

Memorandum

TO: HONORABLE MAYOR
AND CITY COUNCIL

FROM: Planning Commission

SUBJECT: SEE BELOW

DATE: November 5, 2009

COUNCIL DISTRICT: 4
SNI AREA: NA

SUBJECT: FIRST AMENDMENT TO THE DEVELOPMENT AGREEMENT WITH NOVELLUS SYSTEMS, INC. RELATED TO CITY FILES NO. PDC07-054, PDC07-055, AND H07-035

RECOMMENDATION

The Planning Commission voted 5-0-2 (Do and Kamkar absent) to recommend that the City Council adopt an ordinance to approve a First Amendment to the Development Agreement with Novellus Systems, Inc. and Vista Montana as approved by Ordinance No. 28154 and entered into on December 20, 2007 to extend the reservation of the residential unit capacity under the North San Area Development Policy an additional two years relative to the development of certain real properties located in north San José.

OUTCOME

Should the City Council approve the Amendment to the Development Agreement, Novellus Systems would retain their existing North San José Phase I residential unit reservation an additional two years (for a total of seven years) consistent with the terms of the Development Agreement.

BACKGROUND

On November 4, 2009, the Planning Commission held a public hearing to consider the proposed Development Agreement Amendment. The project was on the consent calendar and there was no public testimony or Commission discussion on the item. The Commission then voted 5-0-2 (Do and Kamkar absent) to recommend approval of the Planned Development Zoning as recommended by staff.

ANALYSIS

For complete analysis please see the original Staff Report (see attached).

EVALUATION AND FOLLOW-UP

The applicant will be required to secure a time extension to their approved Planned Development Permit(s) in order to retain the Phase I residential unit allocation.

POLICY ALTERNATIVES

Not Applicable.

PUBLIC OUTREACH/INTEREST

- Criteria 1:** Requires Council action on the use of public funds equal to \$1 million or greater.
(Required: Website Posting)
- Criteria 2:** Adoption of a new or revised policy that may have implications for public health, safety, quality of life, or financial/economic vitality of the City. **(Required: E-mail and Website Posting)**
- Criteria 3:** Consideration of proposed changes to service delivery, programs, staffing that may have impacts to community services and have been identified by staff, Council or a Community group that requires special outreach. **(Required: E-mail, Website Posting, Community Meetings, Notice in appropriate newspapers)**

A notice of this Planning Commission public hearing and subsequent City Council hearing was mailed to the owners and tenants of all properties located within 500 feet of the project site and posted on the City website. This staff report is also posted on the Planning division website and staff has been available to respond to questions from the public.

COORDINATION

This project was coordinated with the City Attorney's Office, Department of Public Works, Building Department, Environmental Services Department, Fire Department, Department of Transportation, San José Police Department, and San José Water Company.

FISCAL/POLICY ALIGNMENT

This project is consistent with applicable General Plan policies and the Zoning Ordinance as further discussed in attached staff report.

COST SUMMARY/IMPLICATIONS

Not applicable.

BUDGET REFERENCE

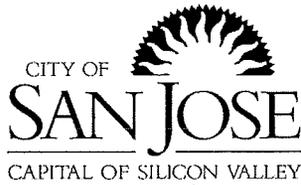
Not applicable.

CEQA

CEQA: Addendum to the North San José Area Development Policy FEIR

for Darryl Boyd
JOSEPH HORWEDEL, SECRETARY
Planning Commission

For questions please contact Darryl Boyd at 408-535-7898.



Memorandum

TO: HONORABLE MAYOR AND
CITY COUNCIL

FROM: Joseph Horwedel

SUBJECT: SEE BELOW

DATE: October 28, 2009

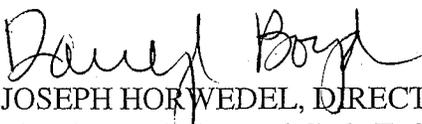
COUNCIL DISTRICT: 4

SNI: None

T R A N S M I T T A L M E M O

DA - Novellus, First Amendment to the Development Agreement with Novellus Systems, Inc and Vista Montana as approved by Ordinance No. 28154 and entered into on December 20, 2007 to extend the reservation of the residential unit capacity under the North San José Area Development Policy an additional two years relative to the development of certain real properties located in North San José.

The Planning Commission will hear this project on November 4, 2009. The memorandum with Planning Commission recommendations will be submitted under different cover. We hope the submittal of this staff report is of assistance in your review of this project.

for 
JOSEPH HORWEDEL, DIRECTOR
Planning, Building and Code Enforcement

For questions please contact Darryl Boyd at (408) 535-7898.

STAFF REPORT
PLANNING COMMISSION

FILE NO.: DA Amendment-Novellus Systems

Submitted: May 19, 2009

PROJECT DESCRIPTION:

First Amendment to the Development Agreement with Novellus Systems, Inc. related to City Files No. PDC07-054, PDC07-055 & H07-035

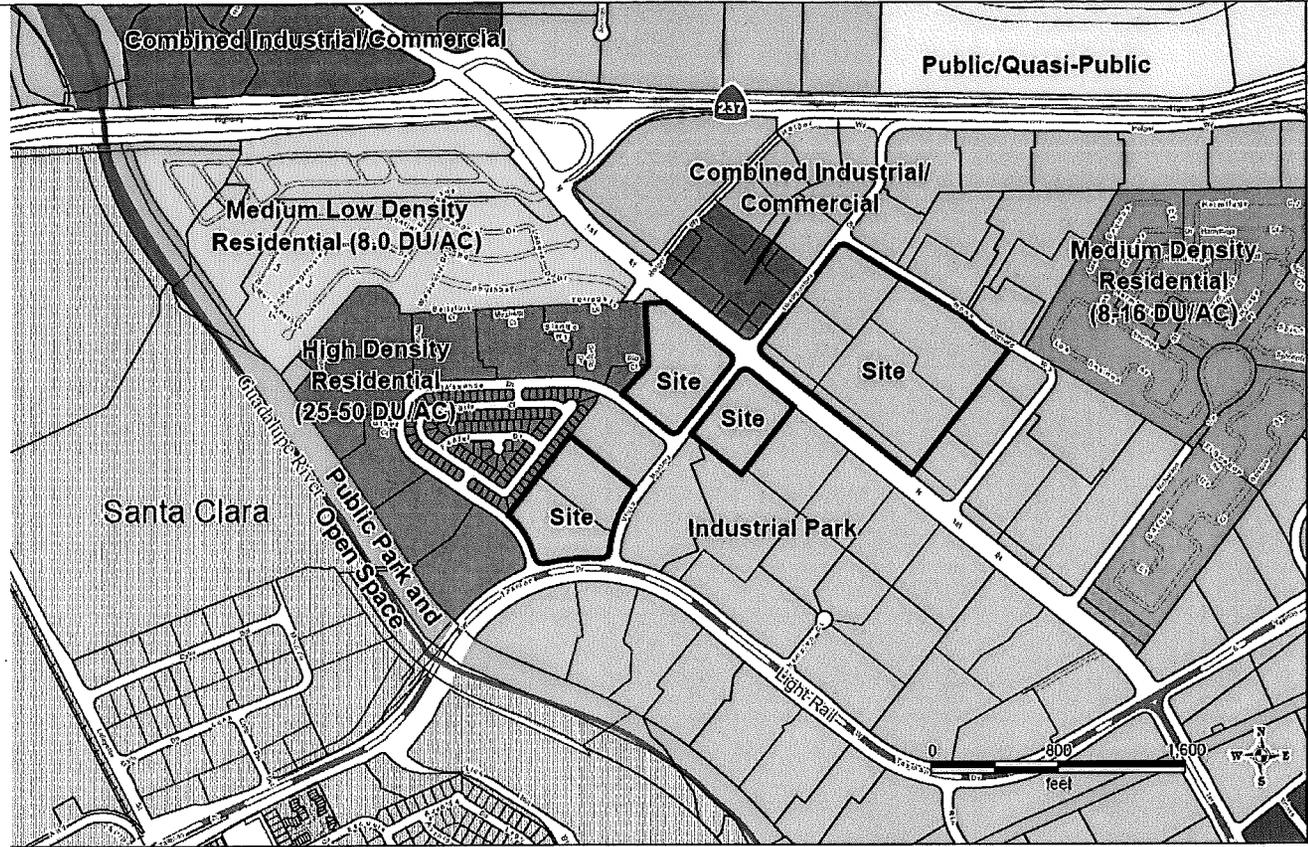
LOCATION: Both sides of North First Street at Vista Montana Drive & Headquarters Drive

Existing Zoning	IP-Industrial Park & A(PD) Planned Development
Proposed Zoning	No change
General Plan	Transit/Employment Residential District (55+ DU/AC) with Floating Park & Industrial Park
Council District	4
Annexation Date	December 14, 1981
SNI	No
Historic Resource	No
Redevelopment Area	Rincon de los Esteros
Specific Plan	No

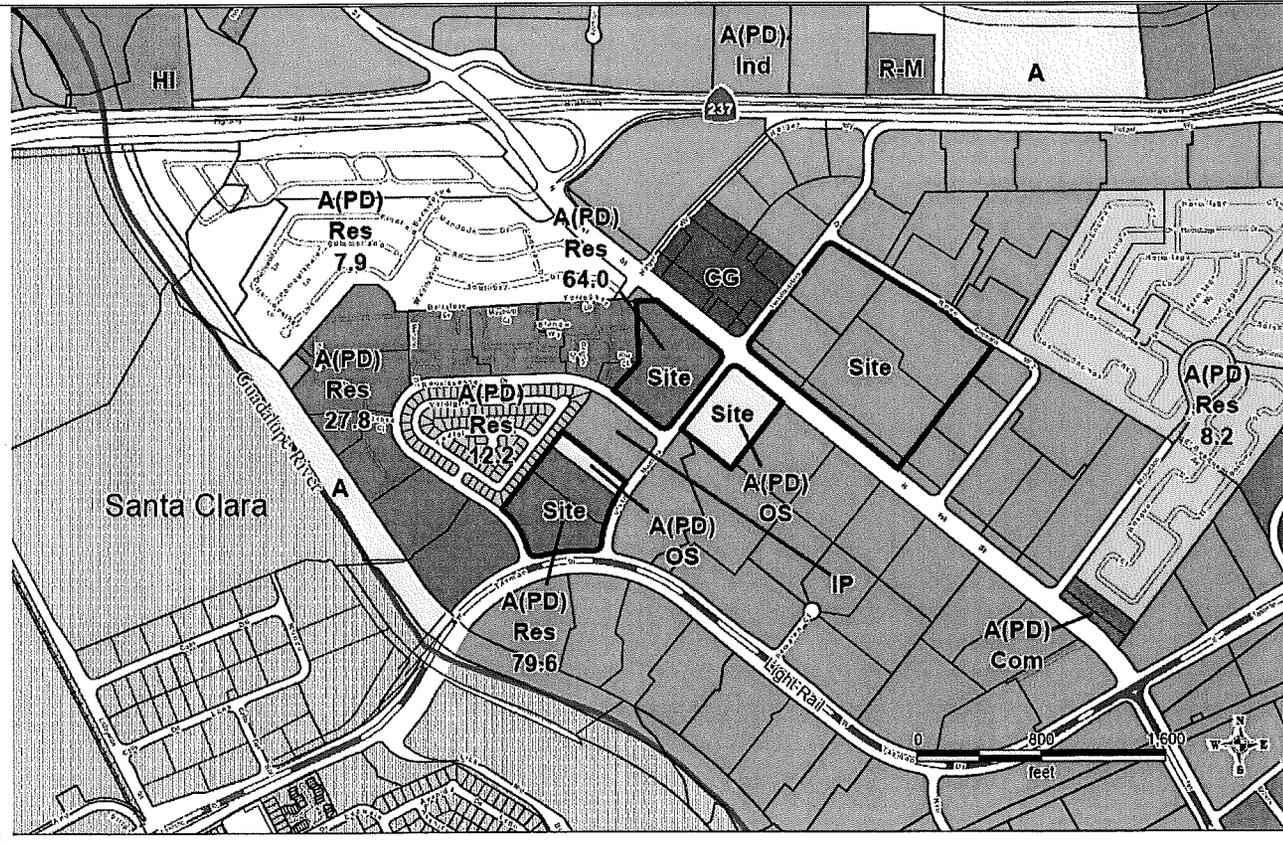
Aerial Map



GENERAL PLAN



ZONING



RECOMMENDATION

Planning staff recommends approval of the proposed Development Agreement Amendment for the following reasons:

1. The proposed Development Agreement Amendment supports the San José 2020 General Plan Economic Development Strategy.
2. The Development Agreement Amendment conforms to the designations of Transit Employment Residential District (55+ DU/AC) with Floating Park and Industrial Park on the adopted San José 2020 General Plan Land Use/Transportation Diagram.
3. The Development Agreement Amendment conforms to the requirements of the existing IP-Industrial Park and A(PD) Planned Development Zoning District.
4. The Development Agreement Amendment conforms to the requirements of the Development Agreement Ordinance.
5. The proposed Amendment is a minor modification to the approved Development Agreement to extend the North San José Development Area Policy residential unit capacity reservation by two years from December 20, 2012 to December 20, 2014.

BACKGROUND & DESCRIPTION

The applicant, Novellus Systems, Inc., has requested a First Amendment to the approved Development Agreement (DA) by and between the City of San José and Novellus Systems, Inc to extend the term of the North San José Development Area Policy residential unit reservation by two years. No other changes to the approved Development Agreement are proposed. The DA is related to two approved Planned Development Rezoning applications (PDC07-054 – 444 Units on 12.1 Acres, and PDC07-055 – 554 Units on 8.7 Acres) and a Site Development Permit (H07-035).

In summary, the City with the DA will preserve and transfer residential and industrial development capacity (per the North San José Area Development Policy) for Novellus for an extended period, in exchange for contributions from Novellus towards the construction and maintenance of two new City parks (a 5-Acre Community Park and a 1-Acre Neighborhood Park) in conjunction with their approved Planned Development Rezonings for approximately 1000 residential dwelling units. As a result, the City will receive dedication and improvement of parkland as part of two proposed residential projects beyond what would have been normally required by the Parkland Dedication Ordinance. In addition, the Agreement provides for the formal transfer of industrial development capacity from the residential development sites to an existing Novellus campus (on the southeast corner of North First and Headquarters Drive) to facilitate the eventual expansion on the site.

A Development Agreement is a contract negotiated between a project proponent and a public agency that governs the land uses to be allowed for a particular project, and which will benefit both parties. In this instance, the proposal is that the City would benefit in that the subject Agreement would facilitate the development of two public parks that would not have occurred to the extent proposed without the subject Agreement. Novellus would benefit by receiving residential allocation of up to 1,000 units from Phase 1 of the NSJ Policy phasing program and the transfer of industrial capacity from the sites proposed for residential development, to a second site which will continue in industrial use by Novellus.

The project is consistent with the Economic Development Major Strategy of the General Plan in that developing new residential at specific locations in close proximity to employment areas, and in combination with specific transportation improvements, supports the intensification of industrial development within the North San José Area, the driving force behind the recent updates of the Policy. This proposal allows for location of residential uses near industrial uses and near transit stations, and thus supports this Major Strategy. Industrial development capacity will be preserved with the transfer of the development capacity from the properties proposed for residential development to the Novellus Campus on sites. The proposed Amendment to the Development Agreement will continue to facilitate the long-term growth of Novellus within the North San José area by providing Novellus with certainty as to its future growth potential on their current campus.

ANALYSIS

Review Criteria for Development Agreements

City Ordinance No. 24209 establishes criteria by which the City may enter into a Development Agreement. For the City Council to approve an Agreement, it must find that the proposed development is consistent with the General Plan, meets important economic, social, environmental or planning goals of the City, and facilitates the development of the subject property. Additionally, the proposed development must be found to either incur unusually substantial public improvement costs and to demonstrate commitment to a very high standard of quality beyond the standard City requirements or the development must be found to make a substantial contribution to the economic development of the City. In the latter case, the development must be for industrial office, research and development or similar use, involve a parcel of at least 5 acres in size, and create or retain at least five hundred jobs, be used as a corporate headquarters by the primary user of the development and qualify as a "Special Handling" project per City requirements. Development Agreements are approved through the adoption of a City ordinance by the City Council. The effective date of the Agreement is the effective date of the ordinance unless a later date or the occurrence of a specific event is specified in the Agreement.

Development Agreements may be amended or cancelled by the mutual consent of the parties to the Agreement or their successors in interest. An amendment may be granted upon a finding by the City Council that the amendment is consistent with either the General Plan and zoning codes in effect at the time the ordinance authorizing the agreement was adopted, or at the time of any amendment. Review of an amendment is limited to consideration of those elements proposed to be added or changed, which in this particular case is a two year extension for retention of the North San José residential reservation.

Development Capacity Allocation

The *North San José Area Development Policy* provides for the development of up to 32,000 new residential dwelling units within North San José, including the potential conversion of up to 285 acres of existing industrial lands to residential use at minimum densities of 55 DU/AC. The total amount of new industrial and residential development capacity is divided into four phases, with 25 percent of the total amount of development in each category of land use assumed for each phase. The phasing plan limits how much industrial or residential development may occur in advance of the construction of supporting infrastructure improvements and commercial development.

Typically, Residential or Industrial development capacity is considered to be reserved for a particular site upon issuance of a Site Development Permit or Planned Development Permit. The actual allocation of the development capacity occurs with the issuance of Building Permits. Development capacity is not reserved for a property through adoption of a zoning or rezoning action. The Policy also allows for the reservation of allocation with a legally binding mechanism such as a Development Agreement that includes allocations that last for the term of the Development Agreement based upon a demonstration that the project will provide extraordinary benefit to the City.

As a part of the approved Development Agreement, residential development capacity of 1000 units is reserved, for up to five years, in conjunction with the approval of the previously mentioned Planned Development Rezonings. The proposed Amendment would extend the term by two years for a total of seven years due to the current economic conditions. This will provide assurances to Novellus that the proposed units will be able to proceed during Phase 1 of the North San José Policy. No Phase I residential units have been allocated thus far, but all of the 8,000 units have been reserved.

Benefit to Novellus

Reservation of Industrial Floor Area Credits

Novellus will receive 870,000 square feet of additional industrial square footage capacity [270,251 square feet to be transferred from the Novellus properties subject to the pending Planned Development Rezonings (PDC07-054 and PDC07-055)]. Of this, 599,749 square feet is being reserved for the site out of the industrial development capacity provided in Phase 1 of the North San José Area Development Policy. (At the point that only 870,000 square feet of development capacity remain within Phase 1 of the North San José Area Development Policy, reservation of all or a portion of the 870,000 square feet may be modified to be reserved from the next phase of NSJ ADP industrial development capacity at the discretion of the Planning Official). This allocation shall be in effect for the 20-year term of the agreement.

Reservation of Phase 1 Residential Allocation

The proposed amendment reserves allocation for the properties subject to the approved Planned Development Rezonings (PDC07-054 and PDC07-055), for 998 units of residential capacity out of the residential development capacity provided in Phase 1 of the NSJ ADP, for a period of seven (7) years subsequent from the date of the Agreement, December 20, 2007. Novellus may transfer up to 500 units from their residential unit reservation to an adjacent property also located within the Transit Employment Residential Overlay.

Benefit to City

In exchange for receiving the benefits described above, the applicant, Novellus will construct two new City parks (a 5-Acre Community Park and a 1-Acre Neighborhood Park). Novellus' total parkland dedication obligation for the 998 multi-family units is 6.85 acres of raw land. Novellus will exceed its Parkland Dedication Obligation under the PDO and PIO by forgoing its claim for private recreational credits (valued at \$2,000,800) and by providing turnkey improvements to the Community Park and to the Neighborhood Park. Novellus will also provide One Million Five Hundred Thousand Dollars (\$1,500,000) to the City of San José to go towards the maintenance and operation of the Community Park for a period of twenty (20) years.

Approval of this Development Agreement Amendment will continue to provide the City with a 5-acre community park facility and a 1-acre neighborhood park that can be expanded with the future development of the adjacent parcel. All of the new parkland will be located within 1,000 feet of the new residential units. Absent this Agreement, development of the overlay is expected to generate approximately 3 acres in total of new parkland. As stated above, this Agreement will also provide significant value in the form of park improvements and cash contribution above the current Parkland Dedication Ordinance requirements.

Conclusion

The proposed Development Agreement Amendment conforms with the City's criteria for approval of such Amendments in that the proposed project conforms to the General Plan, would facilitate the development of 998 multi-family residential units and the future development of up to 870,000 square feet of additional industrial square footage, consistent with the goals and policies of the General Plan and North San José Area Development Policy, and would incur significant costs for public improvements in the form of improvements to public parklands and provision for their maintenance above and beyond the City's standard requirements under the Parkland Dedication Ordinance.

PUBLIC OUTREACH/INTEREST

The property owners and occupants within a 500-foot radius were sent public hearing notices for the City Council hearing. This staff report has been posted on the City's web site. Staff has been available to discuss the proposal with interested members of the public.

- Criterion 1:** Requires Council action on the use of public funds equal to \$1 million or greater. **(Required: Website Posting)**
- Criterion 2:** Adoption of a new or revised policy that may have implications for public health, safety, quality of life, or financial/economic vitality of the City. **(Required: E-mail and Website Posting)**
- Criterion 3:** Consideration of proposed changes to service delivery, programs, staffing that may have impacts to community services and have been identified by staff, Council or a Community group that requires special outreach. **(Required: E-mail, Website Posting, Community Meetings, Notice in appropriate newspapers)**

Although this item does not meet any of the above criteria, staff followed Council Policy 6-30: Public Outreach Policy. A notice of the public hearing was distributed to the owners and tenants of all properties located within 500 feet of the project site and posted on the City website. This staff report is also posted on the City's website. Staff has been available to respond to questions from the public.

Project Manager: Darryl Boyd **Approved by:** Darryl Boyd **Date:** 10/28/09

Owner/Applicant: Erik E. Schoennauer The Schoennauer Company, LLC 90 Hawthorne Way San Jose, CA 95110	Attachments: First Amendment to Development Agreement
--	---

FIRST AMENDMENT TO DEVELOPMENT AGREEMENT

This First Amendment to Development Agreement ("First Amendment") is made as of October __, 2009 by and between the City of San Jose, a Municipal Corporation ("CITY") on the one hand, and Novellus Systems, Inc., a California corporation ("NOVELLUS"), together with Vista Montana Park Homes, LLC, a Delaware limited liability company, and Equity-Tasman Apartments, LLC, a Delaware limited liability company, on the other hand (together Vista Montana Park Homes, LLC, a Delaware limited liability company, and Equity-Tasman Apartments, LLC, a Delaware limited liability company, may sometimes be referred to herein collectively as "VISTA MONTANA"), with reference to the following facts:

A. CITY and NOVELLUS entered into a development agreement (the "Development Agreement") as of the 20th day of December, 2007 concerning the development of properties in the North San Jose area, including properties referred to therein as the RESIDENTIAL PROPERTY, the CAMPUS INDUSTRIAL PROPERTY, the COMMUNITY PARK PROPERTY, and the NEIGHBORHOOD PARK PROPERTY. Each capitalized term used in this First Amendment, but not defined herein, shall have the meaning ascribed to it in the Development Agreement.

B. NOVELLUS has provided CITY with documents evidencing that NOVELLUS made a partial assignment of its rights and obligations under the Development Agreement to VISTA MONTANA. The assignment is evidenced by that certain Assignment and Assumption Agreement (the "Assignment") between NOVELLUS and VISTA MONTANA executed as of the 21st day of December, 2007 and to which CITY is not a party. The Assignment contains a schedule of allocated rights and obligations under the Development Agreement, pursuant to which the parties thereto have allocated and assigned all rights and obligations in the portions of the Development Agreement that are modified in this First Amendment to VISTA MONTANA. The Assignment does not affect the rights or obligations of CITY or NOVELLUS as against each other under the Development Agreement, including, without limitation, NOVELLUS' obligations in connection with the COMMUNITY PARK PROPERTY and the NEIGHBORHOOD PARK PROPERTY and the provisions of Section 1.C.(2) of the Development Agreement.

C. CITY, NOVELLUS, and VISTA MONTANA now desire to amend the Development Agreement in certain respects, which amendment is desirable and in the best interests of all of the parties to provide the best possible opportunities for the projects that were assigned to VISTA MONTANA and that are envisioned by the Development Agreement to be successfully undertaken, in light of existing economic and market conditions.

NOW THEREFORE, in consideration of the mutual conditions and covenants contained in the Development Agreement and herein, CITY and VISTA MONTANA hereby amend the Development Agreement as follows:

1. Section 1.B of the Development Agreement, which reads as follows:

B. Term. The term of this AGREEMENT shall commence no earlier than the effective date of Ordinance No. 28154 approving this AGREEMENT (herein the

“ADOPTING ORDINANCE”) and shall extend for a period of twenty (20) years thereafter, unless said term is terminated, modified or extended by circumstances set forth in this AGREEMENT or by mutual consent of the parties hereto; provided, however, that notwithstanding the foregoing to the contrary and specifically and only with regard to the provisions of SECTION 2.E hereinbelow relating to NOVELLUS’ reservation of residential unit capacity under CITY’s North San Jose Area Development Policy (the “NSJ ADP”), such reservation of capacity shall be effective for a period of five (5) years from the effective date of the ADOPTING ORDINANCE. Following the expiration of said twenty (20) year term of this AGREEMENT, this AGREEMENT shall be deemed terminated and of no further force and effect.

is hereby amended to read as follows:

B. Term. The term of this AGREEMENT shall commence no earlier than the effective date of Ordinance No. 28154 approving this AGREEMENT (herein the “ADOPTING ORDINANCE”) and shall extend for a period of twenty (20) years thereafter, unless said term is terminated, modified or extended by circumstances set forth in this AGREEMENT or by mutual consent of the parties hereto; provided, however, that notwithstanding the foregoing to the contrary and specifically and only with regard to the provisions of SECTION 2.E hereinbelow relating to NOVELLUS’ reservation of residential unit capacity under CITY’s North San Jose Area Development Policy (the “NSJ ADP”), such reservation of capacity shall be effective until and including December 20, 2014. Following the expiration of said twenty (20) year term of this AGREEMENT, this AGREEMENT shall be deemed terminated and of no further force and effect.

2. The following sentence from Section 2.A, page 12, of the Development Agreement:

In addition and notwithstanding anything foregoing to the contrary, the reservation of capacity under the NSJADP as described in SUBSECTION 2.C hereinbelow shall be vested for NOVELLUS under this AGREEMENT for the term of this AGREEMENT, and the reservation of residential unit capacity under the NSJADP as described in SUBSECTION 2.E hereinbelow shall be vested for NOVELLUS for a period of five (5) years from the EFFECTIVE DATE hereof, which reservation of residential unit capacity may be transferred by NOVELLUS as described in SUBSECTION 2.E hereinbelow.

is hereby amended to read as follows:

In addition and notwithstanding anything foregoing to the contrary, the reservation of capacity under the NSJADP as described in SUBSECTION 2.C hereinbelow shall be vested for NOVELLUS under this AGREEMENT for the term of this AGREEMENT, and the reservation of residential unit capacity under the NSJADP as described in SUBSECTION 2.E hereinbelow shall be vested for

NOVELLUS until and including December 20, 2014, which reservation of residential unit capacity may be transferred by NOVELLUS as described in SUBSECTION 2.E hereinbelow.

3. The following sentence from Section 2.E, page 14, of the Development Agreement:

CITY shall reserve for allocation to the RESIDENTIAL PROPERTY Nine Hundred Ninety-Eight (998) units of residential capacity out of the residential development capacity provided in Phase 1 of the NSJ ADP for a period of 5 years from the date of this AGREEMENT.

is hereby amended to read as follows:

CITY shall reserve for allocation to the RESIDENTIAL PROPERTY Nine Hundred Ninety-Eight (998) units of residential capacity out of the residential development capacity provided in Phase 1 of the NSJ ADP until and including December 20, 2014.

4. The following sentence in Section E of Exhibit E of the Development Agreement:

No later than the date of the one (1) year anniversary of the EFFECTIVE DATE of this AGREEMENT ("Payment Commencement Date"), NOVELLUS shall begin making annual payments to CITY, in the form of cashier's checks or other immediately available funds, in the amount of Seventy-Five Thousand Dollars (\$75,000), which CITY shall deposit into a Gift Trust Fund.

is hereby amended to read as follows:

No later than December 20, 2010 or the date that CITY issues a notice to proceed for the construction of the COMMUNITY PARK PROPERTY, whichever date first occurs, ("Payment Commencement Date"), NOVELLUS shall begin making annual payments to CITY, in the form of cashier's checks or other immediately available funds, in the amount of Seventy-Five Thousand Dollars (\$75,000), which CITY shall deposit into a Gift Trust Fund.

5. The following sentence in Section F of Exhibit E of the Development Agreement:

CITY and NOVELLUS anticipate that NOVELLUS will obtain the first building permit for the MULTI-FAMILY UNITS on or before the two (2) year anniversary of the EFFECTIVE DATE of this AGREEMENT ("BUILDING PERMIT DATE").

is hereby amended to read as follows:

CITY and NOVELLUS anticipate that NOVELLUS will obtain the first building permit for the MULTI-FAMILY UNITS on or before December 20, 2011 ("BUILDING PERMIT DATE").

6. Except as expressly modified by this First Amendment, all of the terms, provisions and conditions contained within the Development Agreement shall remain in full force and effect. In the event of any direct conflict between this First Amendment and the Development Agreement, this First Amendment shall govern and control the agreement of the parties.

7. This First Amendment may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

IN WITNESS WHEREOF, the parties hereto have executed this First Amendment as of the date first set forth above.

CITY

APPROVED AS TO FORM:

CITY OF SAN JOSE, a municipal corporation

By: _____

By: _____
Sr. Deputy City Attorney

Lee Price, MMC
City Clerk

NOVELLUS

NOVELLUS SYSTEMS, INC., a California corporation

By: _____

Its _____

VISTA MONTANA

VISTA MONTANA PARK HOMES LLC, a Delaware limited liability company

By: ERP Operating Limited Partnership,
an Illinois limited partnership, its managing member

By: Equity Residential, a Maryland real estate investment trust, its general partner

By: _____

Name: _____

Title: _____

EQUITY-TASMAN APARTMENTS LLC, a Delaware
limited liability company

By: ERP Operating Limited Partnership,
an Illinois limited partnership, its managing
member

By: Equity Residential, a Maryland real
estate investment trust, its general
partner

By: _____

Name: _____

Title: _____