

INCENTIVE AGREEMENT

This Incentive Agreement (hereafter "Agreement") is made and entered into as of the _____ day of January , 2017, (the "Effective Date") by and between the City of Morgan Hill, a municipal corporation ("City") and Morgan Hill Real Estate LLC, a Limited Liability Company ("Developer").

RECITALS

WHEREAS, Developer is the legal or equitable owner of the property ("Property") governed by this agreement, located on approximately 6.0 acres on the northern portion of APN 728-17-029 (west side of Condit Road and north of east Dunne Avenue) in Morgan Hill, Santa Clara County, California, as more fully described in Exhibits A and B attached hereto and incorporated herein by reference; and,

WHEREAS, Developer has, or will be submitting an application for the following land use approvals ("Approvals") affecting the Property, with the stated intent of building a facility intended for use as an automobile dealership and consisting of approximately twenty-thousand (20,000) square feet (the "Project"), which is to be situated on approximately six (6) acres; and,

WHEREAS, Developer is willing, pursuant to the terms of this Agreement, to make expenditures and provide benefits to the City, including, without limitation, construction of off-site improvements as provided under the Conditions of Approval for the Project.; and,

WHEREAS, in recognition of the benefits to be conferred upon the City from development of the Property, both economic and through improvement of infrastructure, the City is willing to assist Developer by the provision of economic assistance as provided under this Agreement; and,

WHEREAS, in consideration for the benefits conferred upon it by this Agreement, Developer agrees to enter into a covenant regarding the operation of its business, for a specific duration; and,

WHEREAS, the purpose of this Agreement is to facilitate the implementation of the principles outlined above, realizing the public benefits to City and

private benefits to Developer described in these Recitals, because the development of the Project requires a major investment by the Developer and the City in public facilities, substantial investment in on-site and off-site improvements, dedications of land, participation in other programs for public benefit and purposes, and substantial commitments of the resources to achieve both private benefits of the Project for the Developer and the public purposes and benefits of the Project for the City; and,

WHEREAS, the willingness of the City to enter into this Agreement is a material inducement to Developer to implement the Project and but for which the Project would not be feasible, and Developer proposes to enter into this Agreement in order to obtain assurance from the City regarding the timing and extent of the economic assistance outlined above; and,

NOW, THEREFORE, in consideration of the mutual promises, obligations and covenants herein contained, the City and the Developer agree as follows:

AGREEMENT

1. Interest of Developer. Authority to Enter into Agreement. The Developer, and each person signing on behalf of Developer, represents that the Developer or its principals holds all legal or equitable interests in the Property, and that no other entities or individuals hold a legal or equitable interests in this Property; or Developer is authorized to enter into this Agreement on behalf of those entities or individuals and bind them under this Agreement. Each of the City, and those persons signing on the City's behalf, below, represent that the City is authorized to enter into this Agreement and bind the City under this Agreement.
2. Term. The term of this Agreement shall commence on the Effective Date and extend until the twentieth (20th) anniversary of the Effective Date. This Agreement is subject to termination as otherwise set forth in this Agreement.
3. Development of Project. The Developer will develop the Project to completion, and commence business transactions, including the sale and servicing of motor vehicles (new and used), from the Property, within eighteen (18) months from the Effective Date, the date upon which sales commence shall constitute the "Operation

Commencement Date", subject to extension in the event of litigation which is a direct causation of delay in the development of the Property or the commencement of sales and which is not attributable to the Developer.

4. Further Review/Exercise of Discretion. Developer acknowledges that the existing land use regulations contemplate further review of elements or portions of the Project by the City, including but not limited to design review and potential CEQA analysis not caused by the City's actions. This Agreement shall not be construed to limit the authority or obligation of City to hold necessary public hearings, or to limit discretion of the City or any of its officers, officials or employees exercising their discretion with regard to rules, regulations, ordinances or laws, including the mitigation measures identified in the adopted negative declaration for the Project; provided, however, that in no event shall Developer's vested right to develop and construct the Project in accordance with this Agreement and the Development Plan be limited or abridged, nor shall the provisions of this Agreement be limited or adversely affected. In addition, changes in rules, regulations or policies of the City which occur after the Effective Date, including but not limited to those which govern architectural design, landscaping, public improvements, or construction standards, shall apply as though they were in effect as of the Enactment Date. The City also retains the authority to take the following actions: adopt and apply property transfer taxes, excise taxes, and/or utility taxes; uphold the right of the voters to act by initiative or referendum, but only to the extent that the initiative or referendum does not affect or interfere with the vested rights acquired by Developer as stated pursuant to Section 3 of this Agreement, except that this Agreement itself is subject to referendum; impose traffic mitigation fees adopted by the regional transportation agency; and/or take other action not expressly prohibited by the terms or provisions of this Agreement. This Agreement shall not prevent the City from applying its rules, regulations and policies, or from conditioning future Project development approval on rules, regulations and policies which do not conflict with the terms of the Development Plan or this Agreement.
5. Development Fees, Exactions and Dedications.

- 5.1. Development Processing Fees, Exactions. The City shall be entitled to impose on a City-wide basis development fees, special assessments, special taxes, exactions and dedications, which are payable due to the development, build-out, occupancy and use of the Property which are in effect at the time the building permits are actually issued rather than those effective as of the Effective Date. Developer shall be subject to the normal and customary fees then in effect in City at the time such fees are assessed or are to be paid, provided that such fees have general applicability on a City-wide basis and are prospective only.
- 5.2. Dedications. Developer shall irrevocably offer to dedicate to City, upon request by the City, all portions of the Property designated in the conditions of approval for the Project (as counter-signed by the Developer; the "Conditions of Approval") for public easements, streets or public areas.
- 5.3. Contribution to Costs of Facilities and Services. Developer agrees to contribute to the costs of public facilities and services as required to mitigate the impacts of the development of the Property as provided in the Conditions of Approval. Developer recognizes and agrees that, but for Developer's contributions to mitigate the impacts arising as a result of development entitlements granted pursuant to this Agreement, the City would not and could not approve the development of the Property as provided by this Agreement. City's approval of development of the Property is in reliance upon and in consideration of Developer's agreement to make such contributions toward the cost of public improvements and public services as provided to mitigate the impacts of development of the Property all as provided under the Conditions of Approval.
- 5.4. Reimbursement for Agreement Expenses of City. Developer agrees to reimburse City for reasonable and actual expenses, including but not limited to staff overtime expenses incurred in processing, review, approval, inspection and completion of the Project, which are over and above fees paid by Developer as an applicant, for costs incurred by City relating to this

Agreement, including recording fees and publishing fees an allowance of \$5,000.00 in lieu of payment for staff services, consultant costs or attorneys' fees. The reimbursement shall be paid to City within thirty (30) days of submission of an itemized bill to Developer for such expenses.

6. Use of Property. Developer covenants and agrees for itself, its successors, assigns, and every successor in interest to the Property or any part thereof, that during construction and thereafter for a period of twenty (20) years from the recording of the Certificate of Completion, Developer, its successors and assigns, shall devote the Property to use as a retail automobile dealership use under franchise of Chrysler, Dodge, Jeep, or Ram, or another manufacturer mutually acceptable to the City and the Developer; provided that this Agreement shall not be construed to limit introduction of additional product lines on the Property by Developer or its successors. If Developer materially breaches the requirements of this section, and, as a result thereof, is in default under this Agreement, Developer shall be required to reimburse the City for any and all expenses and financial assistance, with interest calculated from the date of payment by the City to developer, and City may, in its discretion, terminate this Agreement

7. Economic Assistance to Developer.

7.1. Findings of Need. The City has found and determined there is a need for certain financial assistance to assist Developer in order to render the Project economically feasible. Extensive improvements to the Property will be required in order to render development of the Property possible. As a result of these economic and financial burdens, development of the Property is not economically feasible unless financial assistance is provided. Developer has stated that it is unwilling to develop the Property unless financial assistance is provided. The City has further determined, based upon its review of the projected economics of the Project for the Developer, that the Project would more than likely not be feasible and would more than likely not be accomplished without the financial participation of the City under this Agreement.

7.2. Benefits of Development to the Community. The City has determined that the development of the Property will provide social and economic benefits to the community. Specifically, the proposed development of the Property will provide a source of employment and creation of jobs within the community. In addition, the proposed development of the Property will generate needed additional sales and property tax revenues to the City and other public agencies. The proposed development of the Property will enable needed capital projects to be completed, and provide funds for maintenance and operations of the public facilities, including but not limited to police facilities, which will improve the health, safety and welfare of the community, improve the economic conditions of the community and provide for the public safety and convenience. The Developer will make good faith efforts to hire Morgan Hill residents and use Morgan Hill vendors and suppliers in its activities pursuant to this Agreement. The Project will further identify the Property and area within its vicinity as commercial destinations and will improve an entryway to the Project Area.

7.3. Economic Assistance: Joint and Several Obligation. Commencing as of the Operation Commencement Date and continuing until end of the quarter (for sales tax reporting purposes) which follows the tenth (10th) anniversary of the Operation Commencement Date (the end of which quarter shall constitute the "Final Payment Accrual Date"), the City shall make payments to the Developer in an amount determined by the taxable sales actually generated by the Property and operations thereon, up to a total of Seven Hundred and Eighty Thousand Dollars (\$780,000) (the "Total Assistance Amount"). The payments shall be determined and made based on the taxable sales generated from the Property and operations thereon and the tax revenue collected by the City from the Property and operations thereon. For purposes of this Section 7.3, the following shall be treated as revenues attributable to taxable sales from the Property and shall be countable for the benefit of the Developer: (i) sales tax revenues collected by the City from the Property or operations thereon. The City shall make payment to the Developer for

taxable sales over the "Baseline Amount" and in accordance with Table A- "Payment Schedule" as defined below. Within sixty days after the end of the second and fourth fiscal quarters of operation, Developer shall submit to the City Manager bona fide documentation demonstrating to the City's satisfaction that the particular amount of sales taxes paid, and stating those which qualify for the rebate program. Any rebate amount shall be paid upon verification by the City's Finance Director of receipt of the sales tax revenue. Payments shall be made by the City within one hundred fifty (150) calendar days following the end of the second and fourth quarters for which sales taxes are reported; provided that unless and until the Baseline Amount has been reached, no payments shall be required to be made in respect to the current Year of Operation.

"Baseline amount" is defined as Five Million Dollars (\$5,000,000) for the first "Year of Operation" (as defined to mean the first full four-quarter period following the Operation Commencement Date for which sales taxes are reported by the Developer); Ten Million Dollars (\$10,000,000) for the second Year of Operation; and, Twenty Million Dollars (\$20,000,000) for each Year of Operation thereafter. The following Table A illustrates how the payments to the Developer would be calculated:

TABLE A-Payment Schedule

Baseline Amount in Taxable Sales	Baseline Amount in Tax Revenue Collected By the City attributed to Taxable Sales	Calculation of payment
\$5,000,000 for first year of Operation	\$50,000	50% times each tax revenue dollar collected above \$50,000 for the Year of Operation

\$10,000,000 for second year of operation	\$100,000	50% times. each tax revenue dollar collected above \$100,000 for the Year of Operation
\$20,000,000 for each year of Operation thereafter	\$200,000	50% times each tax revenue dollar collected above \$200,000 for the Year of Operation

For example, if in the first Year of Operation the Developer generates Ten Million Dollars (\$10,000,000) in taxable sales and prior to the payment date the City collects One Hundred Thousand Dollars (\$100,000) in tax revenue attributable to the taxable sales, the City shall pay the Developer Twenty Five Thousand Dollars (\$25,000) per the calculation in the above Table A for the first Year of Operation. In the third year of operation, if the Developer generates Forty Million Dollars (\$40,000,000) in taxable sales and the City collects Four Hundred Thousand Dollars (\$400,000) in tax revenue attributed to the taxable sales, the City shall pay the Developer One Hundred Thousand dollars (\$100,000) per the calculation in the above Table A for that Year of Operation.

If the Total Assistance Amount has been paid to the Developer prior to the Final Payment Accrual Date, no further sums shall be due and owing from the City, and the rebate agreement shall cease.

7.4 Reporting Obligations. Within sixty (60) days after the end of the second and fourth fiscal quarters of operation of the Project, Developer shall submit to the City Manager bona fide documentation demonstrating to the City's satisfaction the particular amount of sales taxes were in fact paid and which qualify for the rebate program.

8. Cooperation in Implementation. Upon satisfactory completion by Developer of all required preliminary actions provided in the Development Plan, and payment of

required processing fees, if any, City shall proceed in a reasonable and expeditious manner, in compliance with the deadlines mandated by applicable agreements, statutes or ordinances, to complete all steps necessary for implementation of this Agreement and development of the Property in accordance with the Development Plan, including the following actions: processing and checking all maps, plans, land use and architectural review permits, building plans and specifications, and other plans relating to development of the Property. The City shall also reasonably cooperate with Developer in Developer's efforts to obtain such permits and approvals as may be required from other agencies with jurisdiction over the Project.

9. Drainage, Water System, Sewer, Road, Traffic and Other Public Improvements. Developer agrees to construct the public improvements as required under the Conditions of Approval, including but not limited to full frontage improvements along Condit. Such public improvements shall be submitted for approval and constructed in accordance with the City's standard improvement agreement requirements, including but not limited to insurance, bond and indemnification requirements. Developer agrees that it is not entitled to any reimbursement by the City for such improvements unless otherwise stated in the City's improvement agreement with the Developer.

10. Landscape and Maintenance. Developer shall landscape and maintain the Property as provided under the Landscape and Maintenance Agreement between the City and the Developer.

11. Default; Effect Thereof; Waiver.

11.1. Default. Failure by either party to perform any material term or provision of this Agreement shall constitute a default, provided that the Party alleging the default shall have given the other Party advance written notice and thirty (30) days within which to cure the condition, or, if the nature is such that it cannot be cured within that time, the party receiving notice shall not be in default if the allegedly defaulting Party commences to perform its obligations within the thirty (30) days period and diligently prosecutes the cure toward completion. Written notice shall specify in detail the nature of the obligation to be performed by the Party receiving notice.

11.2. Remedies. It is acknowledged by the Parties that the financial obligations of the City under this Agreement are limited to those amounts provided in Section 7.3 of this Agreement and the City would not have entered into this Agreement if it were liable for damages under or with respect to this Agreement in excess of that portion of the Total Assistance Amount not yet required to be paid to the Developer. City shall not be liable in damages to Developer in excess of such remaining portion of the Total Assistance Amount not yet required to be paid, or to any assignee, transferee, or any other person, and Developer covenants not to sue for or claim damages in excess of such remaining portion of the Total Assistance Amount not yet required to be paid. Upon Developer's material default, City shall be entitled to initiate legal proceedings to specifically enforce this Agreement or terminate it. City may terminate this Agreement, upon notice and an opportunity to cure as provided in Section 11.1, due to uncured default without legal action.

11.3. Default by Developer. City, may, in its discretion, refuse to issue a building permit for any structure within the Property, if Developer has materially failed or refused to complete any requirement applicable to the building permit as provided under the Conditions of Approval. This remedy shall be in addition to any other remedies provided for by this Agreement.

11.4. Effect of Default. In the event of Default by Developer pursuant to this provision, all obligations of the Parties shall terminate with the exception of Developer's obligation to defend, indemnify and hold harmless the City, its officers, agents and employees, and Developer's obligations under any Improvement Agreements executed with the City for the Project shall be governed by such Improvement Agreements, if any. No termination shall prevent Developer from completing those portions of the Project in which it has a vested right to do so as defined by law independent of this Agreement, but the City may take any action permitted by law to prevent, stop or correct any violation of law occurring during and after construction, and neither Developer or any tenant thereof shall occupy any portion of the Project, or any building not authorized by a certificate of occupancy.

11.5. Waiver. Failure by either Party to invoke the default or termination

provisions in this Agreement shall not waive that Party's right to insist upon performance of any obligation by the other Party in the future.

12. Estoppel Certificate. Either Party may, at any time, deliver written notice to the other Party requesting such Party to certify in writing that, to the knowledge of the certifying Party, (a) this Agreement is in full force and effect and constitutes a binding obligation of the Parties, (b) this Agreement has not been amended or modified either orally or in writing, or if so amended, identifying the amendments or modifications, and (c) the requesting Party is not in default in the performance of its obligations under this Agreement, or if in default, to describe therein the nature and amount of any such defaults. A Party receiving a written request hereunder shall execute and return such certificate within thirty (30) days following the receipt thereof, or such longer period as may reasonably be agreed to by the Parties. The City Manager of the City shall be authorized to execute any certificate requested by Developer.

13. Mortgagee Protection.

13.1. Mortgagee Protection. This Agreement shall be superior and senior to any lien placed upon the Property, or any portion thereof after the date of recording this Agreement or a Memorandum thereof, including the lien for any deed of trust or mortgage ("Mortgage"). Notwithstanding the foregoing, no breach hereof shall defeat, render invalid, diminish or impair the lien of any Mortgage made in good faith and for value, but all of the terms and conditions contained in this Agreement shall be binding upon and effective against any person or entity, including any deed of trust beneficiary or mortgagee ("Mortgagee") who acquires title to the Property, or any portion thereof, by foreclosure, trustee's sale, deed in lieu of foreclosure, or otherwise.

13.2. Mortgagee Not Obligated. City, upon receipt by City of a written request from a foreclosing Mortgagee, shall permit the Mortgagee to succeed to the rights and obligations of Developer under this Agreement, provided that the failure of Developer to pay any taxes or assessments is cured by the Mortgagee prior to such succession.

13.3. Notice of Default to Mortgagee. If City receives notice from a Mortgagee requesting a copy of any notice of default given Developer and specifying the address for service thereof, then City shall deliver to such Mortgagee, concurrently with service

thereon to Developer, any notice given to Developer with respect to any claim by City that Developer has committed an event of default. Each Mortgagee shall have the right during the same period available to Developer to cure or remedy, or to commence to cure or remedy, the event of default claimed set forth in the City's notice.

13.4 Certification Requested by Mortgagee(s). The City shall not unreasonably refuse to provide certifications if requested to do so by one or more Mortgagees so long as the terms of this Agreement are not materially altered thereby, and Developer is not in default under any term of this Agreement.

14. Severability. The unenforceability, invalidity or illegality of any provision, covenant, condition or term of this Agreement which is not material shall not render the material provisions unenforceable, invalid or illegal.

15. Relationship of City and Developer . It is understood that this Agreement is a contract that has been negotiated and voluntarily entered into by City and Developer and that Developer is an independent contractor and not an agent or employee of City. All persons employed or utilized by Developer in connection with this Agreement are employees of Developer and shall not be considered employees or agents of City in any respect. The Parties declare that the Project is a private development, and hereby renounce the existence of any form of joint venture, association or partnership between them, and agree that nothing contained herein or in any document executed in connection herewith shall be construed as making the City and Developer joint venturers, agents, associates, or partners.

16. Amendment or Termination. City and Developer, by mutual agreement may terminate or amend the terms of this Agreement, and the amendment or termination shall be accomplished in the manner provided under California law for the enactment of Incentive Agreement Amendments.

17. Transfers and Assignments. Excepting for Developer's rights to receive payments under Section 7.3 hereof ("Payment Rights") and the assignment, pledge or hypothecation thereof by Developer from time to time at Developer's election ("Assignment of Payment Rights"), neither party hereto shall assign or transfer any of its interests, rights, or obligations under this Agreement without the prior written

consent of the other party, which consent shall not be unreasonably withheld. Should Developer assign any of its interest, rights or obligations under this Agreement, it shall nonetheless remain liable for performance of the obligations for installation of public improvements and payment of fees. During the Term of the Agreement, Developer shall provide City with written notice of transfer of title (not including leases or ground leases) to the Property within sixty (60) days following each transfer. Each successor in interest to Developer shall be bound by all of the terms and provisions applicable to the portion of the Property acquired by it. This Agreement shall be binding upon and inure to the benefit of the Parties' successors, assigns and legal representatives. The only exceptions to these requirements for obtaining the City's consent are: (a) the Assignment of Payment Rights, and (b) the sale or lease of a subdivided parcel of the Property (i) upon which all public improvements are completed, all applicable fees paid, and all landscaping as required by the Conditions of Approval have been installed; or (ii) which is being sold or transferred to an affiliated or related company or entity of Developer, which is defined as a legal entity which is owned at least fifty percent (50%) by Developer, or which has as a majority of its general partners a majority of the general partners of Developer.

18. Agreement Runs with the Land. The terms of this Agreement and the Development Plan are legislative in nature, and apply to the Property as regulatory ordinances. All of the provisions, rights, terms, covenants, and obligations contained in this Agreement shall run with the land, be binding upon, and inure to the benefit of, the Parties and their respective heirs, successors and assignees, representatives, lessees, and all other persons acquiring the Property, or any portion thereof, or any interest therein, whether by operation of law or in any manner whatsoever.

19. Indemnification. Developer agrees to indemnify and hold harmless City, its elected and appointed councils, boards, commissions, officers, agents, employees, and representatives from any and all claims, costs and liability for any injury or property damage resulting from the performance under this Agreement by the Developer, its contractors, subcontractors, agents, or employees, including but not limited to liabilities for failure to comply with applicable laws. This provision is intended to be

broadly construed and extends to, but is not limited to, any challenge to the validity of this Agreement or its passage, or approval by the City, City Council, Planning Commission or other advisory body.

20. Construction. This agreement is prepared and reviewed by legal counsel for both City and Developer, and no presumption or rule that ambiguities shall be construed against the drafting party shall apply to the interpretation or enforcement of this Agreement.
21. Insurance. During the term of this Agreement, Developer shall purchase and maintain in full force and effect the following insurance policies: (1) commercial general liability insurance; (2) comprehensive automobile insurance (bodily injury and property damage) with respect to employees and vehicles assigned to performance of work under this Agreement; (3) workers' compensation, employer's liability if required by law. Such policies shall have the limits of coverage and endorsements as set forth in Exhibit D attached to this Agreement. The scope and form of each respective insurance coverage shall be subject to approval of the City Attorney. The City must approve all insurance coverages and carriers prior to Developer's commencement of construction activities on the Project. The City will promptly review coverages as submitted by or on behalf of the Developer.
22. Force Majeure. Performance by either party shall not be deemed to be in default where delays or defaults are directly due to war, insurrection, strikes, lockouts, walkouts, riots, heavy floods, earthquakes, fires, casualties, acts of God, governmental entities other than City, or enactment of superseding state or federal laws or regulations. City and Developer shall promptly notify the other Party of any delay hereunder.
23. Nondiscrimination. Developer shall not discriminate, in any way, against any person on the basis of race, color, national origin, gender, sexual orientation, age, creed, religion or disability in connection with or related to the performance of this Agreement.
24. Notices. All notices required or provided for under this Agreement shall be in writing and delivered (a) in person, (b) sent by certified mail, postage prepaid, (c) sent by

overnight delivery, or (d) sent via facsimile.

Notices required to be given to the City shall be given to:

City Manager
City of Morgan Hill
17575 Peak Avenue
Morgan Hill, CA 95037
Fax: 408-779-1592

With a copy to:

City Clerk
City of Morgan Hill
17555 Peak Avenue
Morgan Hill, CA 95037-4128

Notices required to be given to Developer shall be addressed as follows:

Josh Towbin
Morgan Hill Real Estate LLC
6520 Centennial Center Blvd
Las Vegas, NV 89149
Fax:702-558-2776

Party may change its address by giving notice in writing to the other Party as specified in this provision. Notices shall be deemed given and received upon the earlier of personal delivery, or if mailed, upon the expiration of forty-eight (48) hours after being deposited in the United States Mail or on the delivery date or attempted delivery date shown on the return receipt, air bill or facsimile.

21. Duplicate Originals; Entire Understanding; Headings; Further Documents. This Agreement may be executed in duplicate originals, each of which is deemed to be an original. This Agreement constitutes the entire understanding and agreement of the Parties and supersedes all prior negotiations and agreements between the Parties. The headings in this Agreement are for convenience only, and shall not be used as an aid in

interpreting the terms hereof. The Parties shall take all other actions and execute and deliver all other documents necessary or convenient to carry out the terms hereof and to fulfill the purposes and intent of this Agreement.

22. Exhibits. The following documents are referred to in this Agreement and are attached hereto and incorporated herein as though set forth in full;

Exhibit A,B,C-Legal Descriptions and Maps Exhibit D-Insurance Requirements

23. Recording of Incentive Agreement. Amendment or Cancellation. Within ten (10) days after all Parties have executed this Agreement, the City Clerk shall submit this Agreement for recording with the County Recorder assuming the Developer has acquired fee ownership of the Property. If the Parties or their successors-in-interest amend or cancel the Agreement, or if the City terminates or modifies the Agreement for failure of the Developer to comply in good faith with the terms or conditions of the Agreement, the City Clerk shall timely submit the notice of such action for recording action with the County Recorder.

24. No Third Party Beneficiary. This Agreement shall not be construed or deemed to be an agreement for the benefit of any third party, and no third party shall have any claim or right of action hereunder for any cause whatsoever.

25. Governing Law; Legal Action. This Agreement shall be governed by the law of the State of California. All Legal Action regarding this Incentive Agreement shall be filed in the Superior Court of the County of Santa Clara, State of California.

26. Dispute Resolution. Any controversies between Developer and City regarding the construction or application of this Agreement, and claims arising out of this Agreement or its breach, shall be submitted to mediation within thirty (30) days after a written request of one party invoking mediation is served on the other party. The parties may agree on one mediator. If they cannot, the party demanding mediation shall request the Superior Court of the County of Santa Clara to appoint a mediator. The mediation shall not exceed eight (8) hours, unless an extension of time is mutually agreed to by both parties. The costs of mediation shall be borne equally by both parties. Mediation under this section is a condition precedent to filing an action in any court.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed as follows:

CITY OF MORGAN HILL		MORGAN HILL REAL ESTATE, LLC
By:		By:
City Manager		
APPROVED AS TO FORM:		ATTEST
By:		By:
City Attorney		City Clerk

Exhibit "A"
Legal Description-Parcel B
(Certificate of Compliance for Lot Line Adjustment)

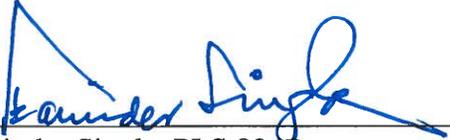
All that certain real property situated in the County of Santa Clara, State of California and being a portion of Parcel 1 and a portion of Parcel 2, said parcels as shown upon the Parcel Map for Lot Line Adjustment, recorded in Book 871 of Maps, Pages 14 through 16, on April 18, 2014, at the Office of the Recorder of Santa Clara County, and being more particularly described as follows:

Beginning at the northerly corner of Parcel 3 of said map, said point lying in the southwesterly line of Condit Road (a 60' wide public street), thence along said line of said street, N25°28'14"W, a distance of 335.52 feet; thence leaving said street, S64°31'46"W, a distance of 782.40 feet to the northeasterly line of Santa Clara Valley Water District, (said line as described in Director's Deed, Document No. 5336791, recorded July 14, 1976 at the said County Recorders), to the point of curve of a non-tangent curve to the right, of which the radius point lies S62°18'09"W, a radial distance of 6,000 feet; thence northeasterly along the arc, through a central angle of 03°12'17", a distance of 335.59 feet to the westerly corner of said Parcel 3, of which the radius point lies S65°30'26"W, a radial distance of 6,000.00 feet; thence leaving said District line, N64°31'46"E, a distance of 778.74 feet to the POINT OF BEGINNING, containing 261,361 square feet or 6.000 acres, more or less.

END OF DESCRIPTION.

See Exhibit "C" attached hereto and made a part hereof.

This description was prepared by me or under my direction in conformance with the requirements of the Land Surveyor's Act.



Harinder Singla, PLS 8347
Expires: 12/31/2017

8-09-16
Date

Prepared by the firm of MH engineering Company, Morgan Hill, CA

K:\2016\216073LLA-Parcel B.doc

Exhibit "B"
Legal Description-Parcel A
(Certificate of Compliance for Lot Line Adjustment)

All that certain real property situated in the County of Santa Clara, State of California and being a portion of Parcel 1 and a portion of Parcel 2, said parcels as shown upon the Parcel Map for Lot Line Adjustment, recorded in Book 871 of Maps, Pages 14 through 16, on April 18, 2014, at the Office of the Recorder of Santa Clara County, and being more particularly described as follows:

Being all of Parcel 1 and all of Parcel 2 of said map, EXCEPTING therefrom the following 6.000 acres.

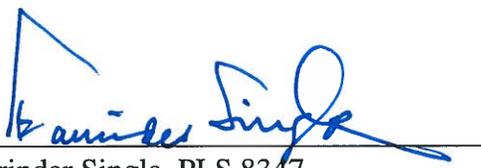
Beginning at the northerly corner of Parcel 3 of said map, said point lying in the southwesterly line of Condit Road (a 60' wide public street), thence along said line of said street, N25°28'14"W, a distance of 335.52 feet; thence leaving said street, S64°31'46"W, a distance of 782.40 feet to the northeasterly line of Santa Clara Valley Water District, (said line as described in Director's Deed, Document No. 5336791, recorded July 14, 1976 at the said County Recorders), to the point of curve of a non-tangent curve to the right, of which the radius point lies S62°18'09"W, a radial distance of 6,000 feet; thence northeasterly along the arc, through a central angle of 03°12'17", a distance of 335.59 feet to the westerly corner of said Parcel 3, of which the radius point lies S65°30'26"W, a radial distance of 6,000.00 feet; thence leaving said District line, N64°31'46"E, a distance of 778.74 feet to the POINT OF BEGINNING.

The resulting Parcel A contains 496,664 square feet or 11.402 acres, more or less.

END OF DESCRIPTION.

See Exhibit "C" attached hereto and made a part hereof.

This description was prepared by me or under my direction in conformance with the requirements of the Land Surveyor's Act.



Harinder Singla, PLS 8347
Expires: 12/31/2017



Date

Prepared by the firm of MH engineering Company, Morgan Hill, CA

K:\2016\216073LLA-Parcel A.doc

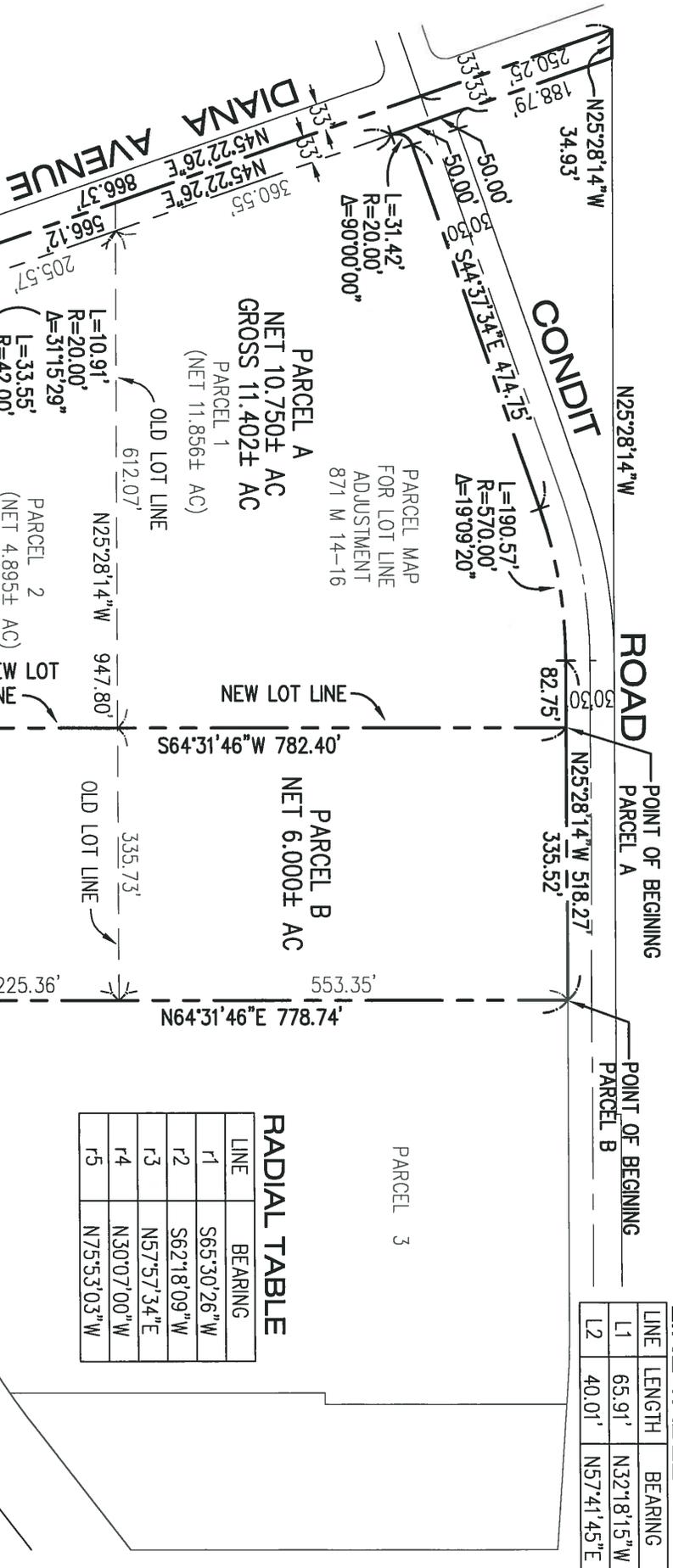


8-09-16

SCALE: 1"=200'



SOUTH VALLEY FREEWAY US 101



LINE TABLE

LINE	LENGTH	BEARING
L1	65.91'	N32°18'15"W
L2	40.01'	N57°41'45"E

RADIAL TABLE

LINE	BEARING
r1	S65°30'26"W
r2	S62°18'09"W
r3	N57°57'34"E
r4	N30°07'00"W
r5	N75°53'03"W

LEGEND

AC	ACREAGE	BOUNDARY OF LOT LINE ADJUSTMENT
DOC. NO.	DOCUMENT NUMBER <th>CENTER LINE</th>	CENTER LINE
(r)	RADIAL BEARING	OLD LOT LINE

EXHIBIT "C"

PLAT TO ACCOMPANY LEGAL DESCRIPTION
FOR A CERTIFICATE OF COMPLIANCE
LOT LINE ADJUSTMENT

DRAWN BY: MM

DATE: AUGUST 8, 2016

MH engineering Co.

16075 Vineyard Boulevard, Morgan Hill, CA 95037

216073

SHEET 1 OF 1