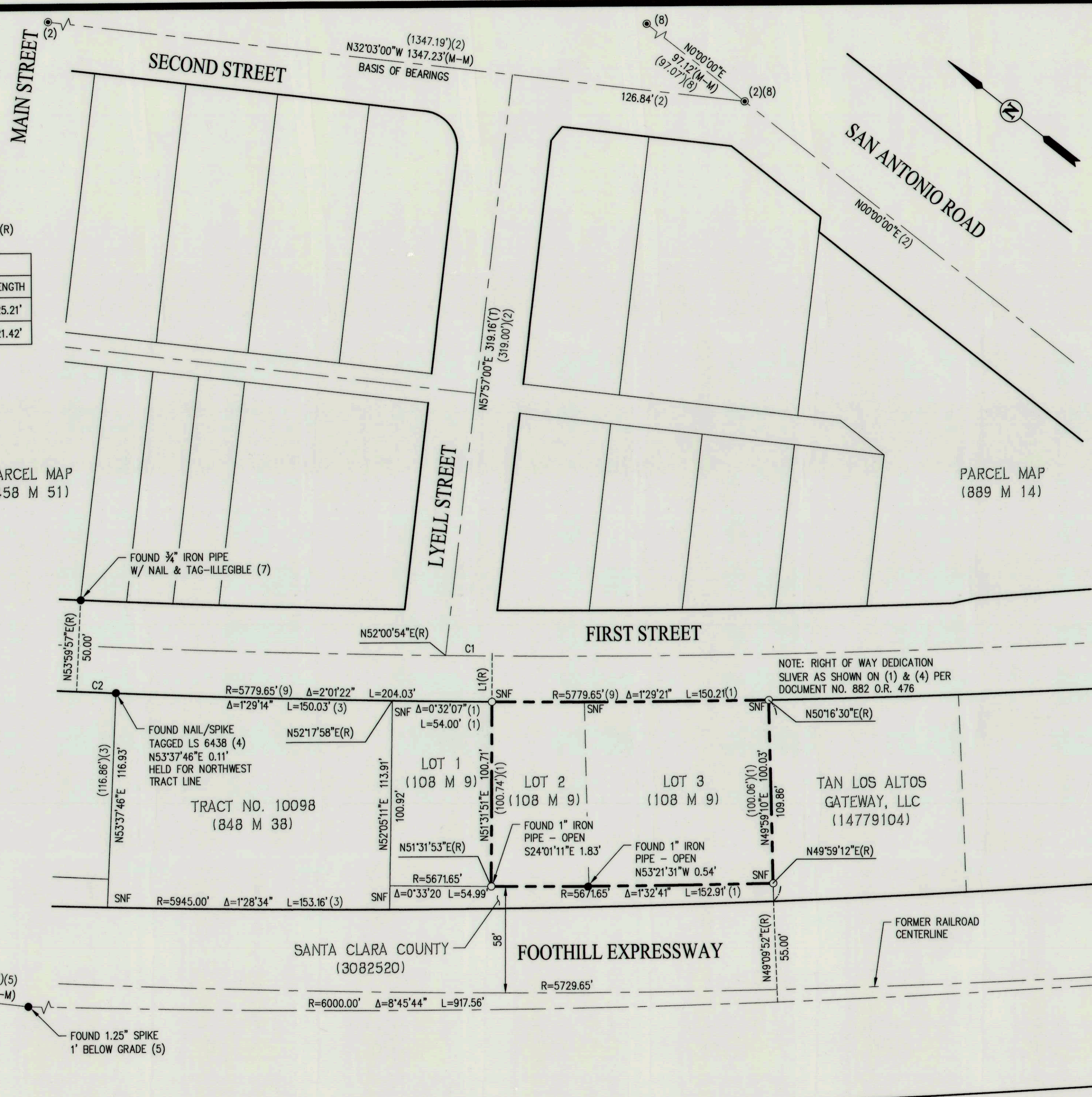
CIVIL ENGINEERS • SURVEYORS • PLANNERS

DECEMBER 2020

LINE TABLE			
NO	BEARING	LENGTH	
L1	N51°45'51"E	25.00'	(R)

CURVE TABLE			
NO	RADIUS	DELTA	LENGTH
C1	5754.65'	0°15'04"	25.21'
C2	5779.65'	0°12'44"	21.42'



**BASIS OF BEARINGS:**

THE BASIS OF BEARINGS FOR THIS SURVEY IS DETERMINED BY FOUND MONUMENTS ON SECOND STREET, THE BEARING BEING N32°03'00"W PER PARCEL MAP (889 M 14).

**LEGEND**

- SUBDIVISION BOUNDARY LINE
- RIGHT OF WAY LINE
- ADJOINING/OFFSITE PROPERTY LINE
- EASEMENT LINE
- CENTERLINE
- (T) TOTAL
- (R) RADIAL
- (M-M) MONUMENT TO MONUMENT
- FOUND STANDARD STREET MONUMENT
- FOUND MONUMENT AS NOTED
- SET 5/8" REBAR AND CAP OR NAIL & TAG, LS 7960
- EAE EMERGENCY ACCESS EASEMENT
- PUE PUBLIC UTILITY EASEMENT
- SWE PUBLIC SIDEWALK EASEMENT
- SNF SEARCHED, NOT FOUND

**NOTES:**

- DISTANCES SHOWN HEREON ARE FEET AND DECIMALS THEREOF, AND ARE GROUND LEVEL DISTANCES.
- TIES SHOWN ARE PERPENDICULAR TO MONUMENT LINES AND CENTERLINES UNLESS OTHERWISE NOTED.

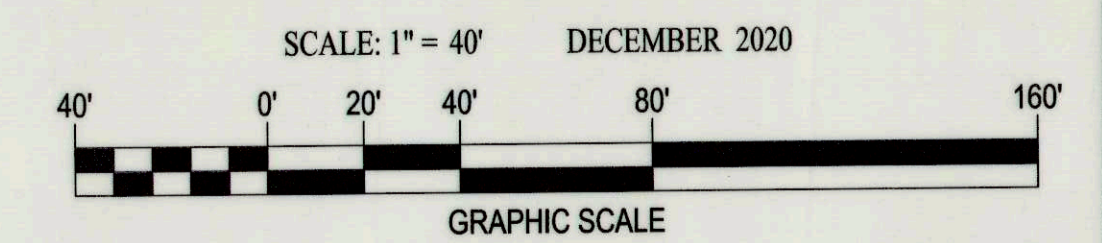
**REFERENCES:**

- (#) INDICATES REFERENCE NUMBER
- (1) RECORD OF SURVEY (108 M 9)
- (2) PARCEL MAP (889 M 14)
- (3) TRACT 10098 (848 M 38)
- (4) CORNER RECORD NO. 2029
- (5) RECORD OF SURVEY (174 M 45)
- (6) RECORD OF SURVEY (884 M 42)
- (7) PARCEL MAP (458 M 51)
- (8) TRACT 9953 (823 M 50)
- (9) DOC. NO. 882 O.R. 476

**TRACT 10553  
450 FIRST STREET**

CONSISTING OF 3 SHEETS  
A ONE LOT SUBDIVISION FOR CONDOMINIUM PURPOSES (27 UNITS)  
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### LEGEND

	SUBDIVISION BOUNDARY LINE
	RIGHT OF WAY LINE
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SNF	SEARCHED, NOT FOUND

### NOTES:

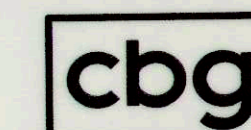
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  - DOC. NO. 882 O.R. 476

## TRACT 10553 450 FIRST STREET

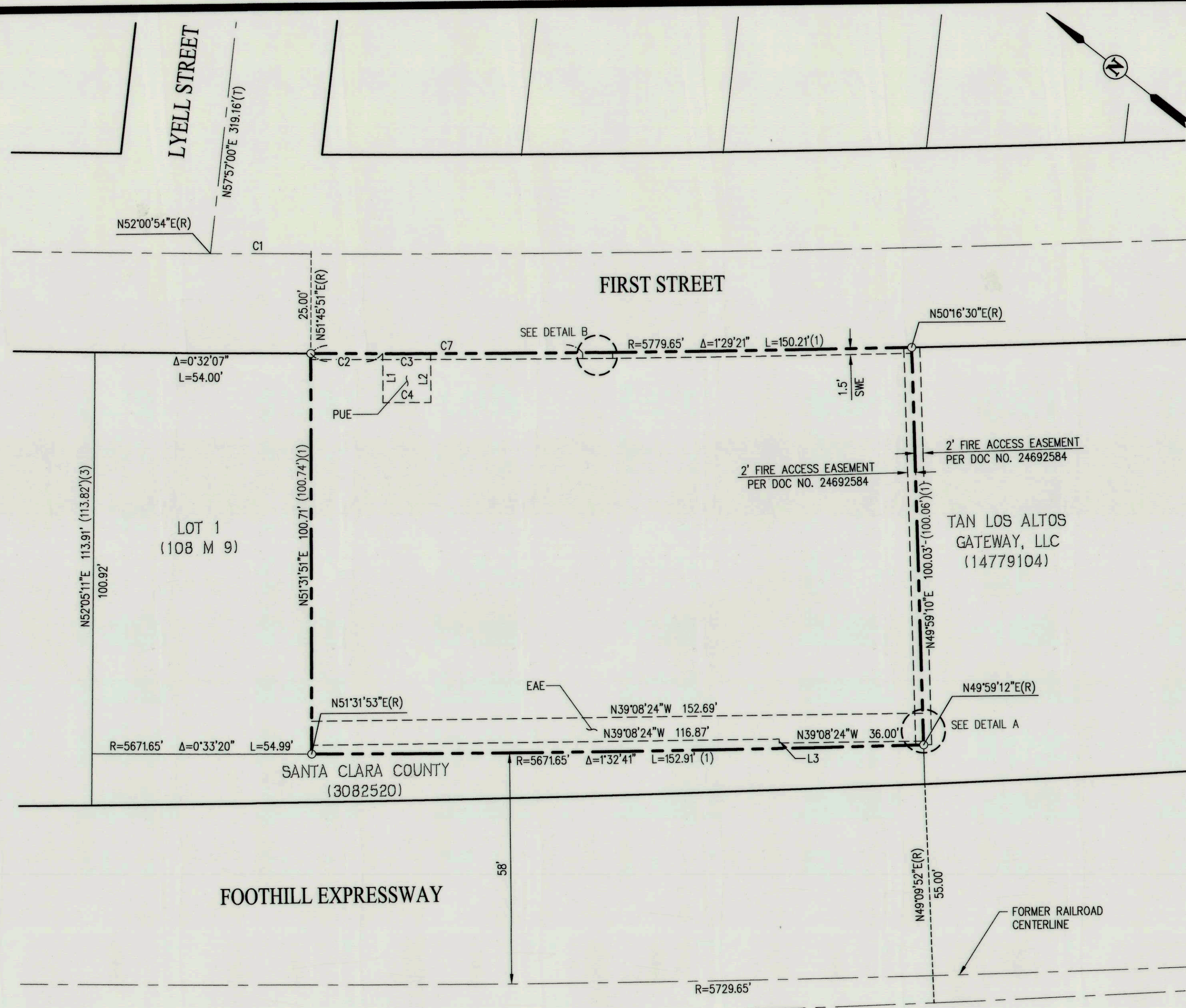
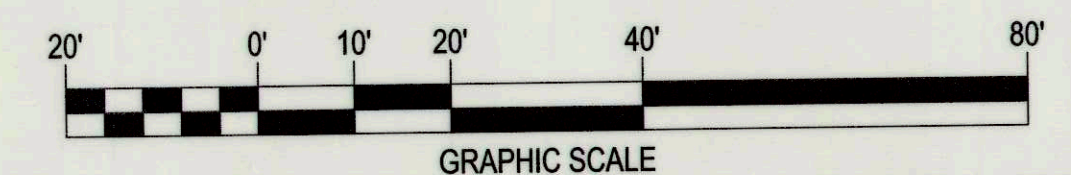
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CITY OF LOS ALTOS, SANTA CLARA COUNTY, CALIFORNIA



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CIVIL ENGINEERS SURVEYORS PLANNERS

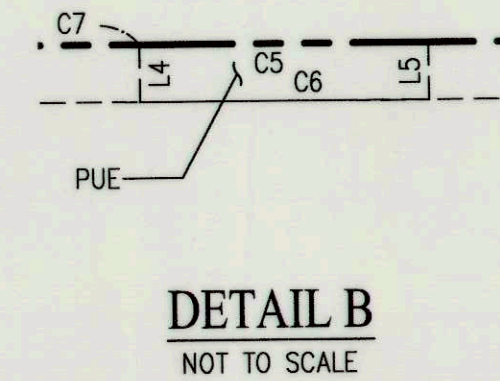
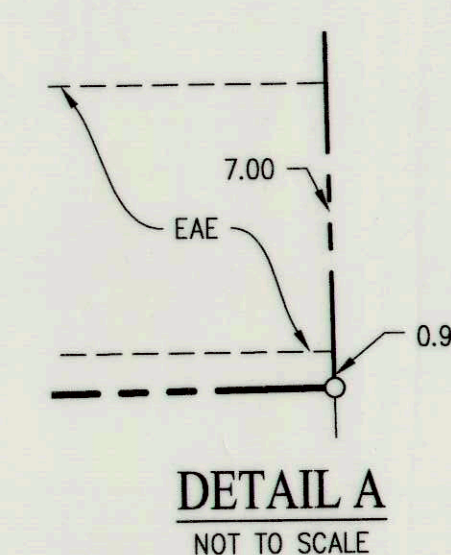
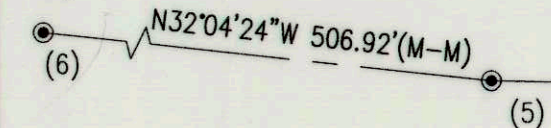
SCALE: 1" = 20' DECEMBER 2020



LINE TABLE		
NO	BEARING	LENGTH
L1	S51°36'02"W	12.30'
L2	S51°28'42"W	12.30'
L3	N50°51'36"E	1.00'
L4	N51°05'31"E	1.50'
L5	S51°00'56"W	1.50'

CURVE TABLE			
NO	RADIUS	DELTA	LENGTH
C1	5754.65'	0°15'04"	25.21'
C2	5779.65'	0°10'38"	17.88'
C3	5779.65'	0°07'08"	12.00'
C4	5791.95'	0°07'08"	12.03'
C5	5779.65'	0°04'28"	7.50'
C6	5781.15'	0°04'28"	7.50'
C7	5779.65'	0°40'27"	68.00'

MAIN STREET



RECORDING REQUESTED BY:

City of Los Altos

WHEN RECORDED, MAIL TO:

City Clerk, City of Los Altos

1 North San Antonio Road

Los Altos, CA 94022

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RECORD WITHOUT FEE UNDER  
§§ 27383 & 27388.1 GOVERNMENT CODE

Improvement Agreement No. 2021-XX  
PROJECT TITLE – Tract 10553  
APN: 167-41-011  
DD 1<sup>st</sup> Street Group, LLC

**IMPROVEMENT AGREEMENT  
450 First Street**

This Improvement Agreement (this “Agreement”) is made and entered into by and between the CITY OF Los Altos, a municipal corporation (hereinafter "City"), and DD 1<sup>st</sup> Street Group LLC (hereinafter "Developer"). City and Developer may be collectively referred to herein as the “parties.”

**RECITALS**

- A. In accordance with the Subdivision Map Act (California Government Code Sections 66410, *et seq.*), and the Subdivision Ordinance (Los Altos Municipal Code, Title 13), and the Street Ordinance (Los Altos Municipal Code, Title 9), the Developer has submitted to the City a Final Map (hereinafter “Final Map”) for the project known as 450 First Street (hereinafter “Project”).
- B. The Project is geographically located within the boundaries of the Tentative Subdivision Map known as 450 First Street Tentative Map (hereinafter “Tentative Map”). The Tentative Map is on file with the City Engineer and is incorporated herein by reference. The area within the boundaries of the Tentative Map is described in **Exhibit A** hereto (the “Property”).
- C. The City’s approval of the Tentative Map was subject to specified conditions of approval (hereinafter “Conditions”). The Conditions are attached hereto as **Exhibit B** and incorporated herein by reference.
- D. As required by the Conditions, the Tentative and Final Maps, and the other Project entitlements, Developer shall construct public improvements in connection with the Project along First Street and Lyell Street, including but not limited to the following: installation of approximately 1,700 square feet of concrete sidewalk, installation of approximately 320 lineal feet of concrete vertical curb and gutter, installation of one new driveway approach, installation of four accessible ramps, installation of approximately 1,200 square feet of pavement replacement, installation of approximately 30 lineal feet of concrete channel with open grate, installation of street signs, installation of striping and curb marking, and installation of all appurtenances associated with above listed improvements (collectively, the “Work”).

**NOW, THEREFORE, IN CONSIDERATION OF THE MUTUAL COVENANTS AND CONDITIONS IDENTIFIED HEREIN, THE PARTIES HEREBY AGREE AS FOLLOWS:**

- 1. **SCOPE OF WORK.** The Developer shall perform, or cause to be performed, the Work described in the Plans and Specifications and the Conditions (hereinafter “Work”), to the satisfaction of the City Engineer. The Work shall be performed, and all materials and labor shall be provided, at the Developer’s sole cost and expense. No change shall be made to the Scope of Work unless authorized in writing by the City Engineer.
- 2. **PERMITS, LICENSES, AND COMPLIANCE WITH LAW.** The Developer shall, at the Developer’s expense, obtain and maintain all necessary permits and licenses for the performance of the Work. The Developer shall comply with all local, state, and federal laws, whether or not said laws are expressly stated in this Agreement. *WITHOUT LIMITING THE GENERALITY OF THE FOREGOING, DEVELOPER HEREBY AGREES TO BE BOUND BY THE LABOR CODE PROVISIONS ATTACHED HERETO AT EXHIBIT C.*
- 3. **DEVELOPER’S AUTHORIZED REPRESENTATIVE.** At all times during the progress of the Work, Developer shall have a competent foreperson or superintendent (hereinafter



**CITY OF LOS ALTOS – IMPROVEMENT AGREEMENT**  
**450 First Street**

“Authorized Representative”) on site with authority to act on behalf of the Developer. The Developer shall, at all times, keep the City Engineer informed in writing of the name and telephone number of the Authorized Representative. The Developer shall, at all times, keep the City Engineer informed in writing of the names and telephone numbers of all contractors and subcontractors performing the Work.

4. **IMPROVEMENT SECURITY.** The Developer shall furnish faithful performance and labor and material security concurrently with the execution of this Agreement by the Developer, and prior to the commencement of any Work. The Developer shall furnish warranty security prior to the City's acceptance of the Work. The form of the security shall be as authorized by the Subdivision Map Act (including Government Code Sections 66499, *et seq.*) and Section 13.20.210 the Los Altos Municipal Code, and as set forth below:
  - 4(a). **Faithful Performance** security in the amount of \$210,000.00 (which amount is equal to the estimated cost to construct the Work in accordance with the Plans and Specifications) to secure faithful performance of this Agreement (until the date on which the City Council accepts the Work as complete) pursuant to Government Code Sections 66499.1, 66499.4, and 66499.9.
  - 4(b). **Labor and Material** security in the amount of \$105,000.00 (which amount is equal to fifty (50) percent of the estimated cost to construct the Work in accordance with the Plans and Specifications) to secure payment by the Developer to laborers and materialmen pursuant to Government Code Sections 66499.2, 66499.3, and 66499.4.
  - 4(c). **Warranty** security in the amount of \$21,000.00 (which amount is equal to ten (10) percent of the estimated cost to construct the Work in accordance with the Plans and Specifications) to secure faithful performance of this Agreement (from the date on which the City accepts the Work as complete until one year thereafter) pursuant to Government Code Sections 66499.1, 66499.4, and 66499.9.
5. **BUSINESS TAX.** The Developer shall apply for and pay the business license tax for a business license, in accordance with Los Altos Municipal Code Chapter 4.04.
6. **INSURANCE.** Developer shall, throughout the duration of this Agreement, maintain insurance to cover Developer (including its agents, representatives, contractors, subcontractors, and employees) in connection with the performance of services under this Agreement. **Exhibit D** of this Agreement identifies the minimum insurance levels with which Developer shall comply; however, the minimum insurance levels shall not relieve Developer of any other performance responsibilities under this Agreement (including the indemnity requirements), and Developer may carry, at its own expense, any additional insurance it deems necessary or prudent. The general liability and automobile policies required under **Exhibit D** shall contain, or be endorsed to contain, provision for the City, its officers, officials, employees, agents and volunteers, to be covered as additional insureds as respects alleged liability arising out of activities performed by or on behalf of the Developer under this Agreement. Concurrently with the execution of this Agreement by the Developer, and prior to the commencement of any services, the Developer shall furnish written proof of insurance (certificates and endorsements), in a form acceptable to the City. Developer shall provide substitute written proof of insurance no later than 30 days prior to the expiration date of any insurance policy required by this Agreement.
7. **REPORTING DAMAGES.** If any damage (including death, personal injury or property damage) occurs in connection with the performance of this Agreement, Developer shall immediately notify the City Risk Manager's office by telephone at, and Developer shall promptly submit to the City's Risk Manager and the City Manager or designee, a written report (in a form acceptable to the City) with

**CITY OF LOS ALTOS – IMPROVEMENT AGREEMENT**  
**450 First Street**

the following information: (a) a detailed description of the damage (including the name and address of the injured or deceased person(s), and a description of the damaged property), (b) name and address of witnesses, and (c) name and address of any potential insurance companies.

**8. INDEMNIFICATION.** Developer shall indemnify, hold harmless, and defend (with counsel reasonably acceptable to the City) the City and its elected officials, officers, agents and employees from and against any and all claims (including all litigation, demands, damages, liabilities, costs, and expenses, and including court costs and attorneys’ fees) resulting or arising from performance, or failure to perform, under this Agreement (with the exception of the gross negligence or willful misconduct of the City).

**9. TIME OF PERFORMANCE.** Time is of the essence in the performance of the Work, and the timing requirements set forth herein shall be strictly adhered to unless otherwise modified in writing in accordance with this Agreement. The Developer shall submit all requests for extensions of time to the City, in writing, no later than ten (10) days after the start of the condition which purportedly caused the delay, and not later than the date on which performance is due.

**9(a). Commencement of Work.** No later than fifteen (15) days prior to the commencement of Work, the Developer shall provide written notice to the City Engineer of the date on which the Developer shall commence Work. The Developer shall not commence Work until after the notice required by this section is properly provided, and the Developer shall not commence Work prior to the date specified in the written notice.

**9(b). Schedule of Work.** Concurrently with the written notice of commencement of Work, the Developer shall provide the City with a written schedule of Work, which shall be updated in writing as necessary to accurately reflect the Developer’s prosecution of the Work.

**9(c). Completion of Work.** The Developer shall complete all Work by no later than three hundred sixty-five (365) days after the City’s execution of this Agreement.

**10. INSPECTION BY THE CITY.** In order to permit the City to inspect the Work, the Developer shall, at all times, provide to the City proper and safe access to the Project site, and all portions of the Work, and to all shops wherein portions of the Work are in preparation. Developer shall reimburse the City for the costs of the City Engineer’s inspections of the Work, as required by Los Altos Municipal Code Section 13.20.190.

**11. DEFAULT.** If either party (“demanding party”) has a good faith belief that the other party (“defaulting party”) is not complying with the terms of this Agreement, the demanding party shall give written notice of the default (with reasonable specificity) to the defaulting party, and demand the default to be cured within ten days of the notice. If: (a) the defaulting party fails to cure the default within ten (10) days of the notice, or, (b) if more than ten (10) days are reasonably required to cure the default and the defaulting party fails to give adequate written assurance of due performance within ten (10) days of the notice, then (c) the demanding party may terminate this Agreement upon written notice to the defaulting party.

**11(a).** The Developer shall be in default of this Agreement if the City Engineer determines that any one of the following conditions exist:

**11(a)(1).** The Developer is insolvent, bankrupt, or makes a general assignment for the benefit of its creditors.

**11(a)(2).** The Developer abandons the Project site.

**CITY OF LOS ALTOS – IMPROVEMENT AGREEMENT**  
**450 First Street**

**11(a)(3).** The Developer fails to perform one or more requirements of this Agreement.

**11(a)(4).** The Developer fails to replace or repair any damage caused by Developer or its agents, representatives, contractors, subcontractors, or employees in connection with performance of the Work.

**11(a)(5).** The Developer violates any legal requirement related to the Work.

**11(b).** In the event that the Developer fails to cure the default, the City may, in the discretion of the City Engineer, take any or all of the following actions:

**11(b)(1).** Cure the default and charge the Developer for the costs therefor, including administrative costs and interest in an amount equal to seven percent (7%) per annum from the date of default.

**11(b)(2).** Demand the Developer to complete performance of the Work.

**11(b)(3).** Demand the Developer's surety (if any) to complete performance of the Work.

- 12. ACCEPTANCE OF WORK.** Prior to acceptance of the Work by the City Engineer, the Developer shall be solely responsible for maintaining the quality of the Work, and maintaining safety at the Project site. Neither the final certificate of payment, nor any provision in this Agreement, nor partial or entire use or occupancy of the improvements by the City shall constitute an acceptance of the Work not done in accordance with this Agreement or relieve Developer of liability pursuant to Section 13, below. The Developer's obligation to perform the Work shall not be satisfied until after the City Engineer has made a written determination that all obligations of the Agreement have been satisfied and all outstanding fees and charges have been paid, the City Engineer has accepted the Work as complete, and the City Council has authorized the release of the security for faithful performance as described in Government Code Section 66499.7.
- 13. WARRANTY PERIOD.** The Developer shall warrant the quality of the Work, in accordance with the terms of the Plans and Specifications, for a period of one year after acceptance of the Work by the City. In the event that (during the one year warranty period) any portion of the Work is determined by the City Engineer to be defective as a result of an obligation of the Developer under this Agreement, the Developer shall be in default.
- 14. RELATIONSHIP BETWEEN THE PARTIES.** Developer is, and at all times shall remain, an independent contractor solely responsible for all acts of its employees, agents, contractors, or subcontractors, including any negligent acts or omissions. Developer is not City's agent, and shall have no authority to act on behalf of the City, or to bind the City to any obligation whatsoever, unless the City provides prior written authorization to Developer.
- 15. CONFLICTS OF INTEREST PROHIBITED.** Developer (including its employees, agents, contractors, and subcontractors) shall not maintain or acquire any direct or indirect interest that conflicts with the performance of this Agreement. If Developer maintains or acquires a conflicting interest, any contract with the City (including this Agreement) involving Developer's conflicting interest may be terminated by the City.
- 16. NONDISCRIMINATION.** Developer shall comply with all applicable federal, state, and local laws regarding nondiscriminatory employment practices, whether or not said laws are expressly stated in this Agreement. Developer shall not discriminate against any employee or applicant because of race, color, ancestry, ethnicity, religious creed, national origin, physical disability, mental disability, medical condition, marital or family status, sexual orientation, gender or gender identification, age (over 40), veteran status, or sex.

**CITY OF LOS ALTOS – IMPROVEMENT AGREEMENT**  
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17. **NOTICES.** All notices required or contemplated by this Agreement shall be in writing and shall be delivered to the respective party as set forth in this section. Communications shall be deemed to be effective upon the first to occur of: (a) actual receipt (or refusal) by a party, or (b) actual receipt (or refusal) at the address designated below, or (c) three (3) working days following deposit in the United States Mail of registered or certified mail sent to the address designated below. Either party may modify their respective contact information identified in this section by providing notice to the other party.

**TO: City**

Attn: Andrea Chelemengos  
1 N. San Antonio Road  
Los Altos, CA 94022

**To: Developer**

Attn: Mark Yazdani  
DD 1<sup>st</sup> Street Group LLC  
PO Box 474  
Los Altos, CA 94023

18. **HEADINGS.** The heading titles for each paragraph of this Agreement are included only as a guide to the contents and are not to be considered as controlling, enlarging, or restricting the interpretation of the Agreement.
19. **SEVERABILITY.** If any term of this Agreement (including any phrase, provision, covenant, or condition) is held by a court of competent jurisdiction to be invalid or unenforceable, the Agreement shall be construed as not containing that term, and the remainder of this Agreement shall remain in full force and effect; provided, however, this paragraph shall not be applied to the extent that it would result in a frustration of the parties' intent under this Agreement.
20. **GOVERNING LAW, JURISDICTION, AND VENUE.** The interpretation, validity, and enforcement of this Agreement shall be governed by and interpreted in accordance with the laws of the State of California. Any suit, claim, or legal proceeding of any kind related to this Agreement shall be filed and heard in a court of competent jurisdiction in the County of Santa Clara.
21. **ATTORNEYS' FEES.** In the event any legal action is commenced to enforce this Agreement, the prevailing party is entitled to reasonable attorney's fees, costs, and expenses incurred.
22. **ASSIGNMENT AND DELEGATION.** This Agreement, and any portion thereof, shall not be assigned or transferred, nor shall any of the Developer's duties be delegated, without the written consent of the City. Any attempt to assign or delegate this Agreement without the written consent of the City shall be void and of no force or effect. A consent by the City to one assignment shall not be deemed to be a consent to any subsequent assignment.
23. **MODIFICATIONS.** This Agreement may not be modified orally or in any manner other than by an agreement in writing signed by both parties.
24. **WAIVERS.** Waiver of a breach or default under this Agreement shall not constitute a continuing waiver or a waiver of a subsequent breach of the same or any other provision of this Agreement.
25. **CONFLICTS.** If any conflicts arise between the terms and conditions of this Agreement and the terms and conditions of the attached exhibits or any documents expressly incorporated, the terms and conditions of this Agreement shall control.

**CITY OF LOS ALTOS – IMPROVEMENT AGREEMENT**  
**450 First Street**

26. **ENTIRE AGREEMENT.** This Agreement, including all documents incorporated herein by reference, comprises the entire integrated understanding between the parties concerning the Work described herein. This Agreement supersedes all prior negotiations, agreements, and understandings regarding this matter, whether written or oral. The documents incorporated by reference into this Agreement are complementary; what is called for in one is binding as if called for in all.
27. **COVENANT RUNNING WITH THE LAND.** This Agreement is entered into as a condition of the Tentative Map, is an instrument affecting the title or possession of the real property, and is intended to run with the land. All the terms, covenants and conditions herein imposed shall be binding upon and inure to the benefit of City, Developer, the successors in interest of Developer, their respective successors and permitted assigns, and all subsequent owners of a fee interest in the Property or of a beneficial interest substantially equivalent to a fee interest. The obligations of the Developer under this Agreement shall be the joint and several obligations of each and all of the parties comprising Developer, if Developer consists of more than one individual and/or entity. Upon the sale or division of the Property, the terms of this Agreement shall apply separately to each parcel and the fee owners of each parcel shall succeed to the obligations imposed on Developer by this Agreement.
28. **MISCELLANEOUS.** This Agreement may be executed in counterparts, each of which shall be deemed an original. There are no third-party intended beneficiaries of this Agreement. This Agreement represents the contributions of both parties, each of whom has had the opportunity to be represented by competent counsel, and the rule stated in Civil Code Section 1654 that ambiguities in a contract be construed against the drafter shall have no application hereto.
29. **SIGNATURES.** The individuals executing this Agreement represent and warrant that they have the right, power, legal capacity, and authority to enter into and to execute this Agreement on behalf of the respective legal entities of the Developer and the City. This Agreement shall inure to the benefit of and be binding upon the parties hereto and their respective successors and assigns.

**IN WITNESS WHEREOF**, the City and Developer do hereby agree to the full performance of the terms set forth herein.

**CITY OF LOS ALTOS**

**LIMITED LIABILITY COMPANY**  
DD 1<sup>st</sup> Street Group, LLC,  
a California Limited Liability Company

By: \_\_\_\_\_  
Brad Kilger  
Title: Interim City Manager  
Date: \_\_\_\_\_

By: \_\_\_\_\_  
Mark Yazdani  
Title: Managing Member  
Date: \_\_\_\_\_

APPROVED AS TO FORM:

By: \_\_\_\_\_  
Jolie Houston  
Title: City Attorney

**CITY OF LOS ALTOS – IMPROVEMENT AGREEMENT  
450 First Street**

**EXHIBIT A**

**LEGAL DESCRIPTION OF PROPERTY**

**Exhibit A**

**Legal Description**

Real property in the City of Los Altos, County of Santa Clara, State of California, described as follows:

PARCELS TWO AND THREE, RECORD OF SURVEY OF THE LANDS OF COLLINSON, ET AL, FILED JUNE 29, 1959, MAP BOOK 108, PAGE 9, SANTA CLARA COUNTY RECORDS.

APN: 167-41-010 (Affects: Parcel Two) and 167-41-011 (Affects: Parcel Three)

**EXHIBIT B**  
**CONDITIONS OF APPROVAL**

**EXHIBIT B**  
**CONDITIONS**

**GENERAL**

**1. Approved Plans**

The project approval is based upon the plans dated March 10, 2020 and the support materials and technical reports, except as modified by these conditions.

**2. Affordable Housing**

The applicant shall offer the City five (5) below market rate units as follows:

- a. One (1) studio unit at the moderate income level for sale;
- b. Two (2) one-bedroom units. One (1) at the low income and one (1) at the moderate income level for sale; and
- c. Two (2) two-bedroom units at the moderate income level for sale

**3. Upper Story Lighting**

Any exterior lighting above the ground floor of the building shall be shrouded and/or directed down to minimize glare.

**4. Encroachment Permit**

An encroachment permit and/or an excavation permit shall be obtained prior to any work done within the public right-of-way and it shall be in accordance with plans to be approved by the City Engineer.

**5. Public Utilities**

The applicant shall contact electric, gas, communication and water utility companies regarding the installation of new utility services to the site.

**6. Tree Protection and Mitigation**

The building plans shall incorporate the tree protection plan included in the arborist report by Kiely Arborist Services LLC (March 2019; revised February 24, 2020). All tree protection measures shall be carried out by the contractor in coordination with the consulting arborist. Grading underneath the driplines of the redwood trees shall be supervised by the consulting arborist. Documentation by letter(s) or reports shall be submitted prior to final inspection that demonstrates the tree protection plan was implemented by the developer and consulting arborist.

**7. Americans with Disabilities Act**

All improvements shall comply with Americans with Disabilities Act (ADA).

**8. Municipal Regional Stormwater Permit**

The project shall be in compliance with the City of Los Altos Municipal Regional Stormwater (MRP)NPDES Permit No. CA S612008, Order No. R2-2015-0049 dated November 19, 2015.

**9. Sewer Lateral**

Any proposed sewer lateral connection shall be approved by the City Engineer.

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450 First Street**

**10. Transportation Permit**

A Transportation Permit, per the requirements specified in California Vehicle Code Division 15, is required before any large equipment, materials or soil is transported or hauled to or from the construction site.

**11. Indemnity and Hold Harmless**

The applicant/owner agrees to indemnify, defend, protect, and hold the City harmless from all costs and expenses, including attorney's fees, incurred by the City or held to be the liability of the City in connection with the City's defense of its actions in any proceedings brought in any State or Federal Court, challenging any of the City's action with respect to the applicant's project.

**PRIOR TO SUBMITTAL OF BUILDING PERMIT**

**12. Green Building Standards**

The applicant shall provide verification that the project will comply with the City's Green Building Standards (Section 12.26 of the Municipal Code) from a qualified green building professional.

**13. Property Address**

The applicant shall provide an address signage plan as required by the Building Official.

**14. Water Efficient Landscape Plan**

Provide a landscape documentation package prepared by a licensed landscape professional showing how the project complies with the City's Water Efficient Landscape Regulations.

**15. Climate Action Plan Checklist**

The applicant shall implement and incorporate the best management practices (BMPs) into the plans as specified in the Climate Action Compliance Memo submitted on March 11, 2019.

**16. Pollution Prevention**

The improvement plans shall include the "Blueprint for a Clean Bay" plan sheet in all plan submittals.

**17. Storm Water Management Plan**

The Applicant shall submit a Storm Water Management Plan (SWMP) in compliance with the MRP. The SWMP shall be reviewed and approved by a City approved third party consultant at the Applicant's expense. The recommendations from the Storm Water Management Plan (SWMP) shall be shown on the building plans.

**18. Noise Mitigation**

The applicant shall implement and incorporate the noise mitigation measures into the plans as required by the report by Charles M. Salter Associates Inc., dated February 20, 2019.

**19. Electric Vehicle Charging Station Infrastructure**

All of the parking spaces shall be electric vehicle charging spaces capable of supporting future electric vehicle supply equipment. At least 10 percent of the total number of parking spaces shall meet the minimum EV space dimensions pursuant to the 2019 California Green Building



**CITY OF LOS ALTOS – IMPROVEMENT AGREEMENT  
450 First Street**

Standards Code. Other parking spaces not identified or required for accessible parking may be reduced to not less than eight and one-half (8.5) feet in width per the approved plans.

**PRIOR TO FINAL MAP RECORDATION**

**20. Ingress/Egress Easement**

- a. Property owner shall use best efforts to negotiate a commercially reasonable easement agreement with the adjacent property owner directly to the north (440 First Street; APN 167-41-009) pursuant to which the property owner will grant a nonexclusive perpetual easement for ingress/egress in favor of such property. The ingress/egress easement shall be no narrower than and follow the driveway entrance at First Street down the ramp to the first floor of the below grade garage and provide access to the northerly parcel (APN 167-41-009) with no less than a twenty-four foot wide access drive aisle to the future below grade garage of the northerly parcel as shown on page A-0 of the approved plans.
- b. If an easement agreement is negotiated to gain primary vehicular access to the underground parking for the property at 440 First St, the easement shall not be recorded until the approval of the proposed development on the parcel at 440 First Street.

**21. Covenants, Conditions and Restrictions**

The applicant shall include the following provisions in the Covenants, Conditions and Restrictions (CC&Rs):

- a. Long-term maintenance and upkeep of the landscaping and street trees, on-site and in the public right-of-way along the site frontage, as approved by the City, shall be a duty and responsibility of the property owners.
- b. Long-term maintenance and upkeep of the building's exterior materials and finishes shall be the responsibility of the Homeowner's Association.

**22. Pedestrian Easement**

The applicant shall record a one-foot public easement along the frontage of the parcel to the City of Los Altos for use as public right-of-way. Applicant shall submit documentation to the City for review and approval for the recordation of the public easement to the City of Los Altos.

**23. Public Utility Dedication**

The applicant shall dedicate public utility easements as required by the utility companies to serve the site.

**PRIOR TO ISSUANCE OF BUILDING PERMIT**

**24. Final Map Recordation**

The applicant shall record the final map. Plats and legal descriptions of the final map shall be submitted for review by the City Land Surveyor. Applicant shall provide a sufficient fee retainer to cover the cost of the map review by the City.

**25. Payment of Fees**

The applicant shall pay all applicable fees, including but not limited to sanitary sewer connection and impact fees, parkland dedication in-lieu fees, traffic impact fees, affordable housing impact

**CITY OF LOS ALTOS – IMPROVEMENT AGREEMENT**  
**450 First Street**

fee, public art impact fee and map check fee plus deposit as required by the City of Los Altos Municipal Code.

**26. Affordable Housing Agreement**

The Applicant shall execute and record an Affordable Housing Agreement, in a form approved and signed by the Community Development Director and the City Attorney, that offers five (5) below market rate units, in perpetuity as allowed by law, as defined in Condition No. 2. The below market rate units shall be constructed concurrently with the market rate units, shall be provided at the location on the approved plans, and shall not be significantly distinguishable with regard to design, construction or materials.

**27. Tree/landscaping well**

No tree or landscaping wells shall be located within the public right-of-way over or in the proximity of the sewer main along First Street.

**28. Soldier beams/Shoring**

The applicant shall insure the design of all soldier beams or other temporary shoring supports are outside the public right-of-way.

**29. Storm Water Filtration Systems**

The Applicant shall insure the design of all storm water filtration systems and devices are without standing water to avoid mosquito/insect infestation.

**30. Cost Estimate and Performance Bonds**

The applicant shall submit a cost estimate for the improvements in the public right-of-way and shall submit a 100 percent performance bond or cash deposit (to be held until acceptance of improvements) and a 50 percent labor and material bond (to be held six months after acceptance of improvements) for the work in the public right-of-way.

**31. Air Quality Mitigation**

The applicant shall implement and incorporate the air quality mitigation measures into the plans as required by the report prepared by Illingsworth & Rodin, Inc., dated March 6, 2019.

**32. Noise Mitigation**

The applicant shall implement and incorporate the noise mitigation measures into the plans as required by the report by Charles M. Salter Associates Inc February 20, 2019.

**33. Acoustical Report**

The applicant shall submit a report from an acoustical engineer ensuring that the rooftop mechanical equipment meets the City's noise regulations.

**34. Grading and Drainage Plan**

The Applicant shall submit on-site grading and drainage plans that include (i.e. drain swale, drain inlets, rough pad elevations, building envelopes, drip lines of major trees, elevations at property lines, all trees and screening to be saved) for approval by City Engineer. No grading or building pads are allowed within two-thirds of the drip line of trees unless authorized by a certified arborist and the Planning Division.

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**35. Sewage Capacity Study**

The applicant shall submit calculations showing that the City's existing sewer line will not exceed two-thirds full due to the project's sewer loads. For any segment that is calculated to exceed two-thirds full for average daily flow or for any segment that the flow is surcharged in the main due to peak flow, the applicant shall replace the sewer line with a larger sewer line.

**36. Construction Management Plan**

The Applicant shall submit a construction management plan for review and approval by the Community Development Director and the City Engineer. The construction management plan shall address any construction activities affecting the public right-of-way, including but not limited to excavation, traffic control, truck routing, pedestrian protection, material storage, earth retention and construction vehicle parking. The plan shall provide specific details with regard to how construction vehicle parking will be managed to minimize impacts on nearby commercial and residential properties. A Transportation Permit, per the requirements in California Vehicle Code Division 15, is required before any large equipment, materials or soil is transported or hauled to or from the site. Applicant shall pay the applicable fees before the transportation permit can be issued by the Traffic Engineer.

**37. Solid Waste Ordinance Compliance**

The Applicant shall be in compliance with the City's adopted Solid Waste Collection, Remove, Disposal, Processing & Recycling Ordinance (LAMC Chapter 6.12) which includes a mandatory requirement that all multi-family dwellings provide for recycling and organics collection programs.

**38. Solid Waste and Recyclables Disposal Plan**

The Applicant shall contact Mission Trail Waste Systems and submit a solid waste and recyclables disposal plan indicating the type, size and number of containers proposed, and the frequency of pick-up service subject to the approval of the Engineering Division. The Applicant shall also submit evidence that Mission Trail Waste Systems has reviewed and approved the size and location of the proposed trash enclosure. The enclosure shall be designed to prevent rainwater from mixing with the enclosure's contents and shall be drained into the City's sanitary sewer system. The enclosure's pad shall be designed to not drain outward, and the grade surrounding the enclosure designed to not drain into the enclosure. In addition, Applicant shall show on plans the proposed location of how the solid waste will be collected by the refusal company. Include the relevant garage clearance dimension and/or staging location with appropriate dimensioning on to plans.

**PRIOR TO FINAL OCCUPANCY**

**39. Condominium Map**

The applicant shall record the condominium map as required by the City Engineer.

**40. Pedestrian Safety**

The applicant shall install a "watch for pedestrians" sign at the top of the underground parking garage driveway ramp.

**41. Landscape and Irrigation Installation**

All on- and off-site landscaping and irrigation shall be installed and approved by the Community Development Director and the City Engineer. Provide a landscape WELCO Certificate of Completion, signed by the project's landscape professional and property owner, verifying that the

**CITY OF LOS ALTOS – IMPROVEMENT AGREEMENT  
450 First Street**

trees, landscaping and irrigation were installed per the approved landscape documentation package.

**42. Tree Protection Verification**

Documentation by letter(s) or reports shall be submitted prior to final inspection that demonstrates the tree protection plan was implemented by the developer and consulting arborist.

**43. Signage and Lighting Installation**

The applicant shall install all required signage and on-site lighting per the approved plan.

**44. Green Building Verification**

The applicant shall submit verification that the structure was built in compliance with the California Green Building Standards pursuant to Section 12.26 of the Municipal Code.

**45. Sidewalk in Public Right-of-Way**

The Applicant shall remove and replace entire sidewalk and curb and gutter along the frontage of First Street as directed by the City Engineer. Sidewalk shall have minimum width of 5 feet. The width of the curb and gutter shall not be part of the 5-foot wide sidewalk.

**46. New ADA Ramps and Crosswalks**

The applicant shall provide two new ADA ramps at the driveway per the City standards on First Street.

**47. Public Infrastructure Repairs**

The Applicant shall repair any damaged right-of-way infrastructures and otherwise displaced curb, gutter and/or sidewalks and City's storm drain inlet shall be removed and replaced as directed by the City Engineer or his designee. The Applicant is responsible to resurface (grind and overlay) half of the street along the frontage of First Street if determined to be damaged during construction, as directed by the City Engineer or his designee.

**48. Maintenance Bond**

A one-year, ten-percent maintenance bond shall be submitted upon acceptance of improvements in the public right-of-way.

**49. SWMP Certification**

The Applicant shall have a final inspection and certification done and submitted by the Engineer who designed the SWMP to ensure that the treatments were installed per design. The Applicant shall submit a maintenance agreement to City for review and approval for the stormwater treatment methods installed in accordance with the SWMP. Once approved, City shall record the agreement.

**50. Label Catch Basin Inlets**

The Applicant shall label all new or existing public and private catch basin inlets which are on or directly adjacent to the site with the "NO DUMPING - FLOWS TO ADOBE CREEK" logo as required by the City.

**51. Off-Site Improvements**

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The Applicant shall complete the installation of the sidewalk where none currently exists along with the replacement of the curb and gutter in the public right-of-way on the west side of Lyell Street between Second Street and the public alley.

**52. Back-Up Power Supply**

If required or proposed, a back-up power supply for the approved project shall be provided by a battery system that shall only be charged or energized by the electric feed from the domestic electric utility company providing electrical service to the project site, subject to the battery system's compliance with all other applicable codes and regulations that apply.

**53. Diesel Generator Prohibition**

Diesel powered electric generators are prohibited for any purpose in this project.

**EXHIBIT C**

**LABOR CODE PROVISIONS**

1. This Agreement is subject to all applicable requirements of Chapter 1 of Part 7 of Division 2 of the Labor Code, including requirements pertaining to wages, working hours and workers' compensation insurance.
2. The Work is subject to the prevailing wage requirements applicable to the locality in which the Work is to be performed for each craft, classification or type of worker needed to perform the Work, including employer payments for health and welfare, pension, vacation, apprenticeship and similar purposes. Copies of these prevailing rates are available online at <http://www.dir.ca.gov/DLSR>.
3. Developer shall not enter into a contract with a contractor for the performance of the Work unless the contractor and its subcontractors are registered with the California Department of Industrial Relations to perform public work under Labor Code Section 1725.5, subject to limited legal exceptions.

**EXHIBIT D****INSURANCE REQUIREMENTS**

Developer's performance of Work under this agreement shall not commence until Developer shall have obtained all insurance required under this Exhibit and such insurance shall have been reviewed and approved by the Risk Manager. All requirements herein provided shall appear either in the body of the insurance policies or as endorsements and shall specifically bind the insurance carrier.

Developer shall procure and maintain for the duration of the contract all necessary insurance against claims now and in the future for alleged injuries to persons or damages to property which may arise from or in connection with the performance of the Work by the Developer, the Contractor it's agents, representatives, employees and contractors.

**INSURANCE COVERAGE AND LIMITS RESTRICTIONS**

1. It shall be a requirement under this agreement that any available insurance proceeds broader than or in excess of the specified minimum insurance coverage requirements and/or limits shall be available to the additional insured. Furthermore, the requirements for coverage and limits shall be (1) the minimum coverage and limits specified in this agreement; or (2) the broader coverage and maximum limits of coverage of any insurance policy or proceeds available to the named insured; whichever is greater.
2. The limits of insurance required in this agreement may be satisfied by a combination of primary and umbrella or excess insurance. Any umbrella or excess insurance shall contain or be endorsed to contain a provision that such coverage shall also apply on a primary and non-contributory basis for the benefit of the City before the City's own insurance or self-insurance shall be called upon to protect it as a named insured.

**A. MINIMUM SCOPE OF INSURANCE**

Coverage shall be at least as broad as:

1. Insurance Services Office Commercial General Liability coverage:
  - a. Blanket contractual liability
  - b. Broad form property coverage
  - c. Personal injury
2. Insurance Services Office form covering Automobile Liability, code 1 (any auto).
3. Workers' Compensation insurance as required by the State of California and Employer's Liability insurance.
4. Such other insurance coverages and limits as may be required by the City.

**B. MINIMUM LIMITS OF INSURANCE**

Developer shall maintain limits no less than:

1. General Liability: \$1,000,000 per occurrence for bodily injury, personal injury and property damage and a \$2,000,000 aggregate. If Commercial General Liability insurance or other form with a general aggregate liability is used, either the general aggregate limit shall apply separately to this agreement or the general aggregate limit shall be twice the required occurrence limit.
2. Automobile Liability: \$1,000,000 per accident for bodily injury and property damage.
3. Employer's Liability:
  - Bodily Injury by Accident - \$1,000,000 each accident.
  - Bodily Injury by Disease - \$1,000,000 policy limit.
  - Bodily Injury by Disease - \$1,000,000 each employee.

**CITY OF LOS ALTOS – IMPROVEMENT AGREEMENT**  
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4. Such other insurance coverages and limits as may be required by the City of.

**C. DEDUCTIBLES AND SELF-INSURED RETENTIONS**

1. Any deductibles or self-insured retentions must be declared to and approved by the City of. At the option of the City, either: the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects the City of **\*\*CITY\*\***, its officers, officials, employees, and volunteers; or the Developer shall procure a bond guaranteeing payment of losses and related investigations, claims administration and defense expenses.
2. Policies containing any self-insured retention (SIR) provision shall provide or be endorsed to provide that the SIR may be satisfied by either the named insured or the City.
3. The City reserves the right to obtain a full certified copy of any insurance policy and endorsement. Failure to exercise this right shall not constitute a waiver of right to exercise later.

**D. ADDITIONAL INSURED REQUIREMENTS:**

The required general liability and automobile policies are to contain, or be endorsed to contain the following provisions:

- a. The City, its officers, officials, employees, agents and volunteers are to be covered as additional insureds as respects alleged: liability arising out of activities performed by or on behalf of the Developer; products and completed operations of the Developer; premises owned, occupied or used by the Developer; or automobiles owned, leased, hired or borrowed by the Developer. The coverage shall contain no special limitations on the scope of protection afforded to the City, its officers, officials, employees, agents or volunteers.
- b. Any failure to comply with reporting or other provisions of the policies including breaches of warranties shall not affect coverage provided to the City, its officers, officials, employees, agents or volunteers.
- c. The Developer's insurance shall apply separately to each insured against whom claim is made or suit is brought except, with respect to the limits of the insurer's liability.
- d. Developer shall furnish properly executed Certificates of Insurance from insurance companies acceptable to the City and signed copies of the specified endorsements for each policy prior to commencement of work under this agreement. Such documentation shall clearly evidence all coverages required above including specific evidence of separate endorsements naming the City and shall provide that such insurance shall not be materially changed, terminated or allowed to expire except after 30 days prior written notice by certified mail, return receipt requested, has been filed with the City Clerk.  
Such insurance shall be maintained from the time work first commences until completion of the work under this agreement. Developer shall replace such certificates for policies expiring prior to completion of work under this agreement.

**E. ACCEPTABILITY OF INSURERS**

Insurance is to be placed with insurers with a current A.M. Best's rating of no less than A: VII.

**F. COMPLETED OPERATIONS**

Developer shall maintain insurance as required by this contract to the fullest amount allowed by law and shall maintain insurance for a minimum of five years following the completion of this project. In the event the Developer fails to obtain or maintain completed operations coverage as required by this agreement, the City at its sole discretion may purchase the coverage required and the cost will be paid by the Developer.



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**G. CROSS-LIABILITY**

The Liability policy shall include a cross-liability or severability of interest endorsement.

**H. FAILURE TO MAINTAIN INSURANCE COVERAGE**

If Developer, for any reason, fails to maintain insurance coverage, which is required pursuant to this Agreement, the same shall be deemed a material breach of contract. The City, at its sole option, may terminate this agreement and obtain damages from the Developer resulting from said breach. Alternatively, the City may purchase such required insurance coverage, and Developer shall reimburse the City for any premium costs advanced by the City for such insurance.

**I. PRIMARY AND NON-CONTRIBUTORY**

For any claims related to this project, the Developer’s insurance coverage shall be primary insurance as respects the City, its officers, officials, employees, agents and volunteers. Any insurance or self-insurance maintained by the City, its officers, officials, employees, agents or volunteers shall be excess of the Developer’s insurance and shall not contribute with it.

The additional insured coverage under the Developer’s policy shall be primary and non-contributory” and will not seek contribution from the City’s insurance or self-insurance and shall be at least as broad as CG 20 01 04 13.

**J. SUBCONTRACTORS**

Developer shall require its contractors to maintain the same levels of insurance and provide the same indemnity that the Developer is required to provide under this Agreement. A contractor is anyone who is under contract with the Developer or any of its contractors to perform work contemplated by this Agreement. The Developer shall require all contractors to provide evidence of valid insurance and the required endorsements prior to the commencement of any work.

**K. SUBROGATION WAIVER**

Developer agrees to waive subrogation rights against City regardless of the applicability of any insurance proceeds, and to require all Contractors, subcontractors or others involved in any way with the services to do likewise.

**L. VERIFICATION OF COVERAGE**

Developer shall furnish the City with original endorsements effecting coverage required by this clause. The endorsements are to be signed by a person authorized by that insurer to bind coverage on its behalf. All endorsements are to be received and approved by the City before the services commence.