



COMMUNITY DEVELOPMENT DEPARTMENT

Council Meeting Date: November 27, 2007
Staff Report #: 07-205

Agenda Item #: H1

INFORMATION: **Update on the Settlement Agreement and Review Process for the Revised Derry Mixed-Use Project Located at 550-580 Oak Grove Avenue and 540-570 Derry Lane.**

This is an information report. Council action is not required at this time.

BACKGROUND

On August 29, 2006, the Derry Lane Mixed Use Development, which included 135 residential units and 22,525 square feet of commercial space, was approved by the City Council, and on September 12, 2006, the City Council adopted the related ordinances amending the Zoning Ordinance and rezoning the property to Planned Development (P-D). In October 2006, a referendum petition was submitted to the City. To provide the applicant and referendum group with the opportunity to reach a settlement, the City Council did not take action regarding the referendum. In May 2007, the applicant for the Derry Lane project and the referendum group announced a settlement, and in September 2007 staff received plans for a revised project based on the settlement. The revised project plans are currently undergoing review by staff.

After hearing from members of the public at its meeting of October 22, 2007, the Planning Commission discussed the revised project. The Planning Commission had the following comments on the revised proposal:

- More information is needed regarding the permitted commercial uses and types of commercial establishments, including a market assessment plan.
- The project should provide as many below-market rate (BMR) units as possible.
- The applicant should provide renderings with perspectives from El Camino Real, the 7-11 store, and the train tracks.
- More information is needed regarding the height of and roofing for the stair and elevator towers.
- The applicant should investigate using green building techniques and working with Build It Green.
- The proposed residential unit mix should be revisited to add one- and two-bedroom units and reduce the number of three-bedroom units.
- Public noticing should be expanded to Marcussen Drive and on-site noticing should be explored.

This report serves as an information update on the revised project and focuses on the differences between the previously approved and revised projects, and the review process, but does not provide an in-depth analysis of the revised project. An in-depth analysis will follow at a later date. A more detailed discussion of the revised project is provided in the Planning Commission staff report (Attachment A), which also includes the revised project plans (Attachment A10-A46) and the public portion of the Settlement Agreement (Attachment A47-A50). Additionally, a Frequently Asked Questions document on the Settlement Agreement and Referendum prepared by the City Attorney's office (Attachment B) and a chart comparing the approved project and the revised project (Attachment C) are included as part of this report. The objective of the information item is to provide an opportunity for the City Council to become familiar with the revised project, and for the applicant and staff to understand questions, ideas, or concerns of the City Council.

ANALYSIS

Proposal

The revised project would require the following actions:

- 1) **Rescind the August 29, 2006 and September 12, 2006 approvals** for a General Plan Amendment, Zoning Ordinance Amendment, Rezoning, Planned Development Permit, Major Subdivision, BMR Agreement, and Heritage Tree Removal Permit;
- 2) **General Plan Amendment** to modify the El Camino Real land use designation and the associated land use intensity tables to allow the density for residential uses to exceed the base density of 18.5 dwelling units per acre (du/ac) and to allow the intensity to exceed the base floor area ratio (FAR) of 75 percent on this property through a Development Agreement;
- 3) **Zoning Ordinance Amendment** to modify Chapter 16.57 P-D District to allow the density for residential uses to exceed the base density of 18.5 du/ac and to allow intensity to exceed the overall floor area ratio (FAR) requirements of the existing C-4 General Commercial District (Applicable to El Camino Real) zoning designation on this property, and to require a Development Agreement to exceed the density and floor area ratio maximums of the pre-existing zoning district;
- 4) **Rezone** the property from C-4 (ECR) District to P-D District;
- 5) **Planned Development Permit** for the demolition of existing commercial structures and to establish the specific uses, development regulations, and architectural designs for the construction of:
 - 108 residential units at a density of 40 du/net acre (32 du/gross acre) where 18.5 du/ac is the maximum density permitted by the pre-existing zoning designation;
 - Approximately 146,075 square feet of residential gross floor area;
 - Approximately 12,650 square feet of retail/restaurant space (with permitted restaurant alcohol sales and outdoor seating) and 12,275 square feet of non-medical office space for a total commercial gross floor area of 24,925 square feet;

- A residential net FAR of 123.4 percent (97.2 percent gross FAR) and commercial net FAR of 21.1 percent (16.6 percent gross FAR) for a total net FAR of 144.6 percent (113.8 percent gross FAR) where 75 percent is the maximum FAR permitted by the pre-existing zoning designation;
 - Three-story building elements with a maximum building height of 40 feet where 30 feet is the maximum building height permitted by the pre-existing zoning designation;
 - 301 on-site parking spaces in a partially submerged and below-grade parking structure where 366 parking spaces would be required by the existing C-4 (ECR) zoning designation; and
 - 26 on-street parallel parking spaces along the proposed Derry Lane (Garwood Way) right-of-way extension.
- 6) **Major Subdivision** to merge eight existing lots, to abandon right-of-way, plan lines, and easements, to dedicate right-of-way and easements, and to create 108 residential condominium units and a maximum of eight commercial condominium units;
 - 7) **Development Agreement** to guarantee development rights associated with the requested entitlements and to establish a payment schedule for the public benefit contribution of two million dollars;
 - 8) **Below Market Rate Agreement** to provide 16 BMR units and in-lieu fees in accordance with the City's BMR Housing Program;
 - 9) **Heritage Tree Removal Permit** to remove four on-site heritage trees associated with the project, and to remove six off-site heritage trees associated with the proposed Derry Lane (Garwood Way) right-of-way improvements and extension; and
 - 10) **Addendum to the Environmental Impact Report** that would compare the potential environmental impacts of the proposal with the EIR certified on August 29, 2006.

Project Review Process

Throughout the process, there will be opportunities for public input. The following public meetings have occurred or are planned:

- Housing Commission Meeting to make recommendations on the proposed BMR Agreement – January 2007;
- Planning Commission Public Hearing to review and make recommendations on the EIR Addendum and the requested development applications;
- City Council Public Hearing on the EIR Addendum and the requested development applications, including introduction of the ordinances to amend the Zoning Ordinance and rezone the property; and
- City Council Meeting to adopt the ordinances to amend the Zoning Ordinance and rezone the property.

The approved project did not include a Fiscal Impact Analysis (FIA) and it is not staff's intent to introduce this element for the revised project.

Development Agreement

In order to arrange payment of the two million dollar public benefit contribution that is part of the Settlement Agreement and establish any other terms to be negotiated, the applicant is pursuing a legally binding Development Agreement. The City Council adopted Resolution No. 4159 in January 1990, establishing the procedures and requirements for the consideration of Development Agreements (available upon request at the Planning Division). The resolution contains specific provisions regarding the form of applications for development agreements, minimum requirements for public notification and review, standards for review, findings and decisions, amendments and cancellation of agreements by mutual consent, recordation of the agreements, periodic review, and modification or termination of an agreement. The City has previously entered into only one Development Agreement, with Sun Microsystems for the development of its campus at 1601 Willow Road. This document is available for review upon request at City offices.

Approval of the Development Agreement would be part of the final set of City Council actions. Due to the complexity and technical content of such agreements, the City Manager will lead the process of formulating the draft Development Agreement in close consultation with the City Attorney and other relevant staff, in a manner that is consistent with the parameters established in the Settlement Agreement.

IMPACT ON CITY RESOURCES

Staff time spent on the development review of this project is fully recoverable through fees charged to the applicant.

POLICY ISSUES

The proposed project will ultimately require the Council to consider a policy decision whether to amend the General Plan and Zoning Ordinance and rezone the property. The implications associated with this decision will be analyzed through the project review process.

ENVIRONMENTAL REVIEW

An Addendum to the certified EIR will be prepared for this project. The City Council certified the Final EIR on August 29, 2006. The Addendum will describe changes to the project analyzed in the Final EIR, the likely environmental effects of these changes, and an explanation of the decision not to prepare a Subsequent EIR.

Megan Fisher
Associate Planner
Report Author

Justin Murphy
Development Services Manager

PUBLIC NOTICE

Public notification was achieved by posting the agenda, with this agenda item being listed, at least 72 hours prior to the meeting. In addition, the staff report was posted on the Derry Mixed-Use Project webpage on the City's website, and an email bulletin was sent to all subscribers to the page.

ATTACHMENTS

- A. Planning Commission Staff Report, dated October 22, 2007
- B. Frequently Asked Questions on the Derry Project Settlement Agreement and Referendum
- C. Comparison Chart of the Approved and Revised Projects

OTHER AVAILABLE DOCUMENTS

Previously distributed documents for this project with all of the attachments are available for review during business hours at the Planning Division. Documents and information on the project are also available on the project webpage:
http://www.menlopark.org/projects/comdev_dmu.htm

Note: Attached are reduced versions of maps and diagrams submitted by the applicants. The accuracy of the information in these drawings is the responsibility of the applicants, and verification of the accuracy by City staff is not always possible. The original full-scale maps, drawings and exhibits are available for public viewing at the Community Development Department.



PLANNING COMMISSION STAFF REPORT

FOR THE PLANNING COMMISSION
MEETING OF OCTOBER 22, 2007
AGENDA ITEM D1

LOCATION:	550-580 Oak Grove 540-570 Derry Lane	APPLICANT:	O'Brien at Derry Lane, LLC
EXISTING USE:	Car wash Retail Fast food Dry cleaner Automobile storage	OWNER:	Derry Family
PROPOSED USE:	Residential/ Commercial	INFORMATION UPDATE ON APPLICATIONS TO:	Rescind Previous Approvals and Pursue New Approval for a General Plan Amendment, Zoning Ordinance Amendment, Rezoning, Planned Development Permit, Major Subdivision, Development Agreement, Environmental Review
EXISTING ZONING:	C-4(ECR) (General Commercial, Applicable to El Camino Real)	PROPOSED ZONING:	P-D (Planned Development)

PROPOSAL

The applicant is proposing to demolish all existing structures on the project site, including several single-story commercial buildings along Oak Grove Avenue and Derry

Lane, merge the lots and the Derry Lane right-of-way, and construct 108 residential condominium units, 24,925 square feet of commercial condominium space, and 301 parking spaces in a partially and fully submerged parking garage. The proposed project site consists of eight existing parcels at 540-570 Oak Grove Avenue and 550-580 Derry Lane and the Derry Lane right-of-way, totaling 3.45 acres. Following dedication of the proposed Derry Lane (Garwood Way) right-of-way and Oak Grove Avenue plan line, the site area would be 2.72 acres.

The proposal will require review and recommendations by the Planning Commission on the General Plan Amendment, Zoning Ordinance Amendment, Rezoning, Planned Development Permit, Lot Merger and Condominium Subdivision, Development Agreement and Environmental Review. In addition, the proposal will require Housing Commission review and recommendation on the Below Market Rate (BMR) Agreement. The City Council will be the final decision-making body on these applications and the Heritage Tree Removal Permit. No staff recommendation on the requested applications is being provided at this time.

BACKGROUND

On August 29, 2006, the Derry Lane Mixed Use Development, which included 135 residential units and 22,525 square feet of commercial space, was approved by the City Council, and on September 12, 2006, the City Council adopted the ordinances amending the Zoning Ordinance and rezoning the property to Planned Development (P-D). In October 2006, a referendum petition was submitted to the City. To provide the applicant and referendum group with the opportunity to reach a settlement, the City Council did not take action regarding the referendum. In May 2007, the applicant for the Derry Lane project and the referendum group announced a settlement, and in September 2007 staff received plans for the revised project. The revised project plans are currently undergoing review by staff.

This report focuses on the differences between the previously approved and revised projects, and does not provide an in-depth analysis of the revised project. The October 22, 2007 meeting will serve as an information update on the revised project and Section Two of the Settlement Agreement (Attachment C). The objective is to provide an opportunity for the public and the Planning Commission to become familiar with the revised project, and for the applicant and staff to understand questions, ideas, or concerns of the public and the Planning Commission.

PROJECT DESCRIPTION

The proposed project would require the following actions:

- 1) Rescind the August 29, 2006 and September 12, 2006 approvals for a General Plan Amendment, Zoning Ordinance Amendment, Rezoning, Planned Development Permit, Major Subdivision, BMR Agreement, and Heritage Tree Removal Permit;

- 2) General Plan Amendment to modify the El Camino Real land use designation and the associated land use intensity tables to allow the density for residential uses to exceed the base density of 18.5 dwelling units per acre (du/ac) and to allow the intensity to exceed the base floor area ratio (FAR) of 75 percent on this property;
- 3) Zoning Ordinance Amendment to modify Chapter 16.57 P-D District to allow the density for residential uses to exceed the base density of 18.5 du/ac and to allow intensity to exceed the overall floor area ratio (FAR) requirements of the existing C-4 General Commercial District (Applicable to El Camino Real) zoning designation on this property, and to require a Development Agreement to exceed the density and floor area ratio maximums of the pre-existing zoning district;
- 4) Rezone the property from C-4 (ECR) District to P-D District;
- 5) Planned Development Permit for the demolition of existing commercial structures and to establish the specific uses, development regulations, and architectural designs for the construction of:
 - 108 residential units at a density of 40 du/net acre (32 du/gross acre) where 18.5 du/ac is the maximum density permitted by the pre-existing zoning designation;
 - Approximately 146,075 square feet of residential gross floor area;
 - Approximately 12,650 square feet of retail/restaurant (with permitted restaurant alcohol sales) space and 12,275 square feet of non-medical office space for a total commercial gross floor area of 24,925 square feet;
 - A residential net FAR of 123.4 percent (97.2 percent gross FAR) and commercial net FAR of 21.1 percent (16.6 percent gross FAR) for a total net FAR of 144.6 percent (113.8 percent gross FAR) where 75 percent is the maximum FAR permitted by the pre-existing zoning designation;
 - Three-story building elements with a maximum building height of 40 feet where 30 feet is the maximum building height permitted by the pre-existing zoning designation;
 - 301 on-site parking spaces in a partially submerged and below-grade parking structure where 366 parking spaces would be required by the existing C-4 (ECR) zoning designation; and
 - 26 on-street parallel parking spaces along the proposed Derry Lane (Garwood Way) right-of-way extension.
- 6) Major Subdivision to merge eight existing lots, to abandon right-of-way, plan lines, and easements, to dedicate right-of-way and easements, and to create 108 residential condominium units and a maximum of eight commercial condominium units;
- 7) Development Agreement to guarantee development rights associated with the requested entitlements and to establish a payment schedule for the public benefit contribution of two million dollars;
- 8) Below Market Rate Agreement to provide 16 BMR units and in-lieu fees in accordance with the City's BMR Housing Program;
- 9) Heritage Tree Removal Permit to remove four on-site heritage trees associated with the project, and to remove six off-site heritage trees associated with the proposed Derry Lane (Garwood Way) right-of-way improvements and extension; and
- 10) Addendum to the Environmental Impact Report that would compare the potential environmental impacts of the proposal with the EIR certified on August 29, 2006.

Project Revisions

In order to comply with the Settlement Agreement, the applicant has provided revised plans that are included as Attachment B. The public sections of the Settlement Agreement are included as Attachment C. The Settlement Agreement references several sections of the previously approved Planned Development Permit, hence for context, that document has been included as Attachment D. A summary of the key changes to the project is contained in the table below. All square footages for the revised project are based on the maximums permitted in the Settlement Agreement, and therefore, are approximate and slightly higher than the square footage calculations currently shown on the project plans.

	<u>Previous Project</u>	<u>Revised Project</u>
<u>Residential</u>		
No. of Residential Units	135	108
No. of BMR units	21	16
Residential Square Footage	171,334 square feet	146,055 square feet
Unit Mix	53 one-bedroom units 82 two-bedroom units	29 one-bedroom units 58 two-bedroom units 21 three-bedroom units
<u>Commercial</u>		
Office Square Footage	12,274 square feet	12,275 square feet
Retail/Restaurant Square Footage	10,251 square feet	12,650 square feet
Total Commercial Square Footage	22,525 square feet	24,925 square feet
Total Square Footage	193,859 square feet	171,000 square feet
<u>Parking</u>		
No. of on-site spaces	307 spaces	301 spaces
No. of off-site spaces on Derry Lane (Garwood Way)	29 spaces	26 spaces
No. of off-site spaces on Oak Grove Avenue	5 spaces	5 spaces
Max. Building Height	48.6 feet	40 feet
Max. No. of stories	4 stories	3 stories

Restaurant Space and Public Plaza

As part of the revised plans, the ground floor commercial space has been increased by approximately 2,400 square feet. The applicant is proposing to include more restaurant

uses in this space, for up to 7,800 square feet of restaurant. A public plaza is located between the two commercial buildings along Oak Grove Avenue. As part of the revised proposal, the plaza has been enlarged to approximately 3,500 square feet. It is proposed that outdoor dining associated with restaurant uses would be located in this area. As a result of the enlarged plaza area, the pedestrian entrance to the podium has been altered so the stairs are enclosed and on the left of the plaza, rather than open and in the center of the plaza.

Parking

Rezoning to P-D allows a project to depart from the development regulations of the existing zoning district. The applicant is proposing the following on-site parking standards for the revised project:

	<u>Proposed Parking Standards</u>	<u>C-4 (ECR) Parking Standards</u>
Residential One-Bedroom Units	one space per unit	two spaces per unit
Residential Two- and Three-Bedroom Units	two spaces per unit	two spaces per unit
Non-Medical Office	3.3 spaces per 1,000 sq. ft.*	6 spaces per 1,000 sq. ft.
Retail	5 spaces per 1,000 sq. ft.*	6 spaces per 1,000 sq. ft.
Restaurant	6 spaces per 1,000 sq. ft.*	6 spaces per 1,000 sq. ft.

*Parking standards per the Policy for Administrative Review of Parking Reduction Requests (Use-Based Guidelines)

The difference in the calculations for number of the spaces per the proposed parking standards and the Zoning Ordinance standards are shown in the table below:

	<u>Proposed Parking Calculations</u>	<u>C-4 (ECR) Parking Calculations</u>
Residential One-Bedroom Units	29 * 1 = 29	29 * 2 = 58
Residential Two- and Three-Bedroom Units	58 * 2 = 116	58 * 2 = 116
Non-Medical Office	21 * 2 = 42	21 * 2 = 42
Non-Medical Office	12,275 / 1,000 * 3.3 = 41	12,255 / 1,000 * 6 = 74
Retail	4,850 / 1,000 * 5 = 25	4,835 / 1,000 * 6 = 29
Restaurant	7,800 / 1,000 * 6 = 47	7,800 / 1,000 * 6 = 47
Total Parking Required	300 spaces	366 spaces

The applicant is proposing to provide 301 on-site parking spaces, which will exceed the number required by the proposed parking calculations by one space. Additionally, 26 off-site, on-street parallel parking spaces are proposed to be constructed as part of the Derry Lane (Garwood Way) right-of-way extension.

Additional Public Benefits

Per the Settlement Agreement, a 10-foot public access easement is proposed along the northernmost border of the property adjacent to building four. The purpose of the easement is to provide pedestrian connectivity between the proposed Derry Lane (Garwood Way) right-of-way, the proposed 1300 El Camino Real project, and El Camino Real. Also, in addition to all mandated fees, the Settlement Agreement states that upon all of the necessary project approvals for the revised project becoming final and effective without any legal or referendum challenge, the developer will make a two million dollar public benefit contribution to the City over a multi-year period. This contribution will be in place of the previously approved 100,000 dollar payment (Condition 6.53, Attachment D18).

PROJECT REVIEW

Staff will be reviewing the revised project plans and providing comments to applicant in the following weeks. During the review process, staff will be examining the conditions of approval that were part of the previously approved Planned Development Permit to determine if conditions should be eliminated, modified, or added to reflect information that has changed as a result of the plan revisions.

The following public meetings have been scheduled or are planned:

- Information Item – October 22, 2007 (Planning Commission)
- Information Item – November/December 2007 (City Council)
- Housing Commission Meeting to make recommendations on the revised BMR Agreement.
- Planning Commission Public Hearing to make recommendations on the Addendum to the EIR and the requested development applications.
- City Council Public Hearing on the Addendum to the EIR and the requested development applications, including introduction of the ordinances to amend the Zoning Ordinance, rezone the property, and enact the Development Agreement.
- City Council Meeting to adopt the ordinances to amend the Zoning Ordinance, rezone the property, and enact the Development Agreement.

All actions on the project would be structured so the effective date of the rescission of the previous approvals and the initiation of the revised approvals would occur simultaneously.

CORRESPONDENCE

Staff has received three items of correspondence on the revised project that are included as Attachment E. Greenbelt Alliance sent a letter of support endorsing the Derry project, due to its proximity to the downtown and transit, below market rate housing opportunities, and compact design. Secondly, Steve Flach, a resident at 847 Valparaiso, states that while the project seems to be a good idea, he is concerned

about the fate of Foster's Freeze. He believes that a firm commitment from the developer regarding the relocation of Foster's Freeze is necessary prior to approval of the project. Finally, the applicant has provided a letter from Sung Jun Lee, the operator of Foster's Freeze. Mr. Lee states his intention to continue to operate in downtown Menlo Park until construction commences, and that the O'Brien Group and Derry Family have agreed to provide financial and other support in the planning and execution of relocating Foster's Freeze within Menlo Park.

ENVIRONMENTAL REVIEW

An Addendum to the certified EIR will be prepared for this project. The City Council certified the Final EIR on August 29, 2006. The Addendum will describe changes to the project analyzed in the Final EIR, the likely environmental effects of these changes, and an explanation of the decision not to prepare a subsequent EIR.

RECOMMENDED MEETING REVIEW PROCEDURE

1. Introduction by Staff
2. Project Presentation by Applicant
3. Commission Questions of Staff/Applicant on the Revised Project Proposal and Plans
4. Public Comment on the Revised Project Proposal and Plans
5. Commission Comments on the Revised Project Proposal and Plans

Megan Fisher
Associate Planner
Report Author

Justin Murphy
Development Services Manager

PUBLIC NOTICE

Public notification consisted of publishing a notice in the local newspaper and notification by mail of owners and occupants within the area bounded by the City's northerly boundary along El Camino Real between Valparaiso Avenue and Watkins Avenue, Felton Gables, Laurel Street, Ravenswood Avenue, the Caltrain right-of-way, Middle Avenue, and University Drive.

Additionally, The City has prepared a project page for the proposal, which is available at the following address: http://www.menlopark.org/projects/comdev_dmu.htm. This page provides up-to-date information about the project, allowing interested parties to stay informed of its progress. The page allows users to sign up for automatic email bulletins, notifying them when content is updated.

ATTACHMENTS

- A. Location Map
- B. Project Plans
- C. Section Two of the Settlement Agreement, dated May 31, 2007
- D. Planned Development Permit, dated August 29, 2006
- E. Correspondence
 - Greenbelt Alliance, dated September 28, 2007
 - Steve Flach, 847 Valparaiso Avenue, dated October 12, 2007
 - Sung Jun Lee, Foster's Freeze, dated September 24, 2007

Note: Attached are reduced versions of maps and diagrams submitted by the applicants. The accuracy of the information in these drawings is the responsibility of the applicants, and verification of the accuracy by City Staff is not always possible. The original full-scale maps, drawings and exhibits are available for public viewing at the Community Development Department.

PREVIOUS STAFF REPORTS

Previously distributed documents for this project with all of the attachments are available for review during business hours at the Planning Division. Documents and information on the project are also available on the project webpage:
http://www.menlopark.org/projects/comdev_dmu.htm

EXHIBITS TO BE PROVIDED AT MEETING

Color and Material Boards

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5/31/2007

**Settlement Agreement
and
Mutual Release of Claims**

(C1)

Settlement Agreement and Mutual Release of Claims

This SETTLEMENT AGREEMENT AND MUTUAL RELEASE OF CLAIMS (“*Agreement*”) is entered into on May 31, 2007 by and among MENLO PARK TOMORROW, an unincorporated general purpose political committee (“*MPT*”), and O’Brien at Derry Lane, LLC, which is wholly owned or controlled by THE O’BRIEN GROUP, (“*O’Brien*”) (all the foregoing, collectively “*Parties*”).

Section 2 Characteristics of Amended Project.

2.1 General Scope of Changes. The Amended Project will be substantially the same as the previously-approved Derry Mixed Use Project except as amended to implement the changes needed to meet the terms of this Agreement, as set forth below, which changes the Parties agree significantly and substantially modify the previously approved project.

2.2 Specific Changes to be Incorporated. The following characteristics and parameters will be incorporated into the plans for the *Amended Project* and/or its Conditions of Approval, and, for the purposes of determining compliance with this Agreement, shall be calculated according to definitions, practices, methodologies used by the *City* on August 29, 2006. No aggregate increase in the square footage of space which was not counted as part of the *Approvals* but which would count towards FAR under section 16.04.325 of the city zoning code shall be permitted. Notwithstanding the preceding sentence, increases in the aggregate square footage of utility, mechanical, electrical and elevator equipment rooms located in the garage will be permitted if reasonably required to service the development. The *Parties* will use reasonable efforts to request that the *City* apply those same definitions, practices and methodologies to calculate the project characteristics and parameters when processing the application for the *Amended Project*.

- (a) Project Floor Area: Reduction from 193,859 square feet as previously approved to a maximum of 171,000 square feet.
- (b) A maximum total commercial floor area of 24,925 square feet, consisting of:
 - (1) Ground floor retail sales/restaurant (no office) of 12,650 square feet minimum, occupying buildings 10 and 8 as shown in Attachment A hereto and as described in said attachment;
 - (2) Office space of 12,275 square feet maximum;
 - (3) Medical/Dental and other related uses not permitted.
- (c) Total residential floor area of 146,075 square feet, consisting of a maximum of 108 residential units, including 16 Below Market Rate units.

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(d) Maximum building height of any building is reduced from 50 feet to 40 feet. Maximum number of stories is reduced from four to three. Subject to the foregoing reductions, building heights shall be as defined by Section 2.6 of the August 29, 2006 Planned Development Permit.

(e) All mandated fees and permits, including the Park & Recreation in lieu fee set forth in section 15.16.020 of the Menlo Park Municipal Code (estimated to be \$3.456 million for 108 units), will be at the *City* specified rates.

(f) *O'Brien* shall grant to the *City* a cross access easement on the northernmost border of the property adjacent to building four. The easement shall be 10 feet wide, designed to fit entirely within the existing 15' building four setback and to connect the Garwood Way on-street parking area to the 1300 El Camino Real project for future pedestrian access through to El Camino Real. Said pedestrian access shall be designed to be inviting to pedestrians, and shall be subject to review and approval by *City* staff on that basis.

(g) Parking shall be provided in accordance with revised project plans to show a total of 316 parking spaces, of which 290 parking spaces shall be provided on the project site underground and 26 parking spaces shall be provided in the newly constructed Garwood Way right-of-way. Additionally, a commercial loading zone measuring nine feet wide by 66 feet long shall be provided along Garwood Way and shall not count toward required parking. Existing and any additional public parking spaces on Oak Grove will not count toward required parking. If the *City* will permit additional parking spaces on Garwood Way (non-diagonal), then *O'Brien* may reduce the underground parking by 1 space for every two standard spaces added to Garwood Way, not to result in less than 287 spaces underground. If additional parking is required due to an increase in permitted restaurant square footage uses, such parking shall be provided in the underground garage.

(h) Project to include the expanded ground floor public plaza with reduced elevation close to Oak Grove street grade near the expanded retail area as shown on page 1 item "circle A" of Attachment A and described in said Attachment. The expanded plaza is approximately 3,500 square feet.

2.3 Permitted Conversion of Space to Restaurant Use. *O'Brien* shall be permitted to convert up to 3,400 square feet of first floor retail uses to restaurant uses for a total restaurant uses not to exceed 7,800 square feet. However, this conversion is subject to whatever traffic analysis may be required by the *City*, and provided that all required parking for the expanded restaurant uses is located in the underground garage.

2.4 No Greater School and Traffic Impacts. The school and traffic impacts of the *Amended Project*, as analyzed by the *City*, shall be no greater than those of the previously approved Derry Mixed Use Project. In particular, the *Amended Project* must generate no more peak hour AM and PM vehicle trips, and no more total daily vehicle trips than the previously-approved project as determined by the *City* Transportation Manager.

2.5 Specific Changes to be Incorporated in Prior City Approvals. The Planned Development Permit, Major Subdivision, BMR Housing Agreement, and Heritage Tree Permit will be those of the previously-approved project, with only those changes required to reflect the new building parameters. In addition to any other changes required under this Agreement, the Planned

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Development Permit for the *Amended Project* will incorporate the following changes from the PD permit for the prior Derry Mixed Use Project:

- Section 1.2 will be modified to reflect the terms of this Agreement.
- Section 1.5 will report gross and net square footage and acreage of the property area: “Area of Property: 150,209 gross/ 117,200 net square feet (3.45) acres gross, (2.69) acres net.”
- Sections 2.1, 2.2, 2.6, and 2.8 will be modified to reflect the terms of this Agreement.
- *MPT* and *O’Brien* shall request that Sections 2.1, and 2.2 be modified to report in maximum units, square footage and number of dwelling units, in addition to any reference to FAR or dwelling units per acre.
- Section 3 will be modified to reflect commercial square footage and use restrictions contained in Section 2.2 of this Agreement.
- Section 6.1 (“Project Conditions”) will be modified as follows:
 - The project plans referenced in section 6.1 will be altered to reflect design changes needed to implement the terms of this Agreement.
 - Permitted changes in the project plans referenced in section 6.1 will be limited to only those reasonably needed to meet the terms of this Agreement. In particular, building footprints, building materials and building colors will remain substantially unchanged. Notwithstanding the above, the *Parties* acknowledge and agree that *O’Brien* may make minor design changes to the previously-approved project design (e.g. relocate elevators and stairs, modify alignment of bridge elements, etc.) as appropriate to accommodate the project revisions described in the Agreement, provided that the overall architectural quality of the project is maintained.

2.6 Public Benefit Contribution by O’Brien. In addition to the mandated fees, upon all of the necessary City approvals and Project Approvals for the *Amended Project* becoming final and effective without any legal or referendum challenge, *O’Brien* will make a \$2 million Public Benefit Contribution to the *City* (“*Public Benefit Contribution*”). The *Public Benefit Contribution* shall be made on a pro rata basis on the sale of the market-rate residential units with \$100,000 due after the close of escrow of the sale of the first residential unit, a pro-rated portion of the balance due upon the close of escrow of the sale of each remaining market-rate residential unit, with the balance due no later than two years from the close of escrow of the sale of the first residential unit. The denominator of such pro-rata calculation shall be all market-rate residential units included in the *Amended Project*. The *Public Benefit Contribution* shall be directed at the discretion of *City*. In the event that, on or after September 12, 2006, any new *City* fee has been implemented, the *Public Benefit Contribution* shall be reduced to the full extent of the new fee.

PLANNED DEVELOPMENT PERMIT

550-580 Oak Grove Avenue and 540-570 Derry Lane Collectively Known as the Derry Lane Mixed-Use Project

1. GENERAL INFORMATION:

- 1.1 Applicant: O'Brien at Derry Lane, LLC
- 1.2 Nature of Project: General Plan and Zoning Ordinance Amendments, Rezoning, Planned Development Permit for the construction of 22,525 square feet of commercial space in two separate buildings and 135 residential units configured in eight separate buildings, with related site improvements including partially and fully submerged parking, landscaping, and right-of-way dedication and improvements, and Tentative Subdivision Map to abandon Derry Lane public right-of-way and existing 20-foot wide storm sewer easement along the eastern boundary of the project site, merge eight parcels and the Derry Lane right-of-way, relocate the public utility easement adjacent to the southwest portion of the project site, and create 135 residential condominium units with associated common areas and a maximum of eight commercial condominium units.
- 1.3 Property Location: 550-580 Oak Grove Avenue and 540-570 Derry Lane, collectively known as the Derry Lane Mixed-Use Project
- 1.4 Assessor's Parcel Numbers: 061-430-200, 061-430-210, 061-430-220, 061-430-230, 061-430-310, 061-430-320, 061-430-380, 061-430-460
- 1.5 Area of Property: 150,209 square feet (3.45 acres)
- 1.6 Present Zoning: C-4 (General Commercial, Applicable to El Camino Real District)
- 1.7 Proposed Zoning: P-D (Planned Development District)

2. DEVELOPMENT STANDARDS:

- 2.1 Floor Area Ratio (FAR) shall not exceed **130 percent** of the project site based on gross land area prior to dedication of the public right-of-way. Residential FAR shall not exceed **115 percent** of the project site area. Commercial FAR shall not exceed **15 percent** of the project site area, except for office uses that shall be limited to a FAR of **8 percent**. Below grade residential storage shall be limited to **5 percent** of the project site area. This amount shall be excluded from the total FAR for the site.
- 2.2 Dwelling units per acre shall not exceed **39 dwelling units per acre**.
- 2.3 Lot coverage shall not exceed **67 percent** of the project site area.
- 2.4 Minimum landscaping shall be **19 percent** of the project site area.
- 2.5 The maximum amount of pavement shall be in accordance with the approved plans.
- 2.6 Building height shall not exceed **50 feet** from the average natural grade.
- 2.7 Building setbacks shall be in accordance with the approved plans.
- 2.8 Parking shall be provided in accordance with the project plans that show a total of **341 parking spaces** on the project site and in the newly constructed right-of-way. Additionally, a commercial loading zone measuring nine feet wide by 66 feet long shall be provided along Garwood Way and shall not count toward required parking.
- 2.9 The on-site circulation shall be installed according to the approved plans and maintained through the creation of a maintenance association as specified in the covenants, conditions and restrictions (CC & R's) for the project.
- 2.10 All rooftop equipment shall be fully integrated into the design of the building or fully screened. Landscaping shall screen all utility equipment that is installed outside of a building and cannot be placed underground.

3. USES

- 3.1 The project site includes a maximum of 22,525 square feet of commercial space in two commercial buildings that may be subdivided into a maximum of eight commercial condominium units. The table on the following page describes the various uses and the locations and the maximum square footage allowed for each of the uses

Use	1st Floor Bldg. 8 = 1,577 sf Bldg. 10= 8,674 sf	2nd Floor Bldg. 8 = 1,572 sf Bldg. 10= 9,208 sf	3rd Floor Bldg. 8 = 1,494 sf	Maximum Floor Area (square feet)
General Offices	-	P	P	12,274
Medical Offices (as a subset of General Offices)	-	P	P	3,066
Retail Stores	P	P	-	10,251
Sale of Alcohol	C	C	-	
Outdoor Sales	A	-	-	
Personal Services	-	P	-	10,780
Banks, Savings and Loans, and Credit Unions and Dry Cleaning (as a subset of Personal Services)	P	-	-	1,577
Cafes and Restaurants, except fast food	P	P	-	4,400
Sale of Alcohol	A	A	-	
Outdoor Seating	A	A	-	
Live Entertainment	C	C	-	
Coffee and juice bars, ice cream shops, delicatessans, and similar uses (as a subset of Restaurant)	P	P	-	4,400
Health and Fitness Establishments	-	A	A	3,066

P = Permitted Use, A = Administratively Permitted Use, C = Conditionally Permitted Use

3.2 The project site includes the development of 135 residential units. Permitted uses include the following for the residential component of the project:

- 3.2.1 Residential units (a maximum of 135); and
- 3.2.2 Business/Fitness center to serve the residents of the residential component.

4. SIGNS

- 4.1 The Planned Development Permit establishes a Master Sign Program for the site with a maximum allowed sign area of 250 square feet for the entire development. The square footage, location and materials shall be subject to review and approval by the Planning Division. All signage must be located entirely within the project site and be consistent with the approved Master Sign Program.
- 4.2 All signs must be reviewed and approved through the Sign Permit process with an application and applicable filing fees.

5. TERMS OF THE PERMIT

- 5.1. The Planned Development Permit shall expire **two years** from the date of approval if the project sponsor does not submit a complete building permit application within that time. The Community Development Director may extend this date per Municipal Code Section 16.82.170.
- 5.2. Minor modifications to building exteriors and locations, fence styles and locations, signage, and significant landscape features may be approved by the Community Development Director or designee, based on the determination that the proposed modification is consistent with other building and design elements of the approved Planned Development Permit and will not have an adverse impact on the character and aesthetics of the site. The Director may refer any request for revisions to the plans to the Planning Commission for architectural control approval. A public hearing could be called regarding such changes if deemed necessary by the Planning Commission.
- 5.3. Major modifications to building exteriors and locations, fence styles and locations, signage, and significant landscape features may be allowed subject to obtaining an architectural control permit from the Planning Commission, based on the determination that the proposed modification is compatible with the other building and design elements of the approved Planned Development Permit and will not have an adverse impact on the character and aesthetics of the site. A public hearing could be called regarding such changes if deemed necessary by the Planning Commission.
- 5.4. Major revisions to the development plan which involve material changes in land use, expansion or intensification of development or a material relaxation in the standards of development set forth in Section 2 above constitute permit amendments that require public hearings by the Planning Commission and City Council.
- 5.5. Any application for amendment shall be made by in writing by the governing association to the Planning Commission. The Planning Commission shall then forward its recommendation to the City Council for action.

6. PROJECT CONDITIONS:

- 6.1. Development of the project shall be substantially in conformance with the following plans approved by the City Council on August 29, 2006 except as modified by the conditions contained herein:
 - The Steinberg Group, dated August 11, 2006, consisting of 33 plan sheets; and
 - BKF, dated received by the Planning Division on August 11, 2006, consisting of 11 plan sheets.

- 6.2. Within two years from the date of approval of the tentative subdivision map, the project sponsor shall submit a Final Map for review and approval of the City Council. The Final Map shall use a benchmark selected from the City of Menlo Park benchmark list as the project benchmark and the site benchmark.
- 6.3. The project sponsor shall submit Covenants, Conditions and Restrictions (CC & R's) for the approval of the City Engineer and the City Attorney. The CC & R's, including condominium plans, shall be approved and recorded prior to building occupancy of the first residential unit. The CC&R's shall include a provision about the disclosure of commercial condominium use restrictions related to the type, size, and location of the units, and administration of the Transportation Demand Management (TDM) plan as identified in Condition 6.50.
- 6.4. Prior to approval of the Final Map, the project sponsor shall comply with all Sanitary District, Menlo Park Fire Protection District, and utility companies' regulations that are directly applicable to the project.
- 6.5. Prior to approval of the Final Map, the project sponsor shall comply with all requirements of the Building Division, Engineering Division, and Transportation Division that are directly applicable to the project.
- 6.6. Prior to Final Map approval, the project sponsor shall pay any applicable recreation fees (in lieu of dedication) per the direction of the City Engineer in compliance with Section 15.16.020 of the Subdivision Ordinance. In addition to the recreation fee, the project sponsor shall pay fees for the final subdivision map, improvement plan check, construction inspection, storm drain connection, and encroachment permit.
- 6.7. Prior to Final Map approval, the City shall enter into a non-recourse reimbursement agreement with the project sponsor, whereby the City shall agree to levy and use its best efforts to collect an improvement fee from all future development on the new Derry Lane. The total amount of fees reimbursed to the applicant shall not exceed the total cost of improvements, less the amount the applicant is required to contribute to the cost of the improvements based on their proportionate size of the project. The agreement shall be entered into at the time of approval of the Final Map.
- 6.8. Prior to Final Map approval, the project sponsor shall enter into a maintenance agreement with the City of Menlo Park designating that the project sponsor will have responsibility for the maintenance of the proposed sound wall located in the right-of-way. If results of the acoustical study, to be conducted prior to building permit submittal, require a change to the height and design of the sound wall, revised plans shall be submitted to the Planning and Transportation Divisions for review and approval prior to issuance of a building permit for the wall.

- 6.9. Prior to Final Map approval, the project sponsor shall submit a garage-gating plan with a minimum of 134 and a maximum of 151 shared parking spaces. The plan shall include unrestricted access to the vehicular connection with the proposed 1300 El Camino Real project, and shall be limited to gating sections of the parking garage, not individual or sets of parking spaces. The commercial loading zone shall not count towards the required 341 total parking spaces. This plan shall be subject to review and approval by the Planning and Transportation Divisions. One year after full occupancy, the project sponsor shall submit a parking study for review and approval by the Planning and Transportation Divisions. The project sponsor shall modify the gating plan at the direction of the Transportation Manager, based on the conclusions of the parking study and staff on whether an adequate number of shared parking spaces are provided.
- 6.10. Prior to Final Map approval, the project sponsor shall fund a queuing analysis for Garwood Way, conducted by the City's traffic consultant, analyzing potential affects on traffic related to the location of the parking garage entrance, and the added traffic from existing and proposed developments at the time of the analysis, for review and approval by the Planning and Transportation Divisions. If the Transportation Division determines that there would be an adverse impact on traffic, then the applicant shall submit a revised plan relocating the garage entrance for review and approval by the Planning and Transportation Divisions. If the Planning Division determines that relocating the garage entrance would create a substantial change in the Garwood Way architectural elevation, the revision will be submitted to the Planning Commission for architectural control review.
- 6.11. Prior to Final Map approval, the project sponsor shall provide revised details for the retaining portion of the sound wall, subject to review and approval by the Engineering Division.
- 6.12. Prior to Final Map approval, the project sponsor shall submit an updated Hydrology Report for review and approval by the Engineering Division based on a third party review of the Hydrology Report. The applicant shall pay all costs associated with the third party review. The Hydrology Report shall confirm that the project does not result in increased storm water runoff as measured by the peak flow rate for a 10-year storm and shall also confirm that the on-site depressed garage will not be subject to flooding during a 10-year storm. If the Hydrology Report shows either an increase of runoff (over the existing conditions runoff) or that on-site garage could be flooded in a 10-year storm, then the applicant shall implement modifications to the project to ensure that neither impact occurs subject to review and approval of the Planning and Engineering Divisions.

- 6.13. Prior to Final Map approval, the project sponsor shall enter into an agreement with the City of Menlo Park for maintenance by the property owner for any dewatering stations in the public right-of-way related to the ultimate storm drainage plan for the project. The project shall be responsible for all costs associated with the maintenance of the dewatering station, including, but not limited to, replacement of the pump, annual maintenance of the flap gate, and provision of power to run the pump. The maintenance agreement shall be subject to review and approval of the Public Works Director and the City Attorney and recorded concurrently with recordation of the Final Map. The City shall enter into a non-recourse reimbursement agreement with the applicant, whereby the City shall agree to levy and use its best efforts to collect a storm drainage maintenance fee from all future development within the new Derry Lane drainage basin. The total amount of fees reimbursed to the applicant shall not exceed the total cost to maintain the facility less the amount the applicant is required to contribute to the cost of the maintenance based on their proportionate size of the project. The agreement shall be entered into at the time of approval of the Final Map.
- 6.14. Prior to recordation of the Final Map, the existing structures shall be demolished after obtaining a demolition permit.
- 6.15. Prior to Final Map approval, the Below Market Rate (BMR) Housing Agreement shall be recorded.
- 6.16. Prior to Final Map approval, the project sponsor shall enter into an "Agreement for Completion of Development Improvements" with the City of Menlo Park to complete all required development improvements and utility works located in public right-of-way. This Agreement shall be approved by the City Council concurrently with Final Map approval.
- 6.17. Prior to recordation of the Final Map, the project sponsor shall remove and replace all damaged, significantly worn, cracked, uplifted or depressed frontage improvements (e.g., curb, gutter, sidewalk) and install new improvements per City standards along Oak Grove Avenue subject to the review and approval of the Engineering Division. The project sponsor shall obtain an encroachment permit prior to commencing any work within the right-of-way or public easements. Based upon the approved "Agreement for Completion of Development Improvements", the project sponsor may be required to provide a bond for the completion of the work subsequent to the recordation of the Final Map.
- 6.18. Prior to recordation of the Final Map, the project sponsor shall install new utilities to the point of service subject to review and approval of the City Engineer. All electric and communication lines servicing the project shall be placed underground. Each unit shall have separate utility service connections. Based upon the approved "Agreement for Completion of

Development Improvements”, the project sponsor may be required to provide a bond for the completion of the work subsequent to the recordation of the Final Map.

- 6.19. Prior to heritage tree removals, the project sponsor shall submit a heritage tree replacement plan for review and approval by the City Arborist.
- 6.20. Concurrent with demolition permit submittal, the project sponsor shall submit a revised arborist report to include an analysis of the impact of the proposed construction on remaining trees, related tree protection measures, and preservation techniques, including the installation of tree protective fencing prior to any construction activity. The project sponsor shall also submit a heritage tree preservation plan, detailing the location of and methods for all tree protection measures and how heritage trees in the vicinity of construction shall be protected pursuant to the Heritage Tree Ordinance.
- 6.21. Concurrent with demolition permit submittal, the project sponsor shall submit a plan for construction safety fences around the periphery of the construction area and a demolition Erosion and Sedimentation Control Plan. The fences and erosion and sedimentation control measures shall be installed according to the plan prior to commencing construction. The plans shall be for reviewed and approved by the Building and Planning Divisions prior to issuance of a demolition permit.
- 6.22. Concurrent with demolition permit submittal, the project sponsor shall prepare a dust control plan. The plan shall be reviewed and approved by the Building Division prior to demolition permit issuance. Consistent with guidance from the Bay Area Air Quality Management District (BAAQMD), the following measures shall be required of construction contracts and specifications for the project as part of the dust control plan.
 - 6.22.1 The following controls shall be implemented during demolition:
 - 6.22.1.1 Watering shall be used to control dust generation during demolition of structures and break-up of pavement;
 - 6.22.1.2 Cover all trucks hauling demolition debris from the site; and
 - 6.22.1.3 Use dust-proof chutes to load debris into trucks whenever feasible.
 - 6.22.2 The following controls shall be implemented during construction:
 - 6.22.2.1 Water all active construction areas at least twice daily and more often during windy periods; active areas adjacent to existing land uses shall be kept damp at all times, or shall be treated with non-toxic stabilizers or dust palliatives;

- 6.22.2.2 Cover all trucks hauling soil, sand, and other loose materials or require all trucks to maintain at least two feet of freeboard;
 - 6.22.2.3 Pave, apply water three times daily, or apply (nontoxic) soil stabilizers on all unpaved access roads, parking areas, and staging areas at construction sites;
 - 6.22.2.4 Sweep daily (with water sweepers) all paved access roads, parking areas, and staging areas at construction sites; water sweepers shall vacuum up excess water to avoid runoff-related impacts to water quality;
 - 6.22.2.5 Sweep streets daily (with water sweepers) if visible soil material is carried onto adjacent public streets;
 - 6.22.2.6 Apply nontoxic soil stabilizers to inactive construction areas;
 - 6.22.2.7 Enclose, cover, water twice daily, or apply non-toxic soil binders to exposed stockpiles (dirt, sand, etc.);
 - 6.22.2.8 Limit traffic speeds on unpaved roads to 15 mph;
 - 6.22.2.9 Install sandbags or other erosion control measures to prevent silt runoff to public roadways; and
 - 6.22.2.10 Suspend excavation and grading activity when winds (instantaneous gusts) exceed 25 mph (MM AIR-1 and AIR-3).
- 6.23. Concurrent with demolition permit submittal, an asbestos and lead-based paint survey shall be performed and submitted to the Building Division for review and approval prior to the issuance of a demolition permit. If asbestos-containing materials are determined to be present, a certified asbestos abatement contractor in accordance with the regulations and notification requirements of the BAAQMD shall abate the materials. If lead-based paint is identified, then Federal and State construction worker health and safety regulations shall be required during demolition activities, and any required worker health and safety procedures shall be incorporated into the Risk Management Plan (RMP) for the project. If loose or peeling lead-based paint is identified, the paint shall be removed by a qualified lead abatement contractor and disposed of in accordance with existing hazardous waste regulations. (MM HAZ-3)
- 6.24. Concurrent with demolition permit submittal, a Construction Noise Plan shall be submitted for review and approval by the Planning and Building Divisions prior to demolition permit issuance. The following measures shall be included in the Plan and implemented during construction.
- 6.24.1 To minimize construction noise impacts on nearby residents and businesses, and be to be consistent with Chapter 8.06 of the City of Menlo Park Municipal Code, standard construction activities that exceed stated noise limits are permitted only between the hours of 8:00 a.m. and 6:00 p.m. from Monday to Friday.

- 6.24.2 A pre-construction meeting shall be held with the City inspectors and the general contractor/on-site project manager to confirm that noise mitigation and practices are completed prior to issuance of a building permit.
- 6.24.3 Site-specific noise reduction measures to reduce daytime noise impacts due to construction to the maximum extent feasible, subject to Building and Planning Division review and approval. The program shall include the following measures:
 - 6.24.3.1 Signs posted at the construction site that include permitted construction days and hours, a day and evening contact number for the job site, and a day and evening contact number for the City in the event of problems;
 - 6.24.3.2 Contact information for an on-site complaint and enforcement manager posted on-site to allow for responses to and tracking of complaints.
 - 6.24.3.3 Equipment and trucks used for project construction shall utilize the best available noise control techniques (e.g., improved mufflers, equipment redesign, use of intake silencers, ducts, engine enclosures, and acoustically attenuating shields or shrouds, wherever feasible);
 - 6.24.3.4 Impact tools (e.g., jack hammers, pavement breakers, and rock drills) shall be hydraulically or electrically powered wherever possible to avoid noise associated with compressed-air exhaust from pneumatically powered tools; where use of pneumatic tools is unavoidable, an exhaust muffler on the compressed-air exhaust shall be used; quieter procedures shall be used, such as drills rather than impact equipment, whenever feasible; and
 - 6.24.3.5 Stationary noise sources shall be located as far from sensitive receptors as possible and shall be muffled and enclosed within temporary sheds or insulation barriers or other measures shall be incorporated to the extent feasible. (MM NOISE-1)
- 6.25. Prior to any building permit issuance, except for demolition permit, the approved Final Map shall be recorded at the County Recorder's Office. The project sponsor shall provide documentation of the recordation of the Final Map at the County Recorder's Office to the Engineering and Planning Divisions.
- 6.26. Prior to building permit submittal, the project sponsor shall submit revised plans, including detailed elevations, perspectives, floor plans, cross-sections, and details for the stairwells to the Planning Division for Architectural Control review and approval by the Planning Commission. The intent of this review shall be to ensure that the construction drawings

accurately reflect the concepts that were approved as part of the PD Permit. In addition, a retail specialist, selected and hired by the project sponsor, shall provide an analysis of the appropriateness of the design of the commercial space necessary to attract quality retail tenants. The plans shall be revised if necessary to include features recommended by the retail specialist.

- 6.27. Prior to Final Map approval, the project sponsor shall submit an improvement plan indicating all proposed modifications in the public right-of-way and right-of-way to be dedicated, including frontage improvements, utility installations, striping and signage on Oak Grove Avenue from El Camino Real to Caltrain right-of-way and Garwood Way from Oak Grove Avenue to Glenwood Avenue, and details for the lighted crosswalk on Oak Grove Avenue at the intersection of Merrill Street for review and approval by the Building Division, Engineering Division, and Transportation Division. All of the improvements shall be installed prior to final building inspection.
- 6.28. Prior to Final Map approval, the project sponsor shall submit a plan for any new utility installations or upgrades for review and approval of the Planning, Engineering and Building Divisions. Landscaping shall properly screen all utility equipment that is installed outside of a building and cannot be placed underground. The plan shall show exact locations of all meters, back flow prevention devices, transformers, junction boxes, relay boxes, and other equipment boxes. The screening shall be compatible and unobtrusive and subject to the review and approval of the Planning Division.
- 6.29. Prior to Final Map approval, the project sponsor shall submit a Grading and Drainage Plan, including an Erosion and Sedimentation Control Plan, for review and approval by the Engineering Division. The Grading and Drainage Plan shall be prepared based on the City's Grading and Drainage Plan Guidelines and Checklist and the Project Applicant Checklist for the National Pollution Discharge Elimination System (NPDES) Permit Requirements. The project is required to utilize on-site infiltration as much as possible as a means of handling roof and site drainage. A Civil Engineer registered in California shall prepare the plan.
- 6.30. Prior to Final Map approval, a detailed landscape plan, including the size, species, and location, and an irrigation plan shall be submitted for review and approval by the Planning Division and Department of Public Works. The landscape plan shall include onsite and offsite landscaping, an unimpeded walkable path in the vegetated swale, details for a potential pedestrian connection for residents and occupants to the proposed 1300 El Camino Real Mixed-Use project, adequate sight distance visibility, and a statement of compliance with the Water Efficient Landscaping Ordinance (Municipal Code Chapter 12.44). The project sponsor shall enter into a maintenance agreement with the City of Menlo Park designating that the project sponsor will have responsibility for the maintenance of the proposed vegetated swale along the project's frontage.

- 6.31. Prior to Final Map approval, decorative walls in the public right-of-way shall not be included in the plans, unless otherwise approved by the Director of Public Works.
- 6.32. Prior to Final Map approval, the project sponsor shall provide a trash and recycling plan including revised site plan sheets showing the trash pick-up in a location not on the public right-of-way, for review and approval by the Planning Division, Department of Public Works, and Allied Waste.
- 6.33. Concurrent with site improvement plan submittal, the project sponsor shall file a Notice of Intent (NOI) with the State Water Resources Control Board and prepare a Stormwater Pollution Prevention Plan (SWPPP) per Section III of the "Project Applicant Checklist for NPDES Permit Requirements". The SWPPP shall be designed to reduce potential impacts to surface water quality through the construction period of the project. It is not required that the SWPPP be submitted to the Regional Water Quality Control Board (RWQCB), but must be maintained onsite and made available to RWQCB staff upon request. The SWPPP shall include the following elements.
 - 6.33.1 Detailed Best Management Practices (BMPs) designed to mitigate construction-related pollutants, including, at a minimum, practices to minimize the contact of construction materials, equipment, and maintenance supplies (e.g., fuels, lubricants, paints, solvents, adhesives) with storm water.
 - 6.33.2 Properly designed centralized storage areas that keep these materials out of the rain.
 - 6.33.3 Site supervisors shall conduct regular tailgate meetings to discuss pollution prevention. The frequency of the meetings and required personnel attendance list shall be specified in the SWPPP.
 - 6.33.4 A monitoring program implemented by the construction site supervisor and including dry and wet weather inspections and monitoring of pollutants that may be present in the runoff that are "not visually detectable in runoff" in accordance with State Water Resources Control Board Resolution No. 2001-046.
 - 6.33.5 An independent monitor to conduct weekly inspections and provide written monthly reports to the Public Works Department to ensure compliance with the SWPPP. RWQCB personnel, who may make unannounced site inspections, are empowered to levy considerable fines if it is determined that the SWPPP has not been properly prepared and implemented.

- 6.33.6 BMPs designed to reduce erosion of exposed soil including soil stabilization controls, watering for dust control, perimeter silt fences, placement of hay bales and sediment basins.
- 6.33.7 If grading must be conducted during the rainy season, the primary BMPs selected shall focus on erosion control (i.e., keeping sediment on the site). End-of-pipe sediment control measures (e.g., basins and traps) shall be used only as secondary measures. If hydroseeding is selected as the primary soil stabilization method, then these areas shall be seeded by September 1 and irrigated as necessary to ensure that adequate root development has occurred prior to October 1.
- 6.33.8 Ingress and egress from the construction site shall be carefully controlled to minimize off-site tracking of sediment. Vehicle and equipment wash-down facilities shall be designed to be accessible and functional during both dry and wet conditions.
- 6.34 The Stormwater Pollution Prevention Plan (SWPPP) shall include BMPs for the project features and operation to reduce potential impacts to surface water quality associated with operation of the project. These BMPs shall be included in the project drainage plan and final development drawings. Specifically, the final design shall include measures designed to mitigate potential water quality degradation of runoff from all portions of the completed development. In general, passive, low maintenance BMPs (e.g., grassy swales, porous pavements) are preferred in areas where year-round irrigation is already planned. If the design includes higher maintenance BMPs (e.g., sedimentation basins, hydrocarbon interceptors), then funding for long-term maintenance needs must be specified (the City will not assume maintenance responsibilities for these features).

As many concepts as practicable from *Start at the Source, Design Guidance Manual for Stormwater Quality Protection* shall be incorporated into the final design of the development project, including consideration of installing “end-of-pipe” treatment systems, including, but not limited to, baffle boxes, catch basins, and hydrodynamic vortex-type separators. A viable maintenance program to be administered by the homeowners association or similar entity must accompany any use of end-of-pipe treatment systems and be included in the CC&Rs prepared for the development. The Public Works Department shall ensure that the SWPPP and drainage plan are prepared and are adequate prior to approval of the grading plan. (MM HYD-1)

- 6.35 Prior to Final Map approval, the project sponsor shall receive certification from the Groundwater Protection Program of San Mateo County Environmental Health Department (SMCEHD) or other administering agency, if another agency is selected for the project site under the Cal EPA Site Designation Program, that the proposed development will be protective

of human health and will not interfere with future anticipated investigation and remediation of releases of solvents from the dry cleaning facility at the project site. The certification shall be submitted to the Planning Division for review prior to site improvement permit issuance. Depending on the findings of future investigations, additional mitigation may be required to ensure that any potential health risks to future site users as a result of contaminated soils and groundwater are reduced to less than 1×10^{-6} (one in one million excess cancer risk). Such mitigation could include remediation of soils or treatment of groundwater) and/or implementation of institutional controls and engineering controls (IC/EC). IC/EC may include the use of hardscape (buildings and pavements), importation of clean soil in landscaped areas to eliminate exposure pathways, use of vapor barriers on building foundations, and/or deed restrictions to prevent ground-floor residential land uses or use of site groundwater. Specific remedies would depend on the results of future environmental investigations and the requirements of the oversight agency or any other future applicable standard/agency regulations, but would be implemented to achieve the performance standard of 1×10^{-6} carcinogenic risks. If additional mitigation is necessary, these measures shall be outlined and submitted for review and approval by the Planning Division. The actions outlined shall be completed prior to site improvement permit issuance.

Concurrently, a Risk Management Plan (RMP) shall be prepared for the project site and submitted. At a minimum, the RMP shall establish soil mitigation and control specifications for grading and construction activities at the site, including health and safety provisions for monitoring exposure to construction workers, procedures to be undertaken in the event that previously unreported contamination or subsurface hazards are discovered, and emergency procedures and responsible personnel. The RMP shall also include procedures for managing soils removed from the site to ensure that any excavated soils containing contaminants are stored, managed, and disposed of in accordance with applicable regulations. If groundwater monitoring at the project site will be necessary during and/or following construction, the RMP shall describe groundwater monitoring wells that will be affected by the construction activities, provide procedures for the proper abandonment of those wells, and provide locations for replacement monitoring wells, if warranted. The RMP shall also include an Operations and Maintenance Plan component, to ensure that any health and safety measures that may be required for future construction and maintenance at the project site, such as maintenance of building foundations, shall be enforced for the life of the project.

The RMP for the project site shall also include emergency procedures for the management and disposal of contaminated soils and groundwater. Use, storage, disposal, and transport of hazardous materials during construction activities shall be performed in accordance with existing local, State, and Federal hazardous materials regulations. The RMP shall be submitted to the Planning Division and SMCEHD or other Administering Agency, if

applicable, for review and approval prior site improvement permit issuance. (MM HAZ-1 and HAZ-2)

- 6.36 Prior to Final Map approval, the project sponsor, in consultation with the Engineering Division and West Bay Sanitary District, shall be responsible for replacing the existing sanitary sewer main in the Oak Grove Avenue right-of-way if it is determined that the existing infrastructure cannot accommodate increased flow. The replacement of this main would require a bore and jack operation under the existing railroad tracks, necessitating the coordination with the appropriate agencies related to Caltrain. (ULT-1)
- 6.37 Prior to Final Map approval, a qualified professional archaeologist shall submit an Archeological Monitoring and Data Recovery Plan (AMDRP) that details protocol for subsurface examination to determine the presence, nature, extent, and potential significance of archaeological deposits that may be encountered by project activities. This plan shall be submitted to the Planning Division for approval prior to grading permit issuance.
- 6.38 Prior to demolition, excavation, grading, or other construction-related activities on the site, the qualified professional archaeologist shall conduct a subsurface examination. If such deposits exist, and cannot be avoided by project activities, they shall undergo a California Register eligibility assessment. If such deposits are California Register eligible, project impacts to these deposits shall be mitigated through archaeological data recovery, in accordance with *CEQA Guidelines* Section 15126.4(b)(3)(C). If such deposits are not California Register eligible, no further study, report, or protection is warranted.

If archaeological data recovery is conducted, feasible efforts shall be made to publicly display the interpretive findings of the investigation. The Menlo Park Historical Society shall be consulted regarding the potential use of the archaeological findings for interpretive opportunities. Such opportunities may include, but are not limited to, museum, library, or Menlo Park Historical Society interpretive displays. A report shall be prepared to document the methods, findings, and recommendations of the archaeologist conducting the work. The report shall be submitted to the Planning Division, the project sponsor, and the Northwest Information Center at Sonoma State University (NWIC). (MM CULT-1)

- 6.39 Prior to Final Map approval, a qualified paleontologist shall conduct a paleontological assessment to determine if monitoring during construction activities for paleontological resources is necessary. The assessment shall include: (1) the results of any geotechnical investigation conducted for the project area; (2) specific details of the construction plans for the project area; (3) background research; and (4) limited subsurface investigation within the project area. If the possibility of paleontological resources is confirmed, a paleontological monitoring plan shall be prepared in

conjunction with this evaluation. Upon completion of the paleontological assessment, a report documenting methods, findings, and recommendations shall be prepared and submitted to the Planning Division, the project sponsor, and the NWIC. The Planning Division shall review and approve assessment prior to grading permit issuance. (MM CULT-2)

- 6.40 Should human remains be encountered during project construction activities, construction activities shall be halted and the project sponsor shall notify the Building Division and County Coroner, immediately. If the human remains are of Native American origin, the Coroner shall notify the Native American Heritage Commission (NAHC) within 24 hours of this identification, and a qualified archaeologist shall be contacted to evaluate the situation. The NAHC will identify a Native American Most Likely Descendent (MLD) to inspect the site and provide recommendations for the proper treatment of the remains and associated grave goods. The archaeologist shall recover scientifically valuable information, as appropriate and in accordance with the recommendations of the MLD. Upon completion of such analysis and/or recovery, the archaeologist shall prepare a report documenting the methods and results of the investigation. This report shall be submitted to the Building Division and Planning Division, the project sponsor and the NWIC. (MM CULT-3)
- 6.41 Concurrent with building permit submittal, a detailed vibration analysis shall be conducted by a qualified Acoustical Specialist, in accordance with FTA standards, and submitted for review and approval by the Building and Planning Divisions prior to foundation permit issuance. This analysis shall include modifications to the project that would reduce vibration levels to under 72 VdB, possibly including the use of extensive shear wall implementation and/or deeper floor joists. The project sponsor shall incorporate vibration reduction measures recommended in the analysis such that vibration levels within the project site are reduced to under 72 VdB. (MM NOISE-4)
- 6.42 Concurrent with building permit submittal, a detailed acoustical analysis by a qualified Acoustical Specialist, in accordance with State and City standards, shall be submitted to the Building and Planning Divisions for review and approval prior to building permit issuance. This analysis shall include modifications to the project that would reduce traffic- and train-related exterior and interior noise levels (including single event noises such train whistles) to Conditionally Acceptable levels (at a minimum), as stated in the Noise Element of the General Plan. These modifications could include the features listed in the Mitigations Monitoring and Reporting Plan (MMRP), however, more suitable options may be recommended at the time the acoustical analysis is prepared. The project sponsor shall incorporate noise reduction measures recommended in the acoustical study. (MM NOISE-2 and NOISE-3)

- 6.43 Concurrent with building permit submittal, a plan shall be provided that details that all on-site stationary noise sources shall comply with the standards listed in Section 08.06.030 of the City's Noise Ordinance. This plan shall be subject to review and approval by the Building Division prior to building permit issuance. (MM NOISE-5)
- 6.44 Concurrent with building permit submittal, a design-level geotechnical investigation report shall be submitted to the City of Menlo Park Building Division for review and confirmation that the proposed development fully complies with the California Building Code. The report shall be approved prior to building permit issuance. The report shall determine the project site's surface geotechnical conditions and address potential seismic hazards such as liquefaction and subsidence. The report shall identify building techniques appropriate to minimize seismic damage. In addition, the analysis presented in the geotechnical report shall conform to the California Division of Mines and Geology recommendations presented in the *Guidelines for Evaluating Seismic Hazards in California*.
- The design-level geotechnical investigation report shall also include measures to ensure potential damage related to expansive soils and non-uniformly compacted fill are minimized. Mitigation options may range from removal of the problematic soils, and replacement, as needed, with properly conditioned and compacted fill to design and construction of improvements to withstand the forces exerted during the expected shrink-swell cycles and settlements. (MM GEO-1 and GEO-2)
- 6.45 Concurrent with building permit submittal, a specific lighting proposal with a photometric study shall be reviewed and approved by the Planning Division prior to building permit issuance. This review shall ensure that any outdoor lighting for the project is oriented downwards and is designed to minimize lighting or glare off-site. (MM AES-1)
- 6.46 Prior to the building permit issuance, the project sponsor shall pay the applicable Building Construction Street Impact Fee.
- 6.47 Prior to the building permit issuance, the project sponsor shall pay the applicable School Impact Fee for the residential and commercial components of the project.
- 6.48 Prior to building permit issuance, the project sponsor shall comply with the requirements of Chapter 12.48 (Salvaging and Recycling of Construction and Demolition Debris) of the City of Menlo Park Municipal Code, and is subject to review and approval by the Public Works Department.
- 6.49 Prior to building permit issuance, the project sponsor shall contribute traffic impact mitigation fees of \$1.60 per square foot of net new commercial square footage and \$708 per new residential unit. (MM TRANS-FEE)

- 6.50 Prior to final building inspection, the project sponsor shall submit a Transportation Demand Management (TDM) Program, including provisions for payment of the annual Shuttle Fee of ten cents per square foot of commercial space, for review and approval by the Planning and Transportation Divisions. Concurrent with the start of occupancy, the project sponsor shall implement the approved TDM measures. (MM TRANS)
- 6.51 Prior to final building inspection, landscape shall be installed per the approved landscape plan, subject to review and approval by the Planning Division.
- 6.52 Prior to Final Map approval, the project sponsor shall fund a study of on-street parking options in the vicinity of the Caltrain station in order to discourage parking by Caltrain patrons along the project frontages. The project sponsor shall either pay for the study subject to the review of the Transportation Manager or pay the City to conduct the study at the discretion of the Transportation Manager. The project sponsor shall be responsible for the cost of installation of any signage associated with time restrictions for on-street parking along the property frontages.
- 6.53 The applicant shall pay to the City the sum of \$100,000 to fund a land use study of the properties on the west side of El Camino Real between Santa Cruz Avenue and Valparaiso Avenue. The timing and parameters of the land use study shall be scoped by staff and subject to review and approval by the City Council as part of its priority setting process. Said payment shall be paid to the City at such time as the City Council has approved the scope of work and awarded a contract for the land use study.

Considered by the Menlo Park
Planning Commission on
July 24, 2006

Approved by the
Menlo Park City Council on
August 29, 2006

Arlinda Heineck, Community
Development Director

Silvia Vonderlinden, City Clerk

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Frequently Asked Questions on the Derry Project Settlement Agreement and Referendum

1. Why can the Planning Commission and City Council not see the full Settlement Agreement between Menlo Park Tomorrow and the O'Brien Group?

The City is not a party to the Settlement Agreement and only a portion of the confidential Settlement Agreement, Section 2, has been made public. Pursuant to the terms of the Settlement Agreement, all but Section 2 are confidential and relate to the rights, duties and obligations of the parties.

2. To what extent is the City bound or limited by the Settlement Agreement?

The City is not a party to the Settlement Agreement and is not bound by it. The Settlement Agreement establishes parameters for a revised project to which both Menlo Park Tomorrow and the O'Brien Group are agreeable. Similar to other lawsuits over land use that reach a negotiated settlement, this settlement has resulted in a scaling back of the size of the project.

The applicant has presented the revised project, as scaled back by the Settlement Agreement, to the City for approval. The City will review the revised project and has the discretion to approve, deny or impose additional restrictions or conditions on the project or to approve a project that is larger than the project contemplated in the Settlement Agreement.

3. What happens if the City Council approves a project that differs from the Settlement Agreement?

If the City Council approves a project that does not fit within the parameters defined in the Settlement Agreement, the Settlement Agreement becomes null and void. It is as if there was no settlement and the City will need to either rescind the approvals or put the matter before the voters (unless the Council determines the form of petition is not valid).

If, however, both parties to the Settlement Agreement agree to the project changes proposed by the City, so long as the project with the proposed changes falls within what was considered by the EIR, then the changes could be implemented without upsetting the settlement.

In addition, the Settlement Agreement contemplates that there could be non-material changes to the project that would not upset the settlement. The terms of the Settlement Agreement limit the intensity of development (i.e. number of units, total FAR for the project, maximum FAR for the commercial, maximum FAR for offices, minimum number of parking spaces on site, and maximum height) and require comparable quality of design and finishes, but allow some flexibility in terms of design and layout.

4. What if the City is interested in accepting the project in its original form?

The City has to respond to the referendum petitions, either rescind the previous ordinances that were the subject of the referendum or put the matter to a vote (unless the Council determines the form of petition is defective and therefore invalid). The City cannot simply accept the project in its original form without taking some action to the referendum petitions.

If the City Council rescinds the previous approvals, the same or substantially the same project cannot be considered for approval within one (1) year of the date the zoning ordinances are repealed, unless the project is approved by the voters.

If the applicant resubmits the original project (after one year) or a modified version of the project as a new project, it would have to go through the entire application process again, including California Environmental Quality Act review. The applicant could use some of the existing environmental information from the original EIR, but to the extent there are new traffic counts, or newly approved projects, that have occurred prior to the receipt of a new application, all that new data would have to go into the analysis. The applicant does not get the benefit of looking back to the conditions in effect at the time their original application was submitted as is the case for the modified project.

5. Is the State law regarding referendum satisfied through the Settlement Agreement?

Unless the City Council declares the referendum petitions to be invalid as to form, the existing ordinances which were suspended when the petitions were filed will either have to be rescinded or placed on the ballot. The Settlement Agreement contemplates that if the City Council approves the revised project, it will rescind the approvals for the previous project at the same time it is approving the revised project and thereby comply with State law. If the council takes the position that the referendum petitions are invalid and therefore the original project approvals stand, then there will likely be litigation prior to going through the referendum process.

Comparison Chart of the Approved and Revised Projects

	<u>Approved Project</u>	<u>Revised Project</u>
<u>Residential</u>		
No. of Residential Units	135	108
No. of BMR units	21	16
Residential Square Footage	171,334 square feet	146,055 square feet
Unit Mix	53 one-bedroom units 82 two-bedroom units	29 one-bedroom units 58 two-bedroom units 21 three-bedroom units
No. of Bedrooms	217	208
<u>Commercial</u>		
Office Square Footage	12,274 square feet	12,275 square feet
Retail Square Footage	10,251 square feet	12,650 square feet
Commercial Square Footage	22,525 square feet	24,925 square feet
Total Square Footage	193,859 square feet	171,000 square feet
<u>Parking</u>		
No. of on-site spaces	307 spaces	301 spaces
No. of off-site spaces on Derry Lane (Garwood Way)	29 spaces	26 spaces
No. of off-site spaces on Oak Grove Avenue	5 spaces	5 spaces
<u>Building Height</u>		
No. of stories	4 stories	3 stories
<u>Fees</u>		
El Camino Real Study Contribution	\$100,000	N/A
Public Benefit Contribution	N/A	\$2,000,000
Rec in Lieu Fee*	\$4.3 million	\$3.5 million
Traffic Impact Fee**	\$97,556	\$82,280
Estimated Cost of Construction	\$37,000,000	\$34,000,000
Building Permit Fees	\$269,482	\$248,190
Construction Street Impact Fee	\$214,600	\$197,200
BMR Proposal	21 units on-site 10 one-bedrooms 11 two-bedrooms	16 units on-site 8 one-bedrooms 8 two-bedrooms \$159,060 in BMR fees

* assumes \$4 million per acre land value

** fee may be updated in 2008