

PREDEVELOPMENT MEMORANDUM OF UNDERSTANDING REGARDING CERTAIN
UNDEVELOPED PROPERTY LOCATED ON SUNSET, EDMUNDSON AND DeWITT IN
UNINCORPORATED SANTA CLARA COUNTY

This Memorandum of Understanding (hereafter "MOU") is dated and effective this 22nd day of FEBRUARY, 2006 by and between the City of Morgan Hill, a municipal corporation (hereafter, "City") and Oak Meadow Plaza LLC, a California limited liability company (the "Sunset Owner"); Bethany S. Liou, MH Development Group LLC, a California limited liability company, and Dr. Steven Spisak and Raylene Spisak (sometimes collectively the "Edmundson Owners"); and American Anchorpoint Academics, Inc., a California corporation (the "DeWitt Owner"). The Sunset Owner, Edmundson Owners and DeWitt Owner are sometimes hereafter collectively referred to as the "Owners".

Recitals

1. Description of Owners' and City's Property. Owners collectively own 117.5 acres of land located in unincorporated Santa Clara County, sometimes hereafter collectively referred to as "Subject Property". Sunset Owner owns four parcels located on or near Sunset Road, being Lots 39, 40, 52 and 53 as depicted on the map (the "Map") attached hereto as Exhibit A. Bethany S. Liou owns the parcel depicted on the Map as Lot 51. MH Development Group LLC owns two parcels depicted on the Map as Lots 48 and 50. The Spisaks own a parcel depicted on the Map as Lot 49. An approximately 35 acre portion of the Subject Property consisting of Lots 39, 40, and portions of Lots 51, 52 and 53 is sometimes collectively referred to as the "Sunset Property". A small portion (0.52 acres) of Lots 39 and 40 is already annexed to the City of Morgan Hill, and is within the City's Urban Growth Boundary, Urban Limit Line, and Urban Service Area. An approximately 53 acre portion of the Subject Property consisting of Lots 48, 49, 50 and portions of Lots 51, 52 and 53 is sometimes collectively referred to as the "Edmundson Property". The DeWitt Owner owns three parcels comprising approximately 29 acres and depicted on the Map as Lots 36, 37 and 38 (the "DeWitt Property"). City owns the roughly 36 acre parcel depicted on the Map as Lot 41 (the "City Property").

2. Description of Current Land Use Designations. The Subject Property is currently designated "Hillside" by the County of Santa Clara General Plan's Land Use and Circulation Element and is zoned "HS-Hillside". The Subject Property is located within the City's sphere of influence. The 0.52 acre portion of Lots 39 and 40 already annexed to the City is currently designated Single Family Low by the City's General Plan.

3. Purpose. The purpose of this MOU is to provide for a mutual understanding of Owners' and City's expectations for submittal of a joint application for ultimate development of the Subject Property and a portion of the City Property involving the development of homes and establishment of permanent open space easements. This MOU addresses the processing of a series of applications relating to possible development of the Subject Property, including applications for necessary annexation of a portion into the City and a portion of that portion into

City's Urban Service Area and Urban Growth Boundary, General Plan and Zoning Map amendments, Measure C, subdivision, and environmental review. While the anticipated densities of development for the Sunset Property, Edmundson Property and DeWitt Property differ from each other, and hence the proposed development of those properties is addressed separately in Section 4, the parties recognize and acknowledge that the development of the various parts of the Subject Property is interrelated, and it is the desire of the parties hereto that, except for approval of the Measure C allocations and described below, either all of the below-described rights and obligations would be created, or none of them would be created.

4. Development of the Subject Property.

A. Development Goals and Limitations.

As an overview, the Owners desire to develop residential units on certain portions of the Subject Property and the City seeks to secure open space easements over the remainder of the Subject Property to ensure that no further development would occur beyond that described in this Section 4.A. The contemplated goals and limitations for each of the Owners regarding their respective properties are as follows:

(i) Regarding the Sunset Property:

(a) After completion of a lot line adjustment by the Sunset Owner and Bethany S. Liou to segregate the Sunset Property from the Edmundson Property, the City would amend the Urban Growth Boundary and locate the Urban Limit Line to include the 19.99 acres of the Sunset Property indicated on the Map, which 19.99 acres consist solely of land with a slope of 12.5 percent or less.

(b) The City would apply to LAFCO for annexation of the entire Sunset Property (except the 0.52 acre portion already annexed to City), and inclusion of the newly annexed 19.99 acre portion in the Urban Service Area.

(c) The 19.99 acres would be designated by City on the City's General Plan diagram as Single Family Low, limiting development to a maximum of three residential units per acre.

(d) The Sunset Owner and Bethany S. Liou would jointly apply for development allocations for the 20.51 acre portion pursuant to Measure C, and would provide in those applications (a) for a height restriction on all homes proposed to be constructed on the portion of Lot 51 included in the 20.51 acres to the effect that the maximum elevation of those homes would not exceed the maximum elevation of the immediately adjacent homes on Lot 52, measured from sea level, and (b) that no structures other than fences and landscaping features would be constructed on the portion of the 20.51 acres with a slope in excess of 10%.

(e) The other approximately 14 acres of the Sunset Property would remain undeveloped and have a permanent open space easement recorded over them. The City would confirm in writing at the time the General Plan Amendment and Urban Growth Boundary alteration applications are acted upon, if such applications are approved, that the Sunset Owner and Bethany S. Liou would be eligible to receive (a) points pursuant to Sections 18.78.220.B, 18.78.230.B.3, and 18.78.330.B.1.e and 2.b. of Measure C (as presently codified) for permanently preserving in open space these approximately 14 acres, and (b) TDCs pursuant to Section 18.44.160 of the MHMC for permanently preserving in open space the portion of the approximately 14 acres with slopes exceeding 20%.

(ii) Regarding the Edmundson Property:

(a) The City would not object to the construction of one home on each of the four Lots, provided that the homes are located in the building envelopes indicated on the Map and that the homes on Lots 48 and 49 are generally not visible from Edmundson Avenue. The Edmundson Owners would provide copies of relevant documents to the City prior to submission of those documents to the County to allow City to confirm compliance with these restrictions. The Lot 50 home would be located just westerly of the existing home on Lot 51 (which would be demolished), and the Lot 51 home would be located just east of the existing home on Lot 51 (which would be demolished).

(b) The Edmundson Owners would make their best reasonable efforts to obtain County approval for access to the homes on Lots 48 and 49 to be taken from DeWitt Avenue, as described in Section 4.A.(iii).(c), below, including keeping City fully informed of the progress of the applicable County development applications so that City would have the ability to participate in advocating that access to these homesites be taken from DeWitt Avenue. Access from Edmundson Avenue for these two parcels would only be allowed if access from DeWitt Avenue is found to be infeasible by the County.

(c) A permanent open space easement would be recorded over approximately 80% of each of the four parcels (a combined approximately 43 acres as generally reflected on the Map), protecting the knoll/ridge line and covering the entire Edmundson Avenue frontage of Lots 48 and 49.

(iii) Regarding the DeWitt Property:

(a) The City would convey by lot line adjustment the roughly 5 acre portion of Lot 41 depicted on the Map to the DeWitt Owner, in exchange for conveyance by lot line adjustment of an equal amount of the acreage of Lot 38 depicted on the Map from the DeWitt Owner.

(b) The DeWitt Owner would merge this resulting 29 acres into one parcel (The "Modified DeWitt Parcel"), and City would not object to the construction of a home on the portion of the parcel conveyed to the DeWitt Owner by the City, provided that the

home shall be located in the area indicated on the Map and shall generally not be visible from DeWitt Avenue.

(c) The DeWitt Owner (and the owners of Lots 48 and 49 if they will be using the driveway as described below) would construct a driveway on the modified City Property in approximately the location of the existing dirt road which leads to the City's water tank. All improvements within the easement area would be subject to approval by the City through its Public Works Director, which approvals would not be unreasonably withheld or delayed. The driveway would serve the new home to be built on the Modified DeWitt Parcel, the water tank, and the homes on Lots 48 and 49 of the Edmundson Property, as described above. City would grant residential access easements to the owners of the Modified DeWitt Parcel and Lots 48 and 49 to provide a connection between these properties and DeWitt Avenue. The City would enter into an agreement with the owners of Lots 48, 49 and the Modified DeWitt Parcel establishing an equitable sharing of the costs of maintenance of the shared driveway, but the City would not be responsible for any costs incurred in constructing the shared driveway or in constructing or maintaining any electronic gate desired by the other owners utilizing the shared driveway.

(d) A permanent open space easement would be recorded, encumbering the Modified DeWitt Parcel except for approximately 2.5 acres for the building envelope.

B. As to the Open Space Easements Described in Section 4.A., above:

(i) The Owners would record permanent open space easements, bearing language acceptable to both Owners and City, on their parcels as provided above, within one year of the City Council's approval of the inclusion of the 19.99 acre portion of the Sunset Property within the Urban Growth Boundary, or by the effective date upon which the Sunset Property is formally included in the Urban Service Area, whichever occurs first. Should the easements not be recorded within that time period, or should LAFCO reject annexation of the Sunset Property (except the 0.52 acre portion already annexed to City) into the City limits and/or the 19.99 acre portion into the City's Urban Service Area, or should development occur inconsistent with the intent of this MOU, then the 19.99 acre area would be removed from the Urban Growth Boundary and, if applicable, the Urban Service Area. Approval of housing allocations for the Sunset Property pursuant to the Measure C process would not be a precondition to granting of the permanent open space easements.

(ii) The permanent open space easements placed on the Edmundson and DeWitt Properties would prohibit construction of structures and would also prohibit grading beyond that which is necessary for normal hillside agricultural operations. Agricultural operations typically found on hillsides, such as grazing and viticulture would be allowed. The permanent open space easement placed on the approximately 14 acre portion of the Sunset Property would be more restrictive, prohibit structures, motorized recreational vehicles and grading, and allowing only private recreational use, including

hiking, running, bird watching and similar activities.

(iii) Notwithstanding the fact that the open space easements are referred to herein as "permanent", the open space easements placed on the Subject Property would provide that, in the event the 19.99 acres of the Sunset Property is removed from the Urban Growth Boundary after the easements are recorded, all of the open space easements on the Subject Property would terminate and be of no further force or effect.

(iv) The permanent open space easements and other limitations on the Edmundson Property and DeWitt Property would provide the required community benefit for inclusion of the 19.99 acre portion of the Sunset Property in the Urban Service Area as "infill development" pursuant to Measure C.

5. Submittal of Applications Owners, City, their agent(s) or successors in interest shall submit to City on City's standard application forms, applications with all supplementary information, fees and documents required by City to process the same, for the developments described in Section 4 (excluding the LAFCO application, which shall be prepared and submitted by City, with fees paid by the Sunset Owners).

6. Processing Costs. Owners shall pay City regarding submittal of any applications, the costs customarily charged by City for processing such applications, including the cost for environmental review but not including the cost of environmental review associated with the approval of the Urban Limit Line Committee recommendations, which costs shall be borne by City.

7. Development Agreement. A Development Agreement pursuant to Government Code Section 65864 et seq., with an anticipated term of at least 10 years would be prepared and executed in connection with any development approvals of the Subject Property. It is also anticipated that the development agreement would be in general accord with the terms contained in this Memorandum of Understanding as well as contain other such terms as are agreed upon by the parties to the agreement.

8. Limitations. This MOU requires the City to process and take future action on development requests for which completed applications have been submitted relating to the subject property. The parties acknowledge and agree that execution of this MOU by City does not alter the application of CEQA to development of the Subject Property, nor alter the discretion of the City, the City Council, the City Planning Commission or any department, agency, employee or instrumentality of the City to determine whether to enact the ordinances, adopt resolutions or grant the entitlements required to accomplish any of the actions set forth in Paragraph 4, herein or to make any of the findings required in order to do so. By entering into this MOU, neither Owners nor City shall obtain from each other any right or entitlement, nor shall either obtain from the other any expectancy other than specifically set forth herein.

9. Termination. This MOU shall terminate when all development contemplated in Section 4, above, has been completed, or may be terminated by the City or Owners upon 60 day written notice to the other.

10. Assignment. The MOU is assignable by the Owners to any successor in interest.

11. Notices. Any notice to be served on the City shall be served upon it at City Hall, 17555 Peak Avenue, Morgan Hill, CA 95037. Any notice to be served on the Owners shall be served upon them c/o Bethany Liou at Oak Meadow, P.O. Box 2610, Cupertino, CA 95015 and Steve White at P.O. Box 65, Gilroy, CA 95021.

12. Authority. Each person signing this MOU on behalf of an entity represents that he or she is authorized to execute this MOU and bind such entity to the terms hereof.

CITY OF MORGAN HILL, a municipal corporation

By: [Signature] 7/19/06

Mayor

Attest

By: [Signature] 7/19/06

City Clerk

APPROVED AS TO FORM:

By: [Signature]

City Attorney

OWNERS

Oak Meadow Plaza LLC,
a California limited liability company

By: [Signature]

Bethany S. Liou, Managing Member

MH Development Group, LLC
a California limited liability company

By: [Signature]

Bethany S. Liou, Managing Member

American Anchorpoint Academics, Inc.
a California corporation

By: [Signature]

Stephen White, President

[Signature]
Bethany S. Liou

[Signature]
Dr. Steven Spisak

[Signature]
Raylene Spisak

Raylene Spisak

