

RESOLUTION NO. 26-XXX

**A RESOLUTION OF THE CUPERTINO CITY COUNCIL
APPROVING THE FINAL MAP TRACT NO. 10706 FOR PHASE 1 OF THE
RISE DEVELOPMENT PROJECT; ACCEPTING PUBLIC STREET
DEDICATIONS AND PUBLIC EASEMENTS; ABANDONING
UNNECESSARY PUBLIC EASEMENTS; AND AUTHORIZING THE CITY
ENGINEER TO EXECUTE AND RECORD THE SUBDIVISION
IMPROVEMENT AGREEMENT FOR THE PROJECT LOCATED AT
FORMERLY 10123 NORTH WOLFE ROAD (APN: 316-20-121 & 316-20-122)**

WHEREAS, on September 21, 2018, The Rise Development project and Tentative Map were approved pursuant to Government Code §65913.4 (DP-2018-02); and

WHEREAS, the City approved the project's first modification application in 2022 and the second modification application in 2024; and

WHEREAS, on February 27, 2026, the City approved the third and most recent modification application (M-2025-001, TM-2026-006) for a subdivision for condominium purposes for up to 2,669 condominium units and 31 office/retail condominium units; and

WHEREAS, approval of the Final Map is a ministerial action under the Subdivision Map Act and the Cupertino Municipal Code and is therefore exempt from review under the California Environmental Quality Act pursuant to Public Resources Code Section 21080(b)(1); and

WHEREAS, certain public easements shown on the Final Map are no longer necessary for public purposes and are proposed to be abandoned; and

WHEREAS, public roadway dedication and public easements shown on the Final Map are necessary to serve the approved development and have been offered for dedication to the City; and

WHEREAS, the Subdivision Improvement Agreement has been presented to the City Council in a form ready to be executed; and

WHEREAS, the Final Map for the property located at formerly 10123 North Wolfe Road has been presented to the City Council; and

WHEREAS, the Final Map Tract No. 10706 is in substantial conformance with the approved Tentative Map and satisfies all requirements of the Subdivision Map Act and the Cupertino Municipal Code for approval.

NOW, THEREFORE, BE IT RESOLVED that the City Council of the City of Cupertino does hereby:

- 1) Approve Final Map Tract No. 10706 and authorize its recordation; and
- 2) Accept the public roadway dedication and public easements, and abandon the unnecessary public easements, as shown on the Final Map; and
- 3) Authorize the City Engineer to execute and record the Subdivision Improvement Agreement in substantially the form attached as Exhibit A.

BE IT FURTHER RESOLVED that the City Engineer is authorized to approve and execute such non-material revisions to the Final Map and Subdivision Improvement Agreement as may be necessary to facilitate their execution and recordation.

PASSED AND ADOPTED at a regular meeting of the City Council of the City of Cupertino this 21st day of July, 2026, by the following vote:

Members of the City Council

AYES:

NOES:

ABSENT:

ABSTAIN:

SIGNED: _____ Kitty Moore, Mayor City of Cupertino	 _____ Date
ATTEST: _____	 _____

Lauren Sapudar, City Clerk	Date
----------------------------	------

City of Cupertino
SUBDIVISION IMPROVEMENT AGREEMENT

APNs: (316-20-121; 316-20-122)

This SUBDIVISION AGREEMENT ("**Agreement**") for public improvements is made and entered into this ____ day of _____, 2026, by and between the CITY OF CUPERTINO, a municipal corporation of the State of California, ("**City**"), and VALLCO PROPERTY OWNER, LLC, a Delaware limited liability company ("**Developer**") for a mixed-use development project located on the former Vallco Mall property at the northeast corner of N. Wolfe Road and Vallco Parkway and the northwest corner of N. Wolfe Road and Stevens Creek Boulevard, Cupertino, CA.

RECITALS

1. Developer has legal interest in certain real property consisting of approximately 50.8 acres located within the City and generally located at the northeast corner of N. Wolfe Road and Vallco Parkway and the northwest corner of N. Wolfe Road and Stevens Creek Boulevard, Cupertino CA (APNs 316-20-121; 316-20-122) (the "**Property**").

2. Developer submitted an application on March 27, 2018 pursuant to Government Code Section 65913.4 (as ultimately modified prior to approval, the "**SB 35 Application**") for development of The Rise (formerly known as the Vallco Town Center Project) ("**Development Project**"), which was approved by the City ministerially on September 21, 2018 via a letter to Developer, which includes Attachment A (Initial Approved Plans), Attachment B (90-day determination letter), and Attachment C (Initial Standard Project Requirements), and a technical correction letter dated October 11, 2018 regarding certain standard project requirements under Attachment C. Developer submitted an application on March 24, 2022 for a modification to the Development Project, which the City ministerially approved on June 3, 2022 via a letter to Developer (Modification No. 1). Developer later submitted an application on December 4, 2023 for a further modification to the Development Project, which the City ministerially approved on February 16, 2024 via a letter to Developer (Modification No. 2). Developer later submitted an application on November 25, 2025, for a further modification to the Development Project, which the City ministerially approved on February 27, 2026, via a letter to Developer ("**Modification No. 3**"), which includes Attachment A (Approved Plans), Attachment B (Basis of Approval), and Attachment C (Standard Project Requirements). The September 21, 2018 letter (including all attachments), the June 3, 2022 letter (including all attachments), the February 16, 2024 letter (including all attachments), and the February 27, 2026 letter (including all attachments), and all associated technical correction letters are collectively referred to as the "**SB 35 Approval**".

3. On July 10, 2024, Developer and City entered into that certain Settlement Agreement and Release, recorded as Document No. 2024-25692491 in the Official Records of Santa Clara County (the "**Settlement Agreement**"), pursuant to which Developer and City agreed to resolve certain disputes related to the Project, including regarding certain "fees," as defined in

Government Code section 66000(b), charged by the City in connection with approval of the Project for the purpose of defraying all or a portion of the cost of public facilities related to the Project ("**Impact Fees**"), and parkland dedication requirements and/or fees regulated under the Quimby Act, Government Code section 66477 ("**Parkland Dedication Fee**").

4. The Development Project will consist of up to 2,669 residential units, with 356 units of those residential units being affordable to lower income households, and up to 2,700 condominium units (inclusive of both commercial/retail and residential condominium units) containing a minimum of 226,644 square feet of retail uses and up to 1,474,946 square feet of office uses.

5. Pursuant to the California Subdivision Map Act, the City's local ordinances and regulations relating to subdivision maps, and Government Code section 65913.4, Developer obtained approval of a Tentative Subdivision Map, identified as Sheets TM 1.0 through TM 8.1 of the Approved Plans for the Development Project ("**Tentative Map**").

6. Developer submitted conceptual off-site improvement plans for the Development Project to the City's Public Works Department for review under Application No. PW-2024-0619 ("**Conceptual Improvement Plans**"). On September 3, 2025, Public Works approved the Conceptual Improvement Plans dated August 15, 2025, subject to certain Public Works conditions of approval. The Conceptual Improvement Plans have been prepared at a conceptual level, and City agrees that they are sufficient to support the determination of the approximate costs of the Phase I Improvements, as defined below, for the purposes of this Agreement.

7. Developer has presented to the City for approval a phased final map entitled "Tract No. 10706, The Rise Phase 1", prepared by Sandis Civil Engineering and dated _____, 2026 ("**the Phase I Final Map**"). The Phase I Final Map is intended to implement a portion of the approved Tentative Subdivision Map and consists of the Development Project comprised of Parcel 1 (Blocks 1 and 2), Parcel 2 (Block 3), Parcel 3 (Block 5), Parcel 4 (Block 4 and adjacent open space and retail areas), Parcel 5 (Block 8), Parcel 6 (Block 7), Parcels 7 (Blocks 9, 10, 13, and 14), Parcels 14 (Block 6), and all related street, trail and dedication parcels, and easements shown on the Final Map. Developer intends to file multiple phased final maps for future phases of the Development Project at later times, including for the further subdivision of certain parcels shown in the Phase I Final Map. Accordingly, this Agreement covers only the improvements required in connection with the Phase I Final Map, as further described in this Agreement.

8. Developer has also offered to dedicate to City certain rights of ways and to grant certain easements, including, but not limited to, emergency access easements, public access easements, public park easements, public service easements, and stormwater management easements, of which some are delineated on the Phase I Final Map. The Phase I Final Map does not show all anticipated easements and dedications to be offered to the City with the project, as certain easements and dedications will be granted by separate instrument and may include legal descriptions, plats, easement-area depictions, improvement descriptions, maintenance

obligations, access/use regulations, schedules, and other area-specific or technical exhibits to be completed at the time of grant.

9. Developer desires to enter into this Agreement promising to install and complete, at Developer's sole expense, all public improvement work related to Phase I shown in the Conceptual Improvement Plans, and as further described in this Agreement, as may be refined during creation of final design drawings, for the proposed development (the "**Phase I Improvements**").

10. On _____, 2026, the City approved the Phase I Final Map, conditioned on Developer entering into this Agreement to construct and complete the Phase I Improvements, and conditionally accepted the Dedications shown on the Phase I Final Map.

NOW, THEREFORE, in consideration of City's approval of the Phase I Final Map, and in order to ensure satisfactory performance by Developer of its obligations under the Subdivision Map Act, the Cupertino Municipal Code, and the conditions of approval appurtenant to City's approval of the Map, City and Developer agree as follows.

1. DEVELOPER'S OBLIGATION TO INSTALL IMPROVEMENTS

1.1 Completion of Phase I Improvements. Developer, at its own expense, shall furnish, install, and construct the Phase I Improvements in substantial conformance with the Conceptual Improvement Plans, and the final approved design plans, as approved by the City Engineer of Cupertino in a good and workmanlike manner and in accordance with existing applicable ordinances and resolutions of the City and other applicable laws. The decision of the City Engineer shall be final as to whether any material or workmanship meets the plans, specifications, and standards as set forth. The Phase I Improvements consist of the following: improvements along N. Wolfe Road, including the full center median north of Vallco Parkway and up to the west side of the existing center median south of Vallco Parkway; improvements on Stevens Creek Boulevard; and intersection improvements at the intersections of N. Wolfe Road/Vallco Parkway, N. Wolfe Road/Stevens Creek Boulevard, and Stevens Creek Boulevard/Street A, as more particularly described in Exhibit D.

1.2 Compliance with applicable laws and rules. Developer shall complete, or cause its contractors and subcontractors to complete, the Phase I Improvements in accordance with: (i) the most current City of Cupertino Standard Details and Specifications, where applicable; (ii) the Standard Specifications of the California Department of Transportation, State of California, where applicable; (iii) the Standard Specifications of the Cupertino Sanitary District, where applicable; and (iv) all applicable State, Federal and local laws, rules and regulations, including applicable Labor Code requirements. Wherever the words "State" or "California Division of Highways" are mentioned in the State Specifications, it shall be considered as referring to the City of Cupertino; also wherever the "Director" or "Director of Public Works" is mentioned, it shall be considered as referring to the City Engineer. In case of conflict between the State Specifications and the specifications of the City, and/or the Cupertino Sanitary District, the specifications of the City and/or the Cupertino Sanitary District shall control; provided,

however, Phase I Improvements within the City that are under the jurisdiction of Caltrans shall comply with the Caltrans standards. Developer shall acquire all necessary permits, including an encroachment permit from the City of Cupertino Public Works Department, prior to beginning work in the public right of way. City acknowledges that Government Code Section 65913.4(i) requires it to process permits for the Development Project and public improvements without unreasonable delay and provides that it shall not impose any procedure or requirement that is not imposed on projects that are not approved pursuant to Government Code Section 65913.4.

1.3 Changes in the Work. In order to respond to changed circumstances that are outside of the City's direct control or where necessary to comply with any City ordinance or state or federal law and without material cost increase to Developer, the City Engineer, without invalidating this Agreement and without notification to any of the sureties or financial institutions referenced in this Agreement, may make changes by altering or deleting any portion of the Phase I Improvements as specified herein as the City Engineer reasonably determines necessary to accomplish the purposes of this Agreement and to protect the public health or safety. The City Engineer shall notify Developer or its contractor in writing at the time a determination has been made to require changes in the work and, if Developer objects, the City and Developer shall meet and confer to determine whether changes are necessary. No field changes performed or proposed by Developer or its contractor shall be binding on City unless approved in writing by the City Engineer. The City and Developer may mutually agree upon changes to the Phase I Improvements, subject to the security requirements in this Agreement.

1.4 Repair and replacement of damaged public facilities. Developer shall, at its own expense, repair or replace all public improvements, public utility facilities, surveying monuments and other public facilities that are destroyed or damaged as a result of any work under this Agreement. Developer shall promptly notify the City Engineer of such damage and shall obtain the City Engineer's approval for all repair and replacement work.

1.5 No Warranty by City. The Plans for the Phase I Improvements have been prepared by or on behalf of Developer or its consultants or contractors, and City makes no representation or warranty, express or implied, to Developer or to any other person regarding the adequacy of the Plans or related documents; provided, however, to the extent the City Engineer actually becomes aware of any such inadequacies, City shall notify Developer thereof.

1.6 Developer's responsibility until City's acceptance. Until City accepts the Phase I Improvements, Developer shall be responsible for the care and maintenance of such Phase I Improvements and shall bear all risks of loss or damage to the Phase I Improvements. City shall not have any liability for any accident, loss or damage caused by or to the Phase I Improvements prior to their completion and acceptance by City. City's acceptance of the Phase I Improvements shall not constitute a waiver of any defects in the Phase I Improvements or Developer's obligation to repair such defects as provided in Section 1.5.

1.7 Licensed Contractors. Developer shall cause all of the Phase I Improvements to be constructed by contractors and subcontractors with valid California Contractors' licenses for the type of work being performed. All of Developer's contractors and subcontractors shall

obtain a valid City of Cupertino business license prior to performing any work pursuant to this Agreement. Developer shall provide the City Engineer with a list of all of its contractors and subcontractors prior to initiating any work, and all valid Contractor's licenses and business licenses issued thereto as a condition of constructing the Phase I Improvements.

2. TIME FOR INSTALLATION OF IMPROVEMENTS

2.1 Required time for completion of Phase I Improvements. Developer shall install and complete the Phase I Improvements by not later than within five (5) years from the date of issuance of permits authorizing the initial section of the Phase I Improvements, provided that Developer shall submit application(s) for and diligently pursue such permits within six (6) months following the Effective Date of this Agreement, subject to delays outside Developer's reasonable control, or within such longer period as may be specifically authorized in writing by the City Engineer pursuant to Section 2.2. It is anticipated, but not required, that construction and completion of the Phase 1 Improvements may be completed in sections. Any sectioning of the installation of the Phase I Improvements shall be listed on a schedule ("**Schedule of Performance**") developed by Developer and approved by the City Engineer, which may be modified subject to approval by the City Engineer. In the event Developer fails or refuses to complete the work within the specified period of time in the Schedule of Performance, the City, at its sole option (after complying with the notice requirements set forth in Section 15 and expiration of applicable cure periods, except in the event of an immediate threat to public health and safety in which case only telephonic notice shall be required) shall be authorized to draw upon the security provided pursuant to Section 5 and use such funds to complete the work in whatever manner the City shall decide. No final inspection shall be granted or Phase I Improvements accepted unless all the requirements for safety purposes are installed, including but not limited to sidewalks, handicap ramps, and street lights.

2.2 Time extensions. The City Engineer, in his or her reasonable discretion, may approve, in writing, a request for extension or completion of the time required for construction of the Phase I Improvements upon a showing of good cause by the Developer. Good cause may include, but is not limited to, the delays caused by force majeure described in Section 2.3. In approving a request for time extension, the City Engineer may impose reasonable related conditions, such as an appropriate time period requiring Developer to furnish new or modified improvement security guaranteeing performance of this Agreement, as extended, in an increased amount necessary to compensate for any projected increase in the estimated total cost of Phase I Improvements, as determined by the City Engineer.

2.3 Force Majeure. Notwithstanding the provisions of Section 2.1, Developer's time for completion of the Phase I Improvements shall be extended for the period of any enforced delay caused due to circumstances beyond the control and without the fault of Developer, including to the extent applicable adverse weather conditions, flood, earthquakes, strikes, lockouts, boycotts, epidemic, pandemic, quarantine, judicial decisions and pending litigation resulting in injunction(s), acts or failures to act of a public agency (including City), required changes to the scope of work required by City, and similar causes; provided, however, that the

period of any enforced delay hereunder shall not include any period longer than thirty (30) days prior to City's receipt of a written notice from Developer or its contractor detailing the grounds for Developer's claim to a right to extend its time for performance hereunder. The City Engineer shall reasonably determine the length of all claims of Force Majeure and the City Engineer's decision shall be final.

3. OFFERS AND ACCEPTANCE OF EASEMENTS AND RIGHTS OF WAY

3.1 Offers.

3.1.1 Current Offers. Developer irrevocably offers to the City: (a) the real property designated on Sheet 5 of the Phase I Final Map (the "Rights of Way"), in fee which dedication shall be effected by a separate instrument in the form shown in Exhibit B ("the Dedication"), and (b) the following easements ("Easement(s)"), some of which are shown on Sheets 7 through 9 of the Phase I Final Map:

- Emergency Access Easements, which shall be offered and granted solely on the face of the Phase I Final Map;
- Public Access Easements, which shall be offered and granted solely on the face of the Phase I Final Map;
- Public Service Easements, which shall be offered and granted solely on the face of the Phase I Final Map;
- Public Park Easement(s), which shall be granted via separate easement agreement(s) substantially in the form of Exhibit C ("Public Park Easement and Maintenance Agreement"), and as may be completed and revised in a manner consistent with this Agreement and the Settlement Agreement; and
- Storm Water Management Easement(s) shall be granted via separate easement agreement(s) with applicable technical exhibits to be completed at the time of grant.

The City Engineer, Public Works Director, or other City officer authorized under Resolution No. 11-175 and Government Code section 27281 is authorized to approve, execute, accept, and record the Public Park Easement and Maintenance Agreement(s), Stormwater Management Easement(s), and related certificates of acceptance or other recordable instruments described in this Section 3.1.1, provided that such instruments are substantially in the form attached as Exhibit C or, for Stormwater Management Easements, are consistent with this Agreement, the approved stormwater plans, and applicable City requirements. Such authority includes completion of applicable legal descriptions, plats, easement-area depictions, improvement descriptions, maintenance obligations, access/use regulations, schedules, and other area-specific or technical exhibits.

3.1.2 Future Public Park Easement Offers. Developer may, consistent with the Settlement Agreement, offer to the City additional Public Park Easements in connection with Phase 1 and subsequent phases of the Project, which may include but are not limited to the Public Park Easements anticipated for areas located on Parcels 1, 4, AA, AE, M, N and P as those parcels are depicted on the Phase I Final Map, and any such Public Park Easements may be accepted by the City Engineer, Public Works Director, or other City officer authorized under Resolution No. 11-175 and Government Code section 27281 without further City Council action. Any such Public Park Easement shall be offered at such time as the location, configuration, and applicable terms of the Public Park Easement have been further refined in connection with the applicable phase of development, including any modification pursuant to Government Code Section 65913.4. If the applicable Public Park Easement area is consistent with the parcelization shown on the Tentative Map, the Public Park Easement may be offered by separate instrument with an accompanying plat and legal description; if a subsequent modification or map alters the applicable parcelization, the Public Park Easement may be offered on such subsequent map or by such other instrument approved by the City.

3.1.3 Future Private Easement. Prior to the City's acceptance of the portion of Street A located adjacent to Stevens Creek Boulevard and intended to connect to the existing easement area on the adjacent property, Developer shall provide to the City evidence, reasonably satisfactory to the City Engineer, of the private easement rights necessary to provide the access contemplated by the approved Improvement Plans.

3.2 Conflict with Facilities. The Parties intend that the Easements will include interests in the areas in which Developer ultimately constructs public utilities, internal streets, and walkways and plazas, respectively (collectively, "**the Facilities**"). The Parties recognize that the Phase I Final Map depicts these easements on the basis of the locations of the Facilities on the Conceptual Improvement Plans, and that the precise locations of Facilities as built may vary pursuant to final design and future permits. The Parties agree that in the event the actual location of any of the Facilities varies from the location of the relevant easement, they deem that easement to be erroneously described, and they will cooperate to prepare a certificate of correction for the City Engineer's review and approval, which shall be set for public hearing before the City Engineer pursuant to Cupertino Municipal Code Sections 18.44.010 et seq., provided that such corrections are necessary to accommodate the final design and construction of the Facilities. The parties agree that corrections to the location of easements does not alter any right, title, or interest in the real property reflected on the recorded map.

3.3 Conveyances. Prior to Phase I Final Map recordation, Developer shall deliver to the City for recordation the Dedication along with such other executed conveyances, reconveyances of security instruments, and other instruments necessary to convey clear title as herein required. Prior to the City Engineer's acceptance of stormwater improvements pursuant to Section 3.5, Developer shall deliver to the City for recordation the Storm Water Management Easement(s). Developer, at Developer's sole cost and expense, shall provide to City prior to

Phase I Final Map recordation a preliminary title report issued by a title insurance company for each Right of Way and Easement offered on the Phase I Final Map.

3.4 Safe Access and Inspection. Developer shall at all times maintain proper facilities and safe access for inspection of the Phase I Improvements by the City Engineer, or his or her designees.

3.5 Workmanship; Specifications and Standards. Upon notice by Developer that the Phase I Improvements are complete, the City Engineer shall act within the time periods established under Section 66499.7 of the California Government Code. If City believes the material or workmanship of any Phase I Improvements do not meet the Conceptual Improvement Plans, the final approved design plans, or specifications and standards, it shall identify any deficiencies in writing and propose specific cures. If there are disagreements regarding the completion of the Phase I Improvements, City and Developer shall meet and confer prior to City making a determination regarding completeness and/or pursuing the remedies available to City under this Agreement.

3.6 Acceptance. Upon completion of the Phase I Improvements in substantial compliance with the Conceptual Improvement Plans and all applicable City standards, then the City Engineer shall certify that the Phase I Improvements are complete and, no more than 30 days following such certification, accept the Phase I Improvements on the City's behalf. If requested by Developer, the City may consider acceptance of a portion of the Phase I Improvements as recommended by the City Engineer pursuant to Cupertino Municipal Code Section 18.32.410. After acceptance, the City Clerk shall record a Notice of Completion pursuant to Cupertino City Code Section 18.32.400. Developer shall bear all costs of inspection and certification for acceptance. Acceptance by the City Engineer shall not constitute a waiver by the City of any defects in the Phase I Improvements.

3.7 Quitclaim Deed. Developer, when requested by the City, shall quitclaim all its rights and interests in, and shall grant to City authorization to extract water from the underground strata lying beneath said project. Developer agrees to execute a "Quitclaim Deed and Authorization" regarding such rights, in favor of City upon such request.

4. SECURITY

4.1 Required Security. Prior to execution of this Agreement, Developer shall provide the following security to City in a form acceptable to the City ("**Security Instrument**"):

4.1.1 Faithful performance. Security for faithful performance in the amount set forth in Exhibit A, the SCHEDULE OF BONDS, FEES AND DEPOSITS to guarantee performance of construction and installation of all Phase I Improvements ("**Performance Security**"). This amount is equal to 100% of the estimated cost of construction and installation of all Phase I Improvements. If the estimated costs of construction increase, as demonstrated by estimates based on detailed plans submitted as part of a building permit application (which estimates Developer shall prepare at City's reasonable

request), Developer shall increase the amount of the Performance Security to cover such increased costs. If the estimated costs of construction and/or installation decrease, as demonstrated by estimates based on detailed plans submitted as part of a building permit application, City shall decrease the amount of the Performance Security due to such decreased costs.

4.1.2 Labor and Materials. Security for labor and materials for the Phase I Improvements based on the amount set forth in Exhibit A, the SCHEDULE OF BONDS, FEES AND DEPOSITS to ensure payment to all contractors, subcontractors, laborers, suppliers and materialmen performing work or supplying materials for the Phase I Improvements in the aggregate amount set forth in Exhibit A ("**Labor and Materials Security**"). This amount is equal to 100% of the estimated cost of construction and installation of all Phase I Improvements. If the estimated costs of construction and/or installation increase, as demonstrated by estimates (which estimates Developer shall prepare at City's reasonable request) based on detailed plans submitted as part of a building permit application, Developer shall increase the amount of the security to cover such increased costs. If the estimated costs of construction and/or installation decrease, as demonstrated by estimates based on detailed plans submitted as part of a building permit application, City shall decrease the amount of the Labor & Materials Security due to such decreased costs.

4.2 Form of Security Instrument. Developer shall provide as security, bonds executed by a surety company authorized to transact a surety business in the State of California and approved by the City as to sufficiency. In the event that Developer shall fail to faithfully perform the covenants and conditions of this Agreement, or to make any payment, or any dedication of land, or any improvements herein required, the City shall call on the surety to perform this Agreement or otherwise indemnify the City for Developer's failure to do so.

In lieu of a surety bond, Developer may, with the City's consent, which the City may grant or withhold in its reasonable discretion, elect to secure its performance of this Agreement by depositing with the City (1) cash; (2) a cashier's check, or a certified check payable to the order of the City of Cupertino; or (3) a certificate of deposit, or instrument of credit acceptable to the City and meeting the requirements of Government Code Section 66499 (a) or (b). The amount of said cash, checks, certificate of deposit, or instrument of credit shall be as set forth in Exhibit A. In the event that Developer shall fail to faithfully perform the covenants and conditions of this Agreement, or to make any payment, or any dedication of land, or any improvements herein required, the City may apply the proceeds of said security thereto.

4.3 Release of Security. No release of surety bond, cash deposit, check or certificate of deposit, or other form of security shall be made except upon approval of the Director of Public Works. Upon completion and acceptance by the City of any section of the Phase I Improvements, and following expiration of any retention period required by law, Developer may apply to the City for a reduction to either or both of in the principal amount of any applicable security. Any such request shall be accompanied by an updated engineer's estimate

of the cost to complete the portions of the Phase I Improvements that have not yet been accepted by the City. The City shall review such request and supporting documentation and, if the Director of Public Works reasonably determines that the remaining security is sufficient to secure completion of the unaccepted Phase I Improvements, the City may approve a reduction in the applicable security to reflect the then-current estimated cost of completing such remaining work. The Parties acknowledge that the anticipated sequencing of the Phase I Improvements may be reflected in Exhibit D attached to this Agreement; however, any reduction in security shall be based upon the then-current estimated cost of completing the unaccepted Phase I Improvements rather than any pre-established allocation of costs among phases or components. Unless approved otherwise by the City in writing, the schedule for bond and insurance release for paper bonds are as follows, which releases shall be in addition to any releases required to account for changes in costs as determined at the time of building permit issuance:

4.3.1 Release of 90 percent of the Performance Security upon acceptance of the Phase I Improvements, or discrete component thereof, by the City as set forth in Section 3.6.

4.3.2 Release of the remaining 10 percent of the Performance Security at one year from acceptance of the Phase I Improvements, or discrete component thereof, by the City and after any deficiencies have been corrected and in the absence of any claim against such bond.

4.3.3 Release of the entire labor and material bond at six months from acceptance of the Phase I Improvements, or discrete component thereof, after all deficiencies have been corrected and in the absence of any claim against such bond. If claims against the Labor and Material Security have been filed, such security shall be reduced to an amount equal to the total amount claimed by all claimants for whom liens have been filed and of which notice has been given to the City. The balance of the security shall be released upon settlement or release of all claims and obligations for which the security was given.

4.3.4 Liability insurance, provided by the Developer to hold the City harmless in the event of liability arising from the project, to be retired one year after acceptance if all deficiencies have been corrected and in the absence of any claim against such insurance.

5. PAYMENT OF REQUIRED FEES

5.1 Permits and licenses. Developer shall, at its sole expense, obtain all necessary permits and licenses for the construction and installation of the Phase I Improvements, give all necessary notices (other than those required to be given by the City or other agency), and pay all fees required by City ordinance, including but not limited to the fees described in this Agreement, and all taxes required by law.

5.2 Fees. Developer shall pay fees, including without limitation all of the following fees described in this Section 5.2, subject to the limitations set forth in this Section 5.2 and the Settlement Agreement.

5.2.1 Impact Fees. As set out in the Settlement Agreement for the Development Project, Developer shall pay applicable Impact Fees owed, each in the manner and at the time required by the Settlement Agreement or such other provision of law as may apply.

The Parties acknowledge and agree that this Agreement, therefore, does not “impose” the Impact Fees within the meaning of Government Code Section 66020, and that the City will impose the Impact Fees at a later date pursuant to the terms set forth in the Settlement Agreement. For avoidance of doubt, this Agreement obligates Developer, as a condition of receiving each building permit for the Development Project, to pay the Impact Fees as eventually imposed, subject to the protest provisions of Government Code Section 66020. Nothing in this Agreement is intended to conflict with, supersede, or void the Settlement Agreement. Where the terms of this Agreement conflict with the Settlement Agreement, the Settlement Agreement shall control.

5.2.2 Inspection Fees. Developer shall pay any and all necessary direct expenses for inspection, checking, etc. incurred by City in connection with the design, installation and construction of the Phase I Improvements (“Inspection Fees”). Should the City’s costs vary materially from the estimate upon which said sum is calculated, the City Engineer shall notify Developer of any additional sum due and owing as a result thereof.

5.2.3 Reservation of Rights and No Waiver. Developer reserves any and all rights and remedies to challenge the fees to the extent set forth in the Settlement Agreement. Nothing in this Agreement shall constitute a waiver of Developer’s reserved rights to protest and challenge the fees pursuant to the terms of the Settlement Agreement.

6. MAINTENANCE AND WARRANTY

6.1 Warranty Period. Developer guarantees and warrants the Phase I Improvements and agrees to remedy any defects, damages, or imperfections in the Phase I Improvements arising from faulty or defective materials or construction of the Phase I Improvements for a period of one (1) year after City’s acceptance of the Phase I Improvements, or discrete component thereof.

6.2 Warranty Repairs and Replacements. If, within the warranty period, the Phase I Improvements or any part of the Phase I Improvements fail to fulfill any of the requirements of this Agreement or the Improvement plans and specifications, Developer shall repair, replace or reconstruct any defective or otherwise unsatisfactory parts of the Phase I Improvements

without delay and at no cost to City. If (a) Developer fails to commence repairs within thirty (30) days of the date of delivery of written notice from City, or (b) City determines that public safety requires repair before Developer can be notified, City may, at its option, perform the required repair itself. Developer agrees to pay the cost of any repairs City performs pursuant to this agreement and City may, at its option, recover City's cost as a lien against Developer's property.

7. UTILITY UNDERGROUNDING

Developer shall pay to Pacific Gas and Electric Company, AT&T, and/or appropriate utility companies, any and all fees required for installation of overhead and/or underground wiring circuits to all electroliners and service connections within said Property and any and all fees required for undergrounding as provided in Ordinance No. 331 of City when the Developer is notified by either the City Engineer, Pacific Gas and Electric Company, AT&T, or appropriate utility companies that said fees are due and payable.

8. EASEMENTS AND RIGHT-OF-WAY

Developer shall acquire any easement and right-of-way necessary for completion of the Development Project at its own cost and expense. However, that in the event eminent domain proceedings are required by the City for the purpose of securing said easement and right-of-way, Developer shall deposit with City, a sum covering (i) the reasonable market value of the interest proposed to be taken and (ii) a reasonable allowance for severance damages, if any, and (iii) estimated legal fees and costs, engineering, and other incidental costs in such reasonable amounts as the City may require.

9. HOLD HARMLESS AND INDEMNIFICATION

9.1 Developer shall indemnify and hold harmless City, its City Council, boards and commissions, officers, officials, agents, employees, consultants and contractors (hereinafter, "Indemnitees") from and against any liability, loss, damage, expense, and cost (including reasonable legal fees and costs of litigation or arbitration), resulting from injury to or death of any person, damage to property, or liability for other claims, stop notices, demands, causes of actions and actions, to the extent arising out of or in connection with Developer's performance or nonperformance of its duties under this Agreement, or from negligent acts or omissions or willful misconduct of Developer, its agents, employees, contractors, or subcontractors, where such actions by Developer occur prior to acceptance of the Phase I Improvements by the City. Developer shall, at its own cost and expense, defend any and all claims, actions, suits or legal proceedings that may be brought against the City or any of the Indemnitees (with counsel acceptable to City) in connection with this Agreement or arising out of Developer's performance or nonperformance of its duties and obligations of this Agreement, except to the extent any of the foregoing is caused by the sole and active negligence or willful misconduct of the City or the City's agents, employees and independent contractors.

9.2 If any of the Phase 1 Improvements are to include any “public works” as that term is defined in California Labor Code section 1720 et seq. and California Code of Regulations, Title 8, section 16000 et seq., and if the total compensation is \$1,000 or more, Developer shall require its contractors to pay prevailing wages for such work and comply with the requirements in California Labor Code section 1770 et seq. and 1810 et seq., and all other applicable laws. Developer shall indemnify, defend and hold harmless the City, its agents, employees, contractors, or subcontractors from and against any claims, liabilities, penalties, losses, costs, or expenses arising from the failure of Developer, its agents, contractors or subcontractors to comply with applicable prevailing wage laws with respect to work described by this Section 9.2.

9.3 Developer’s Continuing Obligation. After City’s acceptance of the Phase I Improvements, Developer shall remain obligated to correct or eliminate any defect in design or dangerous condition created by defects in design or construction; provided however, that Developer shall not be responsible for routine maintenance of the Phase I Improvements after the final acceptance thereof by City or other responsible agency. This Section shall remain in full force and effect for ten (10) years following City’s acceptance of the Phase I Improvements, or discrete component thereof. Subject to Section 10.1, Developer acknowledges and agrees that Developer shall be responsible and liable for the design and construction of the Phase I Improvements and other work done pursuant to this Agreement and that City shall not be liable for any acts or omissions in approving, reviewing, checking, correcting, or modifying any Improvement Plans or related specifications or in approving, reviewing or inspecting any work or construction. The security specified in Section 5.1 shall not be required to cover the provisions of this Section beyond the guarantee and warranty period specified in this agreement.

10. INSURANCE

Prior to commencing any of the public Phase I Improvements or work referenced in this Agreement that would be located either within City Public Utility Easements or in City right of way, as shown on the face of the Phase I Final Map and as described in Section 3.1 of this Agreement above, and continuing through the expiration of the warranty period specified in this agreement for all Phase I Improvements (or such longer period as necessary to ensure that all labor, performance and material deficiencies have been corrected as specified in this Agreement and all claims related to any Improvement have been settled or satisfied), Developer shall procure and maintain for the duration of the Agreement, a policy or policies of insurance against claims for injuries to persons or damages to property which may arise from or in connection with the performance of the work hereunder by Developer, its contractor, agents, representatives, employees or subcontractors.

Each insurance carrier shall be authorized to do business in the state of California and have a Best’s Insurance Rating of A-, Class VII or better.

Developer shall file with the City Engineer at or prior to the time of issuance of the first permit required for any of the work described in the first paragraph of this Section 11 above, evidence of insurance coverage satisfactory to the City. In the event of cancellation of coverage,

Developer shall promptly replace the required coverage so that no lapse in insurance occurs and provide a certificate of insurance of the new coverage to the City Engineer.

10.1 Coverage shall be at least as broad as:

10.1.1 Commercial General Liability (CGL): Insurance Services Office (ISO) Form CG 00 01 covering CGL on an "occurrence" basis, written on a commercial general liability form, and must include coverage for liability arising from Developer's Contractors acts or omissions, including Contractor's protected coverage, blanket contractual, products and completed operations, and employer's non-ownership liability coverage, with limits of at least \$2,000,000 per occurrence and an aggregate limit of not less than \$4,000,000, along with a follow-form umbrella policy with a liability limit of at least \$7,000,000. The CGL policy must protect against any and all liability for personal injury, death, property damage or destruction, and personal and advertising injury. If a general aggregate limit applies, the general aggregate limit shall apply separately to this project/location (ISO CG 25 03 or 25 04). The City of Cupertino, its City Council, officers, officials, employees, agents, servants and volunteers ("City Parties") are to be covered as additional insureds on the CGL policy. Endorsement of CGL coverage shall be at least as broad as ISO Form CG 20 10 11 85 or if not available, through the addition of both CG 20 10, CG 20 26, CG 20 33, or CG 20 38; and CG 20 37 if a later edition is used.

(a) Additional Insured coverage under Developer's policy shall be "primary and non-contributory" and shall be at least as broad as ISO CG 20 01 04 13.

(b) The limits of insurance required may be satisfied by a combination of primary and umbrella or excess insurance, provided each policy complies with the requirements set forth in this Contract. Any umbrella or excess insurance shall contain or be endorsed to contain a provision that such coverage shall also apply on a primary and non-contributory basis for the benefit of City before the City's own insurance or self-insurance shall be called upon to protect City as a named insured.

10.1.2 **Automobile Liability** on form CA 00 01 covering owned, hired, and non-owned autos, with limit no less than **\$1,000,000** per accident for bodily injury and property damage. Developer shall additionally require any person, corporation, partnership, trust, company or any other entity that is acting as a general contractor in a direct or indirect contract with the Developer for work on the Phase I Improvements to procure and maintain the same automobile liability insurance, covering Developer and the City Parties as additional insureds.

10.1.3 **Workers' Compensation**: As required by the State of California, with Statutory Limits, and Employer's Liability Insurance of no less than **\$1,000,000** per accident for bodily injury or disease.

10.1.4 For any claims related to this Agreement or the work, Developer's insurance shall be "**primary and non-contributory**" and at least as broad as ISO CG 20

01 04 13 with respect to City, its officers, officials, employees and volunteers, and shall not seek contribution from City's insurance. If the limits of insurance are satisfied in part by **Umbrella/Excess Insurance**, the Umbrella/Excess Insurance shall contain or be endorsed to contain a provision that such coverage shall also apply on a "primary and non-contributory" basis for the benefit of City. Each insurance policy must provide that coverage will not be canceled, except with thirty (30) days' notice to City. Each certificate of insurance must state that the coverage afforded by the policy is in force and will not be reduced, cancelled or materially changed without at least 30 days advance written notice to City, unless due to non-payment of premiums, in which case ten days advance written notice must be provided to City. Such notice must be sent to City via certified mail and addressed to the attention of the City Manager.

The Workers' Compensation policy must be endorsed with a waiver of subrogation in favor of the City for all work performed by Developer or Developer's Contractor, its employees, agents and subcontractors.

11. MAPS AND/OR IMPROVEMENT PLANS

Developer shall provide City with the following maps and/or plans at the Developer's expense:

- A. A scan in .pdf format of all executed Improvement Plans.

12. SUCCESSORS AND ASSIGNS-COVENANT RUNNING WITH THE LAND

This Agreement shall inure to the benefit of, and be binding upon the heirs, administrators, successors, assigns and transferees of the Parties, and shall be recorded in the Office of the County Recorder and constitute a covenant running with the land. Upon any sale or division of the Property, the terms, covenants, conditions and restrictions of this Agreement shall apply to each parcel, and the owner or owners of each parcel shall succeed to the obligations imposed upon Developer by this Agreement.

13. DEFAULT, BREACH, AND REMEDIES TO THE CITY

13.1.1 Default. Default of Developer shall include, but not be limited to:

13.1.2 Developer's failure to timely commence construction of the Phase I Improvements under this Agreement;

13.1.3 Developer's failure to timely complete construction of the Phase I Improvements within the time specified in Section 2.1;

13.1.4 Developer's failure to timely cure any defect in the Phase I Improvements;

13.1.5 Developer's failure to perform substantial construction work on any discrete component of the Phase I Improvements for a period of 20 consecutive calendar days after commencing work on such discrete component and receiving notice from City that interruption in the performance of such work is resulting in adverse impacts on the health, safety or welfare of the City or the surrounding communities or its or their residents;

13.1.6 Developer's insolvency, appointment of a receiver, or the filing of any petition in bankruptcy, either voluntary or involuntary, that is not discharged within 30 days;

13.1.7 The commencement of a foreclosure action against the Property or a portion thereof, or any conveyance in lieu or in avoidance of foreclosure;

13.1.8 Developer's failure to maintain any insurance policy required under this Agreement; or

13.1.9 Developer's failure to perform any other obligation under this Agreement.

13.2 Remedies Cumulative. City reserves all remedies available to it at law or in equity for breach of Developer's obligations under this Agreement. In addition to the right to compel specific performance of this Agreement and to seek recovery of damages, City shall have the right, subject to this Section, to draw upon or use the appropriate security to do or cause to be done acts required of Developer that Developer has failed to perform or to otherwise mitigate City's damages in the event of default by Developer. City's right to draw upon or use the security is in addition to any other remedy available to City. City agrees to draw upon or attempt to draw upon such security prior to initiating legal or equitable action to recover damages or obtain specific performance. The parties acknowledge that the estimated costs and security amounts may not reflect the actual cost of construction of the Phase I Improvements and, therefore, City's damages for Developer's default shall be measured by the cost of completing the required Phase I Improvements. City may use the sums provided by the security for completion of the Phase I Improvements in accordance with the Conceptual Improvement Plans and this Agreement. City shall also have recourse against Developer for any and all amounts necessary to complete the obligations of Developer in the event that the security is insufficient to pay such amounts.

13.3 City Performance at Developer's Expense. In the event that Developer fails to cure any default, or fails to commence and diligently pursue efforts to cure any default, under this Agreement within thirty (30) days after the City mails written notice of such default to Developer and Developer's surety, Developer authorizes City to perform the obligations for which Developer is in default and agrees to pay the entire cost of such performance by City.

13.4 Surety Liability and Use of Materials. In the event that City elects to perform the obligations for which Developer is in default, City may take over the work and complete the

Phase I Improvements by contract or by any other method the City deems appropriate, at the expense of Developer, and Developer's surety shall be liable to City for any excess cost or damages to City resulting therefrom. In such event, City, without liability for so doing, may at its sole option take possession of and use any of Developer's materials, appliances, plant and other property that are owned by Developer and are located at the work site and are necessary to complete the Phase I Improvements.

13.5 Developer Payment of City Costs. In the event that Developer fails to perform any obligation under this Agreement, Developer agrees to pay all costs and expenses incurred by City in securing performance of those obligations, including but not limited to fees and charges of architects, engineers, attorneys and other professionals, and costs of suit and reasonable attorneys' fees, provided City submits reasonable documentation of any such fees and charges.

13.6 No Waiver. City's failure to take enforcement action with respect to a default, or to declare a breach, shall not be construed as a waiver of that default or breach or any subsequent default or breach by Developer.

14. NOTICES

Except as otherwise specified herein, all notices, demands, requests or approvals sent pursuant to this Agreement shall be given in writing and sent to the Parties at their respective addresses specified below or to such other address as a Party may designate by written notice delivered to the other parties in accordance with this Section. All such notices shall be sent by: (a) personal delivery, in which case notice is effective upon delivery; (b) certified or registered mail, return receipt requested, in which case notice shall be deemed delivered upon receipt if delivery is confirmed by a return receipt; (c) nationally recognized overnight courier, with charges prepaid or charged to the sender's account, in which case notice is effective on delivery if delivery is confirmed by the delivery service; or (d) postage prepaid registered or certified mail, in which case notice shall be deemed delivered on the second business day after the deposit thereof with the U.S. Postal Service.

All notices, demands, requests, or approvals from Developer to City shall be addressed to City at:

City of Cupertino
10300 Torre Ave.
Cupertino CA 95014
Attention: Public Works Director

All notices, demands, requests, or approvals from City to Developer shall be addressed to Developer at:

Vallco Property Owner, LLC
C/O Sand Hill Property Company

2600 El Camino Real Suite 410
Palo Alto, CA 94306

15. GOVERNING LAW AND ATTORNEY FEES

This Agreement shall be interpreted under, and enforced by the laws of the State of California excepting any choice of law rules that may direct the application of laws of another jurisdiction. The Agreement and obligations of the parties are subject to all valid laws, orders, rules, and regulations of the authorities having jurisdiction over this Agreement (or the successors of those authorities.) Any suits brought pursuant to this Agreement shall be filed and heard in the courts with jurisdiction in the County of Santa Clara, State of California.

In any lawsuit to enforce any provision of this Agreement, each party shall bear its own costs and fees, except as otherwise provided by law.

16. RELATIONSHIP OF PARTIES

Neither Developer nor any of its contractors, employees or agents shall be deemed to be agents of the City in connection with the Performance of Developer's obligations under this Agreement.

17. DEVELOPER TO WARN PUBLIC

Until final acceptance of the Phase I Improvements, Developer shall give good and adequate warning to the public of any condition that has the potential to be hazardous, and shall take reasonable actions to protect the public from such condition.

18. NO THIRD PARTY BENEFICIARIES

This Agreement is intended to benefit only the parties hereto and their respective successors and assigns. Neither City nor Developer intend to create any third-party beneficiary rights in this Agreement in any contractor, subcontractor, member of the general public, or other person or entity.

19. NO VESTING RIGHTS

Performance by the Developer of this Agreement shall not be construed to vest Developer's rights with respect to any change in any zoning or building law or ordinance.

20. SEVERABILITY

The provisions of this Agreement are severable. If any portion of this Agreement is held invalid by a court of competent jurisdiction, the remainder of the agreement shall remain in full force and effect.

21. INTEGRATED AGREEMENT; AMENDMENTS IN WRITING

This Agreement, including Exhibits A through D, attached hereto and incorporated herein by this reference, represents the full and complete understanding between the parties with respect to the subject matter hereof and all preliminary negotiations and oral or written agreements with respect thereto are merged herein. No verbal agreement or implied covenant shall be held to vary the provisions hereof. Any modification of this Agreement will be effective only by written instrument signed by both City and Developer.

22. TIME IS OF THE ESSENCE

Time is of the essence in the performance of this Agreement by Developer and City.

23. HEADINGS; CONSTRUCTION; STATUTORY REFERENCES

The headings of the Sections and paragraphs of this Agreement are for convenience only and shall not be used to interpret this Agreement. This Agreement is the product of negotiation between the parties. The language of this Agreement shall be construed as a whole according to its fair meaning and not strictly for or against any party. Any rule of construction to the effect that ambiguities are to be resolved against the drafting party shall not apply in interpreting this Agreement. All references in this Agreement to particular statutes, regulations, ordinances or resolutions of the United States, the State of California, or the City of Cupertino shall be deemed to include the same statute, regulation, ordinance or resolution as hereafter amended or renumbered, or if repealed, to such other provisions as may thereafter govern the same subject.

24. COUNTERPARTS

This Agreement may be executed in two or more counterparts, each of which shall be deemed to be an original, and all of which taken together shall constitute one and the same instrument.

IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed by their respective, duly authorized officers on the date listed above.

Approved as to form:

CITY OF CUPERTINO:

Floy Andrews
City Attorney

Chad Mosley
Director of Public Works

DEVELOPER:

Vallco Property Owner, LLC
Name:
Title:

Exhibit(s):

Exhibit A - Schedule of Bonds

Exhibit B – Form of Dedication

Exhibit C – Form of Public Park Easement and Maintenance Agreement

Exhibit D – Phase 1 Improvements

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California)
County of San Francisco)

On _____, before me, _____, a notary public in and for said State, personally appeared _____, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature _____ (Seal)

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California)
County of San Francisco)

On _____, before me, _____, a notary public in and for said State, personally appeared _____, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature _____ (Seal)

EXHIBIT A

Schedule of Bonds

Faithful Performance Bond	\$9,896,000
Labor & Materials Bond	\$9,896,000

Exhibit B

Form of Dedication

**DEDICATION IN FEE
FOR ROADWAY PURPOSES**

APNs (316-20-121; 316-20-122)

VALLCO PROPERTY OWNER, LLC, a Delaware limited liability company, dedicates in fee to the CITY OF CUPERTINO, a California municipal corporation ("City"), for public purposes including, but not limited to roadway purposes, together with the right to construct, repair, operate, and maintain any and all public utilities and improvements in, on, under, along and across the real property which shall be or become necessary for preservation of the public safety, welfare or convenience, all that real property as described in Exhibit A and dedicated in fee to the City as shown on Exhibit B, recorded simultaneously with this Dedication in the Official Records of the County of Santa Clara, which property is situated in the City of Cupertino, County of Santa Clara, State of California.

IN WITNESS WHEREOF, executed this _____ day of 2026.

Vallco Property Owner, LLC

Name:

Title:

City of Cupertino:

Chad Mosley

Director of Public Works

(Notary acknowledgment to be attached)

"NO FEE"

City of Cupertino

CERTIFICATE OF ACCEPTANCE is hereby given in order to comply with the provisions of Section 27281 of the Government Code.

This is to certify that the interest in real property conveyed by the deed or grant dated _____ from Vallco Property Owner, LLC to the City of Cupertino, a municipal corporation, is hereby accepted by the undersigned on behalf of the City Council of the City of Cupertino pursuant to authority conferred by Resolution No. 11-175 of the City Council adopted on October 4, 2011, and the grantee consents to recordation thereof by its duly authorized officer.

Dated:

By: _____

Name:

Title: City Engineer / Public Works Director

EXHIBIT A

LEGAL DESCRIPTIONS OF ROADWAY DEDICATIONS IN FEE OVER STEVENS CREEK
BOULEVARD, AND WOLFE ROAD CUPERTINO, CALIFORNIA

PARCEL 1

ALL THAT REAL PROPERTY BEING A PORTION OF PARCEL ONE AS DESCRIBED IN THAT CERTAIN DOCUMENT NO. 22746588 OF OFFICIAL RECORDS, RECORDED OCTOBER 22, 2014, IN THE OFFICE OF THE RECORDER OF THE COUNTY OF SANTA CLARA, STATE OF CALIFORNIA, AND AS SHOWN ON THAT CERTAIN LOT MERGER DOCUMENT NO. 24097490 OF OFFICIAL RECORDS, RECORDED JANUARY 14, 2019, IN THE OFFICE OF THE RECORDER OF THE COUNTY OF SANTA CLARA, STATE OF CALIFORNIA, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS.

COMMENCING AT THE INTERSECTION OF THE CENTERLINES OF WOLFE ROAD AND STEVENS CREEK BOULEVARD, THENCE LEAVING SAID POINT OF COMMENCEMENT, RUNNING WESTERLY ALONG THE CENTERLINE OF STEVENS CREEK BOULEVARD, SOUTH $89^{\circ}36'00''$ WEST A DISTANCE OF 115.27 FEET TO A POINT, SAID POINT BEARS NORTH $89^{\circ}36'00''$ EAST A DISTANCE OF 142.33 FEET FROM THE INTERSECTION OF THE CENTERLINES OF STEVENS CREEK BOULEVARD AND E. ESTATES DRIVE; THENCE LEAVING SAID POINT NORTH $0^{\circ}24'00''$ WEST A DISTANCE OF 45.00 FEET TO A POINT ON THE SOUTHERLY LINE OF SAID PARCEL ONE, SAID POINT BEING THE **TRUE POINT OF BEGINNING**;

THENCE LEAVING THE TRUE POINT OF BEGINNING RUNNING WESTERLY ALONG SOUTHERLY LINE OF SAID PARCEL ONE SOUTH $89^{\circ}36'00''$ WEST A DISTANCE OF 792.04 FEET TO THE SOUTHWEST CORNER OF SAID PARCEL ONE;

THENCE LEAVING SAID CORNER RUNNING NORTHERLY ALONG THE WESTERLY LINE OF SAID PARCEL ONE NORTH $0^{\circ}43'00''$ WEST A DISTANCE OF 15.50 FEET TO AN ANGLE POINT;

THENCE LEAVING SAID WESTERLY LINE NORTH $89^{\circ}36'00''$ EAST A DISTANCE OF 832.38 FEET TO POINT ON A NON-TANGENT CURVE CONCAVE NORTHWESTERLY, HAVING A RADIUS OF 60.00 FEET, A RADIAL LINE TO SAID POINT BEARS SOUTH $42^{\circ}31'35''$ EAST;

THENCE RUNNING SOUTHWESTERLY ALONG SAID CURVE, THROUGH A CENTRAL ANGLE OF $42^{\circ}07'35''$, AN ARC DISTANCE OF 44.11 FEET TO THE **TRUE POINT OF BEGINNING**.

CONTAINING 12,705 SQUARE FEET (0.29 ACRES) MORE OR LESS.

END OF DESCRIPTION.

TOGETHER WITH:

PARCEL 2

ALL THAT REAL PROPERTY BEING A PORTION OF PARCEL ONE AS DESCRIBED IN THAT CERTAIN DOCUMENT NO. 22746588 OF OFFICIAL RECORDS, RECORDED OCTOBER 22, 2014, AND A PORTION OF PARCEL 1-C1(2) AS DESCRIBED IN THAT CERTAIN DOCUMENT NO. 22755414 OF OFFICIAL RECORDS, RECORDED OCTOBER 22, 2014, BOTH IN THE OFFICE OF THE RECORDER OF THE COUNTY OF SANTA CLARA, STATE OF CALIFORNIA, AND AS SHOWN ON THAT CERTAIN LOT MERGER DOCUMENT NO. 24097490 OF OFFICIAL RECORDS, RECORDED JANUARY 14, 2019, IN THE OFFICE OF THE RECORDER OF THE COUNTY OF SANTA CLARA, STATE OF CALIFORNIA, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS.

COMMENCING AT THE INTERSECTION OF THE CENTERLINES OF WOLFE ROAD AND STEVENS CREEK BOULEVARD, THENCE LEAVING SAID POINT OF COMMENCEMENT, RUNNING NORTHERLY ALONG THE CENTERLINE OF WOLFE ROAD, NORTH 1°05'14" WEST A DISTANCE OF 106.37 FEET TO A POINT, SAID POINT BEARS SOUTH 1°05'14" EAST A DISTANCE OF 819.01 FEET FROM THE INTERSECTION OF THE CENTERLINES OF WOLFE ROAD AND VALLCO PARKWAY; THENCE LEAVING SAID CENTERLINE SOUTH 88°54'46" WEST A DISTANCE OF 54.00 FEET TO A POINT ON THE EASTERLY LINE OF SAID PARCEL ONE, SAID POINT ALSO BEING THE **TRUE POINT OF BEGINNING**;

THENCE LEAVING THE TRUE POINT OF BEGINNING RUNNING NORTHERLY ALONG EASTERLY LINE OF SAID PARCEL ONE NORTH 1°05'14" WEST A DISTANCE OF 819.01 FEET TO AN ANGLE POINT, SAID ANGLE POINT BEING THE NORTHEASTERLY CORNER OF SAID PARCEL ONE;

THENCE RUNNING WESTERLY ALONG THE NORTHERLY LINE OF SAID PARCEL ONE SOUTH 88°54'46" WEST A DISTANCE OF 40.00 FEET TO A POINT, SAID POINT BEING THE SOUTHEASTERLY CORNER OF SAID PARCEL 1-C1(2);

THENCE RUNNING NORTHERLY ALONG THE EASTERLY LINE OF SAID PARCEL 1-C1(2) NORTH 1°05'14" WEST A DISTANCE OF 1015.32 FEET TO AN ANGLE POINT;

THENCE LEAVING SAID EASTERLY LINE SOUTH 90°00'00" WEST A DISTANCE OF 4.00 FEET TO AN ANGLE POINT;

THENCE SOUTH 1°05'14" EAST A DISTANCE OF 1669.11 FEET TO AN ANGLE POINT;

THENCE SOUTH 31°05'14" EAST A DISTANCE OF 20.09 FEET TO AN ANGLE POINT;

THENCE SOUTH 1°05'14" EAST A DISTANCE OF 151.38 FEET TO AN ANGLE POINT;

THENCE SOUTH 46°05'14" EAST A DISTANCE OF 36.96 FEET TO POINT ON A NON-TANGENT CURVE CONCAVE NORTHWESTERLY, HAVING A RADIUS OF 60.00 FEET, A RADIAL LINE TO SAID POINT BEARS SOUTH 61°30'34" EAST;

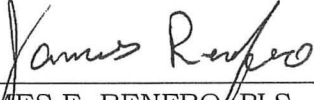
THENCE RUNNING NORTHEASTERLY ALONG SAID CURVE, THROUGH A CENTRAL ANGLE OF 29°34'40", AN ARC DISTANCE OF 30.97 FEET TO THE **TRUE POINT OF BEGINNING**.

CONTAINING 39,114 SQUARE FEET (0.90 ACRES) MORE OR LESS.

END OF DESCRIPTION

THE BASIS OF BEARINGS FOR THIS DESCRIPTION BEING NORTH 88°54'46" EAST BETWEEN FOUND MONUMENTS AS SHOWN ON THAT CERTAIN PARCEL MAP FILED FOR RECORD IN BOOK 804 OF MAPS, AT PAGE 22, ON AUGUST 15, 2006, IN THE OFFICE OF THE RECORDER OF THE COUNTY OF SANTA CLARA, STATE OF CALIFORNIA

ATTACHED HERETO IS A DRAWING LABELED EXHIBIT B FOR ILLUSTRATION PURPOSES AND BY THIS REFERENCE MADE A PART HEREOF.

 6/29/2026

JAMES E. RENFRO/PLS DATE
LICENSE NO. L9062



EXHIBIT B

54'

54'

WOLFE ROAD

L=44.11', R=60.00'
Δ=42°07'35"

S42°31'35"E (R)

L1

TPOB

POINT OF COMMENCEMENT

MILLER AVENUE

S89°36'00"W 115.27'

S89°36'00"W 142.33'

E. ESTATES DRIVE

PARCEL 1
12,705± SQ. FT.
(0.29± ACRES)

N89°36'00"E 832.38'

S89°36'00"W 792.04'

STEVENS CREEK BLVD

LANDS OF VALCO
PROPERTY OWNER, LLC
APN: 316-20-122
DN: 22746588 O.R.

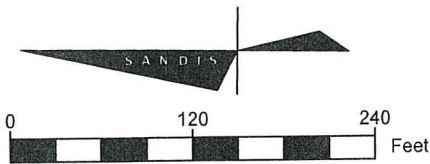
PARCEL A
24097490 O.R.

LEGEND

— — — — —	CENTERLINE
- - - - -	ROADWAY DEDICATION LINE
— — — — —	LOT LINE
- - - - -	TIE LINE
(R)	RADIAL BEARING
TPOB	TRUE POINT OF BEGINNING
O.R.	OFFICIAL RECORDS

LINE TABLE

LINE	BEARING	DISTANCE
L1	N0°24'00"W	45.00'
L2	N0°43'00"W	15.50'



APN:
316-20-083



6/29/2026



SANDIS

BUILD ON.

SANDIS.NET

DATE: 4-24-2026

SCALE: HOR. 1"=120'

BY: AT

PROJECT No.:

223237

ROADWAY DEDICATION

APN: 316-20-122

SHEET

1

OF 2 SHEETS

EXHIBIT B



LANDS OF VALLCO
PROPERTY OWNER, LLC
APN: 316-20-122
DN: 22765414 O.R.
DN: 22746588 O.R.

PARCEL A
24097490 O.R.

PARCEL 2
39,114± SQ. FT.
(0.90± ACRES)

S31°05'14"E 20.09'

S1°05'14"E 151.38'

S46°05'14"E 36.96'

S61°30'34"E (R)

L=30.97', R=60.00'
Δ=29°34'40"

STEVENS CREEK BLVD

L3
94' 65'
N1°05'14"W 1015.32'

L2

S1°05'14"E 1669.11'

44'

WOLFE RD

N1°05'14"W 819.01'

44'

54'

S1°05'14"E 819.01'

54'

VALLCO PKWY

LEGEND

- — — — — CENTERLINE
- - - - - ROADWAY DEDICATION LINE
- — — — — LOT LINE
- - - - - TIE LINE
- (R) RADIAL BEARING
- TPOB TRUE POINT OF BEGINNING
- O.R. OFFICIAL RECORDS

LINE TABLE

LINE	BEARING	DISTANCE
L1	S88°54'46"W	54.00'
L2	S88°54'46"W	40.00'
L3	S90°00'00"W	4.00'



6/29/2026

POINT OF COMMENCEMENT



BUILD ON.
SANDIS.NET

DATE: 4-24-2026
SCALE: HOR. 1"=150'
BY: AT
PROJECT No.:
223237

ROADWAY DEDICATION
APN: 316-20-122

SHEET
2
OF 2 SHEETS

Exhibit C

Form of Public Park Easement and Maintenance Agreement

[see following pages]

Public Park Easement and Maintenance Agreement

Ben Fu
Community Development Director
10300 Torre Avenue
Cupertino, California 95014

The undersigned hereby declares this instrument to be exempt from Recording Fees (Govt. Code § 27383) and from Documentary Transfer Tax (CA Rev. & Tax. Code § 11922 and SF Bus. and Tax Reg. Code § 1105)

APN _____

SPACE ABOVE THIS LINE RESERVED FOR RECORDER'S USE

PUBLIC PARK EASEMENT AND MAINTENANCE AGREEMENT

This Public Park Easement and Maintenance Agreement ("**Agreement**") is made as of _____, 202_, by and between VALLCO PROPERTY OWNER, LLC, a Delaware limited liability company ("**Grantor**"), and the CITY OF CUPERTINO, a municipal corporation ("**Grantee**" or "**City**"), with reference to the following facts.

RECITALS

A. Grantor owns certain property in the City located along North Wolfe Road, between Highway 280 and Stevens Creek Boulevard comprised of approximately 50.8 acres and more particularly described in the attached Exhibit A (the "**Project Site**").

B. Grantor submitted an application on March 27, 2018 pursuant to Government Code Section 65913.4 (as ultimately modified prior to approval, the "**SB 35 Application**") for development of The Rise (formerly known as the Vallco Town Center Project) ("**Project**"), which was approved by the City ministerially on September 21, 2018 via a letter to Developer, which included Attachment A (Initial Approved Plans), Attachment B (Initial 90-day determination letter), and Attachment C (Initial Standard Project Requirements), and a technical correction letter dated October 11, 2018 regarding certain standard project requirements under Attachment C. Grantor submitted an application on March 24, 2022, for a modification to the Project, which the City ministerially approved on June 3, 2022 via a letter to Grantor ("**Modification No. 1**"). Grantor later submitted an application on December 4, 2023, for a further modification to the Project, which the City ministerially approved on February 16, 2024, via a letter to Grantor ("**Modification No. 2**"). Grantor later submitted an application on November 25, 2025, for a further modification to the Project, which the City ministerially approved on February 27, 2026, via a letter to Developer, which includes Attachment A (Approved Plans), Attachment B (Basis of Approval), and Attachment C (Standard Project Requirements) ("**Modification No. 3**"). The September 21, 2018, letter (including all attachments), the June 3, 2022 letter (including all attachments), the February 16, 2024 letter (including all attachments), and the February 27, 2026 letter (including all attachments), and all associated technical correction letters are collectively referred to as the "**SB 35 Approval**".

C. On July 10, 2024, Grantor and City entered into that certain Settlement Agreement and Release (the “**Settlement Agreement**”), recorded as Document No. 2024-25692491 in the official records of Santa Clara County (“**Official Records**”), pursuant to which Grantor and City agreed to resolve certain disputes related to the Project, including regarding certain “fees,” as defined in Government Code section 66000(b), charged by the City in connection with approval of the Project for the purpose of defraying all or a portion of the cost of public facilities related to the Project (“**Impact Fees**”), and parkland dedication requirements and/or fees regulated under the Quimby Act, Government Code section 66477 (“**Parkland Dedication Fee**”).

D. Pursuant to the California Subdivision Map Act and the City’s local ordinances and regulations relating to subdivision maps, Grantor has presented to the City for approval a phased final map entitled “Tract No. 10706, The Rise,” prepared by Sandis Civil Engineering and dated _____, 2026.

E. As part of the Project, and as set forth under the Settlement Agreement, Grantor intends to build certain improvements to create publicly accessible private open space on areas to be dedicated to the City as public park easement areas, as described in Exhibit B (individually and collectively the “**Easement Area**”). This Agreement governs the rights and obligations of the City and Grantor with respect to the Easement Area, and the improvements thereon, which are generally described in Exhibit C (the “**Publicly Accessible Private Improvements**”).

F. Grantor desires to grant to City a nonexclusive “**Public Park Easement**” over the Easement Area for the use, enjoyment and benefit of the public for open space, public access and recreation purposes, as set forth and subject to the terms, conditions and limitations in this Agreement, and Grantee desires to accept the Public Park Easement from Grantor subject to such terms, conditions and limitations.

G. The City Council has approved this Agreement as to form in connection with its approval of the Subdivision Improvement Agreement for the Project, and has authorized the City Engineer, Public Works Director, or other City officer authorized under Resolution No. 11-175 and Government Code section 27281 to complete, execute, accept, and record this Agreement.

AGREEMENT

Now, therefore, for valuable consideration, the receipt of which each of the parties hereby acknowledges, the parties hereby agree as follows:

1. **Grant of Easement.**

(a) **Grant of Easement.** Subject to the provisions of this Agreement, Grantor hereby grants to Grantee, a non-exclusive Public Park Easement in, on and over the Easement Area for the use, enjoyment and benefit of the public for open space and recreation purposes subject to the terms, conditions and limitations in this Agreement. Except as set forth in this Agreement, Grantor retains all rights in the Easement Area and retains the right to permit or perform any act not inconsistent with the Public Park Easement, including but not limited to: (a) the right to otherwise transfer the Easement Area to anyone Grantor chooses, subject to Grantee’s rights under this Agreement, so long as Grantor simultaneously transfers its interest in the Easement Area to the same person or entity; (b) the right to grant additional easements in, and to encumber, the Easement

Area, subject to Grantee's rights under this Agreement; (c) the right to bring and defend actions relating to the Easement Area, including the right to defend any eminent domain action; (d) the right and obligation to maintain, repair and modify the Publicly Accessible Private Improvements consistent with this Agreement; (e) the right to enforce the Regulations as outlined in the attached Exhibit D (the "**Regulations**"), provided that the Regulations are enforced in a nondiscriminatory manner; and (f) the right to develop and enforce reasonable rules ("**Rules**") governing security, safety, use, dress, and conduct with respect to the use of the Easement Area by the public consistent with this Agreement, provided that the Rules are enforced in a nondiscriminatory manner.

(b) Changes. Grantor shall construct the Publicly Accessible Private Improvements in the Easement Area, as generally described in Exhibit C. Grantor shall have the right to modify and/or update the Publicly Accessible Private Improvements from time to time as it may determine in its sole business judgment, provided that such modification does not materially diminish and adversely impact the public's ability to access or use the Easement Area for its intended purposes and provided further that any such modifications shall be subject to review and approval by the City acting in its regulatory capacity with respect to any required permit issuance, if applicable, and that such review and approval shall not be unreasonably withheld or delayed and shall be conducted consistent with the terms and intent of the Settlement Agreement. The Publicly Accessible Private Improvements described in Exhibit C, as may be modified generally consistent therewith, and as constructed or installed pursuant thereto, shall constitute the Publicly Accessible Private Improvements. The Grantor shall at all times maintain park facilities that meet the minimum requirements of Cupertino Municipal Code Section 13.08.080, as was in effect at the time the Project application was submitted. Notwithstanding the foregoing, and subject to the terms of the Settlement Agreement, the bicycle paths along the property perimeter shall not be removed or modified without the prior written consent of the Grantee.

(c) Master Association. Grantor intends to form a property owners' association ("**Master Association**") for the Project Site for the operation, management, maintenance and repair of the commonly used areas and improvements in the Project Site, including the Publicly Accessible Private Improvements, that are located within master common area parcels owned by the Master Association or within master common easement areas over Project Site parcels/lots pursuant to easement agreements in which the Master Association is the benefitted party.

2. Maintenance. Following the completion of any of the Publicly Accessible Private Improvements, Grantor shall operate, maintain and repair such Publicly Accessible Private Improvements at no cost to City, in a clean, litter-free and good condition, consistent with other privately owned publicly accessible private open spaces and privately owned publicly accessible rights of way in the City, for the life of the associated building described in Exhibit C. If Grantor assigns such obligations for completed Publicly Accessible Private Improvements to the Master Association in accordance with the requirements in Section 10 below, Grantor shall cause such Publicly Accessible Private Improvements to be so operated, maintained and repaired by the Master Association in accordance with Section 10 below.

3. City Regulatory Approvals. Prior to commencing the construction or maintenance of any Publicly Accessible Private Improvements, or any modifications thereto, Grantor shall obtain all City approvals Grantor is required to obtain from City, acting in its regulatory capacity in accordance herewith, for such activities. City acknowledges that Government Code section

65913.4(i)(2) requires it to process permits for the Project and public improvements, including within the Easement Area without unreasonable delay and provides that it shall not impose any procedure or requirement that is not imposed on projects that are not approved pursuant to Government Code section 65913.4, and that review and approval of such permits shall be consistent with the terms and intent of the Settlement Agreement.

4. Use and Operation.

(a) On completion of a Publicly Accessible Private Improvement, Grantor shall, or as applicable, cause the Master Association to, operate, maintain and repair such Publicly Accessible Private Improvement and make the Easement Area available for the use, enjoyment and benefit of the public for open space and recreational purposes (the “**Permitted Public Use**”) in accordance with the Regulations, as such Regulations may be refined or amended from time to time by Rules adopted by Grantor in accordance with this Agreement.

(b) Grantor shall not be required to provide public access to the Easement Area until issuance of the first Final Certificate of Occupancy for the building or buildings for which the Publicly Accessible Private Improvements are associated, as described in Exhibit C.

5. Notice and Cure Rights. Except as provided in this Section, City shall provide written notice (a “**Default Notice**”) to the Grantor of any actual or alleged violation of the obligations set forth in this Agreement before taking any enforcement action. Notwithstanding the foregoing, following the assignment of Grantor's obligations under this Agreement (including the use, maintenance and repair obligations) with respect to a completed Publicly Accessible Private Improvement to the Master Association, all in accordance with Section 10 below, a Default Notice for that completed Publicly Accessible Private Improvement shall be instead given to the Master Association; provided, however, that City shall also send a Default Notice to Grantor as long as Grantor has any obligations under Section 10 hereof.

Grantor or the Master Association, as applicable, shall have (i) a period of ten (10) business days after receipt of a Default Notice to cure any violation in making Publicly Accessible Private Improvements available for the Permitted Public Use as required in this Agreement (“**Public Access Violations**”) described in that Default Notice and (ii) a period of thirty (30) days after receipt of a Default Notice to cure any other violation described in that Default Notice, provided that if the violation is not capable of cure within such 30-day period, Grantor or the Master Association, as applicable, shall have such additional time as shall be reasonably required to complete a cure as long as Grantor or the Master Association, as applicable, promptly undertakes action to commence the cure within the 30-day period and thereafter diligently prosecutes the same to completion. The time in which Grantor or the Master Association, as applicable, may cure is herein called the “**Grantor Cure Period**,” and except for any Public Access Violations, City shall not exercise any legal or equitable remedies during the Grantor Cure Period (or if applicable, the Lender Cure Period) as long as Grantor (or if applicable, the Master Association or Lender, as defined in Section 6 below) is diligently pursuing such cure. Notwithstanding anything to the contrary herein, in no event shall the Grantor Cure Period exceed four (4) months.

City's rights and remedies in this Section 5 shall be subject to the provisions of this Agreement. Any notices required or permitted to be given under this Agreement shall be in writing

and shall be delivered (a) in person, (b) by certified mail, postage prepaid, return receipt requested, or (c) by U.S. Express Mail or commercial overnight courier that guarantees next day delivery and provides a receipt, and such notices shall be addressed as follows, or such other address as either party may from time to time specify in writing to the other party:

Grantor: Vallco Property Owner, LLC
C/O Sand Hill Property Company
2600 El Camino Real Suite 410
Palo Alto, CA 94306

City: City of Cupertino
Attn: Community Development Director
10300 Torre Avenue
Cupertino, California 95014

with a copy to:

Attn: _____

6. Lender Notice and Cure Rights. As long as any deed of trust (other than and excluding deeds of trust, if any, on individual residential condominium units within Project Site parcels) encumbering any portion of the Project Site encumbered by this Agreement made in good faith and for value (each, an “**Encumbrance**”) shall remain unsatisfied of record, City shall give to the beneficiary of such Encumbrance (each, a “**Lender**”) a copy of each Default Notice City gives to Grantor if that Lender has given to the City a written request for Default Notices. Copies of such Default Notices shall be given to any requesting Lender at the address that requesting Lender last furnished to City. Nothing in this Section shall be construed to mean that City must provide a Lender with a copy of any Self-Help Notices (as defined in Section 7 below).

Each Lender shall have the right, but not the obligation, to do any act or thing required of Grantor (or the Master Association, if applicable) hereunder, and to do any act or thing which may be necessary and proper to be done in the performance and observance of the agreements, covenants and conditions hereof; provided, however, that no such action shall constitute an assumption by such Lender of the obligations of Grantor (or the Master Association, if applicable) under this Agreement. In the case of any Default Notice given by the City to Grantor (or the Master Association, if applicable), the Lender shall have the applicable Grantor Cure Period for remedying the default described in that Default Notice or causing it to be remedied and, except in the event of a Public Access Violation, if prior to the expiration of the applicable Grantor Cure Period, a Lender gives City written notice that it intends to undertake the curing of such default or to cause the same to be cured, and then proceeds with all due diligence to do so, Lender shall have, in each case, an additional period of thirty (30) days (or, except for a default relating to the payment of money, such longer period as reasonably necessary as long as Lender commences cure within such thirty (30) day period and diligently proceeds to completion) after the later to occur of (i) the expiration of the applicable Grantor Cure Period, or (ii) the date that the City has served such

Default Notice upon Lender, and the City shall accept such performance by or at the instance of the Lender as if the same had been made by Grantor. The time in which Lender may cure is herein called the “**Lender Cure Period**”. Notwithstanding anything to the contrary herein, in no event shall the additional Lender Cure Period exceed six (6) months beyond the applicable Grantor Cure Period.

7. Enforcement. Grantor acknowledges that its failure to properly maintain or operate the Publicly Accessible Private Improvements as required in this Agreement will cause irreparable harm to the City and that the City will not have an adequate remedy at law for such breach. Accordingly, City shall be entitled to specific performance or injunctive or other equitable relief by reason of such breach. City may, in its sole discretion, rely on this Agreement to enforce any of the covenants or restrictions hereunder. City, but not the general public, shall have all rights and remedies available at law or in equity in order to enforce the covenants and restrictions set forth in this Agreement.

If Grantor or, if applicable, the Master Association fails to maintain the Publicly Accessible Private Improvements in the manner required in this Agreement, and Grantor, or, if applicable, the Master Association, fails to timely cure such failure pursuant to Section 5 above, and no Lender cures such failure pursuant to Section 6 above, then City shall further have the right, at its sole option, to remedy such failure at the expense of Grantor (or if applicable, the Master Association) by providing ten (10) days’ prior written notice of City’s intention to cure such failure (a “**Self-Help Notice**”) to the Grantor or, if applicable, to the Master Association. Such action by City shall not be construed as a waiver of such default or any rights or remedies of City, and nothing herein shall imply any duty of City to do any act that Grantor or the Master Association, as applicable, is obligated to perform.

Grantor shall reimburse City for all of its costs and expenses, including without limitation, reasonable attorneys’ fees, in remedying or attempting to remedy such failure (collectively, “**City’s Costs**”), within thirty (30) days of receiving City’s invoice for City’s Costs, together with documentation reasonably evidencing City’s Costs; provided, however, if Grantor’s obligations (including the use, maintenance and repair obligations) for the subject Publicly Accessible Private Improvement were assigned to the Master Association pursuant to Section 10 below, then the Master Association shall reimburse City for City’s Costs within thirty (30) days of receiving City’s invoice for City’s Costs, together with documentation reasonably evidencing City’s Costs.

8. Priority of Lien. No violation or breach of any provision of this Agreement shall impair, defeat or invalidate the lien of any encumbrance, but all provisions hereof shall thereafter be binding upon and effective against any owner whose title is derived through foreclosure of any encumbrance or acceptance of any deed in lieu of foreclosure.

9. Litigation Expenses. In any lawsuit to enforce any provision of this Agreement, each party shall bear its own costs and fees, except as otherwise provided by law. Any suits brought pursuant to this Agreement shall be filed and heard in the courts with jurisdiction in the County of Santa Clara, State of California.

10. Binding on Successors: CC&Rs; No Merger; Post-Construction Responsibility. This Agreement and the covenants and restrictions set forth herein constitute restrictions and covenants

running with the land and shall bind and burden Grantor, in its capacity as owner of the Project Site, and each successor owner and occupier of the Project Site. Grantor may assign, in accordance with applicable laws (including any applicable requirements of the California Department of Real Estate or any successor agency), its obligations for use, operation, maintenance and repair of completed Publicly Accessible Private Improvements to a Master Association, and effective upon such an assignment and recordation of the applicable CC&Rs for the portion of the Project Site containing the completed Publicly Accessible Private Improvements (or recordation of a declaration of annexation or similar instrument, the effect of which is to cause the previously recorded CC&Rs to apply to such portion of the Project Site), and thereupon references in this Agreement to "Grantor" for such completed Publicly Accessible Private Improvements shall mean Master Association.

In order to ensure that, once constructed, the Publicly Accessible Private Improvements are maintained in a clean, good and workmanlike condition, Grantor shall record, when authorized to so record by the State of California's Department of Real Estate, a declaration of covenants, conditions, and restrictions against the portion of the Project Site on which the Publicly Accessible Private Improvements are or will be located ("CC&Rs"), that include a requirement that the Master Association provide all necessary and ongoing maintenance and repairs to the Publicly Accessible Private Improvements, and any required services, at no cost to the City, with appropriate homeowners' assessments to provide for such maintenance and services. The Grantor intends to develop the Project Site in phases, and the CC&Rs therefore may be recorded and/or implemented (such as by means of a declaration of annexation) against portions of the Project Site in phases.

Notwithstanding anything to the contrary above in this Section 10 or contained in any Master Association governing document, if City sends a Default Notice to Grantor pursuant to the second sentence of the first paragraph of Section 5 above, then, following receipt of such notice, Grantor shall, while Grantor still owns property in the Project, use commercially reasonable efforts to cause to be enforced the maintenance and repair obligations of the Master Association. The CC&Rs identified herein shall be subject to reasonable review and approval by the City Attorney, and the City's Community Development Department, regarding the obligations stated in this Section 10, prior to the assignment of Grantor's obligations to the Master Association (as described above in this Section 10) and shall expressly provide the City with a third-party right to enforce the operation, maintenance and repair provisions of the CC&Rs.

11. As-Is. City accepts the Easement Area in its "as is" physical condition, except as otherwise provided herein. Grantor may inform the public that its use of the Easement Area shall be at its own risk. Grantor makes no representations or warranties to City or the public under this Agreement regarding the existing physical condition of the Easement Area or Publicly Accessible Private Improvements.

12. Severability. Should any provision or portion hereof be declared invalid or in conflict with any law, the validity of all remaining provisions shall remain unaffected and in full force and effect.

13. Time. Time is of the essence of this Agreement and each and every part hereof.

14. Commencement; Term; Amendment. This Agreement shall be executed by the parties and recorded in the Official Records prior to issuance of the first Final Certificate of Occupancy for the associated building or phase; provided, however, that the operational obligations requiring public access shall commence only upon the date the applicable Publicly Accessible Private Improvements are complete and opened for public use in accordance with this Agreement. This Agreement shall continue for the life of each building or phase to which the applicable Publicly Accessible Private Improvements are associated, as set forth in Exhibit C. This Agreement may be amended only by a writing executed and acknowledged by the then-owner of the burdened property (or the Master Association, as applicable) and City.

15. Entire Agreement. This Agreement, together with any attachments hereto or inclusions by reference, constitutes the entire agreement between the parties on the subject matter hereof, and this Agreement supersedes and cancels any and all previous negotiations, arrangements, agreements and understandings, if any, between the parties hereto with respect to the easements which are the subject matter of this Agreement.

16. Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of California.

17. No Third-Party Beneficiaries. This Agreement is intended to benefit only the parties hereto and their respective successors and assigns. Neither City nor Grantor intend to create any third-party beneficiary rights in this Agreement in any contractor, subcontractor, member of the general public, or other person or entity.

18. Counterparts. This Agreement may be executed in two or more counterparts, each of which shall be deemed to be an original, and all of which taken together shall constitute one and the same instrument.

19. Recordation. Grantor shall cause this Agreement to be recorded in the Official Records of Santa Clara County prior to issuance of the first Final Certificate of Occupancy for the building or phase associated with such Easement Area.

[REMAINDER OF PAGE INTENTIONALLY BLANK]

IN WITNESS WHEREOF, Grantor and City have executed this Agreement as of the date first written above.

GRANTOR: Vallco Property Owner, LLC,
a Delaware limited liability company

By: _____
Name:
Title:

CITY: CITY OF CUPERTINO,
a municipal corporation

By: _____
Name:
Title: City Engineer / Public Works Director

APPROVED AS TO FORM:

_____,
City Attorney

By: _____

"NO FEE"
City of Cupertino

CERTIFICATE OF ACCEPTANCE is hereby given in order to comply with the provisions of Section 27281 of the Government Code.

This is to certify that the interest in real property conveyed by the deed or grant dated _____ from Vallco Property Owner, LLC to the City of Cupertino, a municipal corporation, is hereby accepted by the undersigned on behalf of the City Council of the City of Cupertino pursuant to authority conferred by Resolution No. 11-175 of the City Council adopted on October 4, 2011, and the grantee consents to recordation thereof by its duly authorized officer.

Dated:

By: _____

Name:

Title: City Engineer / Public Works Director

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California)
County of San Francisco)

On _____, before me, _____, a notary public in and for said State, personally appeared _____, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature _____ (Seal)

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California)
County of San Francisco)

On _____, before me, _____, a notary public in and for said State, personally appeared _____, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature _____ (Seal)

EXHIBIT A

Description of Project Site

[to be provided]

EXHIBIT B

Description of Easement Area(s)

[to be provided]

EXHIBIT C

Publicly Accessible Private Improvements

[to be completed]

Grantor shall substantially complete construction of the Publicly Accessible Private Improvements on the Easement Area as described in this Exhibit C prior to issuance of the first Final Certificate of Occupancy for the building or phase with which the Improvements are associated. For purposes of this Exhibit C, a "Final Certificate of Occupancy" does not include any temporary certificate of occupancy, temporary use authorization, or similar interim approval. Grantor shall complete construction of the Publicly Accessible Private Improvements substantially in accordance with the following schedule:

Description of Publicly Accessible Private Improvements	Installation Schedule (Associated Building)

EXHIBIT D

Guidelines for Regulations Regarding Access, Use Operation and Maintenance of Publicly Accessible Private Improvements

[to be completed]

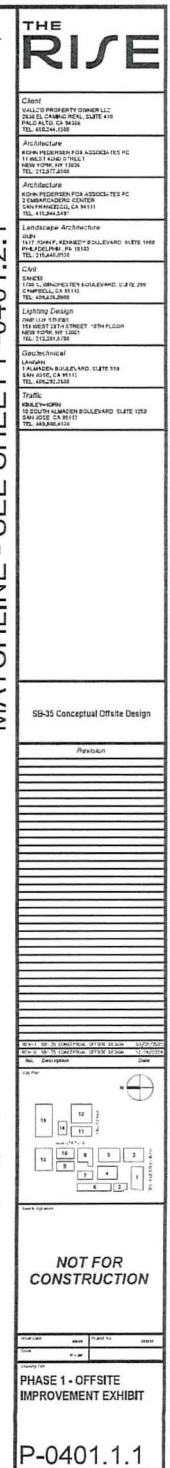
This Exhibit D is attached to identify the subject matters to be addressed in the final Regulations applicable to the Easement Area. These final Regulations shall be completed prior to execution and recordation of the final Public Park Easement and Maintenance Agreement, provided that such final Regulations remain consistent with the rights of public access granted herein and applicable law. Without limitation, the final Regulations may address the following topics:

1. Permitted Public Uses.
2. Prohibited Uses.
3. Animals.
4. Construction/Construction Staging.
5. Non-Discrimination Policies.
6. Maintenance Standards.
7. Temporary Closures. (Emergency/Public Safety and Maintenance and Repairs.)
8. Operation of the Publicly Accessible Private Improvements.
9. Athletic Events.
10. Vending; Mobile Vendors; Pop-Up Commercial Uses.
11. Commercial Areas; Designated Seating/Dining Areas.
12. Signs.
13. Arrest or Lawful Removal of Persons.
14. Project Security.
15. Removal of Obstructions and Unattended Property.
16. Temporary Structures.
17. Public Restrooms.
18. City Joint Use.

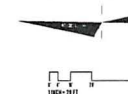
Exhibit D

Phase 1 Improvements

[see following pages]



Offsite Phase 1 Section Notes:
Conceptual sections represent the anticipated construction sequencing of the offsite improvements to support potential partial bond releases.



THE
RISE

Client
VALLCO PROPERTY HOLDINGS
2400 EL CAMINO REAL, SUITE 400
DUBLIN, CA 94568
TEL: 415.244.1000

Architecture
KIMLEY-HORN FOR ARCHITECTS PC
11401 LINDSEY STREET
NEW YORK, NY 10001
TEL: 212.267.4000

Architecture
KIMLEY-HORN FOR ARCHITECTS PC
2 AMERICAN CENTER
SAN FRANCISCO, CA 94111
TEL: 415.444.4444

Landscape Architecture
CLM
1411 JONES STREET, BERKELEY, CALIF. 94709
TEL: 415.841.1111

Civil
DINER
1000 WILSON AVENUE, SUITE 200
DUBLIN, CA 94568
TEL: 415.444.4444

Lighting Design
HUE
1101 10TH STREET, 2ND FLOOR
NEW YORK, NY 10001
TEL: 212.201.5100

Environmental
LANDSCAPE
1 ALAMOSA BLVD., SUITE 100
SAN JOSE, CA 95126
TEL: 415.434.4444

Traffic
KIMLEY-HORN
1000 WILSON AVENUE, SUITE 200
DUBLIN, CA 94568
TEL: 415.444.4444

SB-35 Conceptual Offsite Design

Revision

REV. 1: 10/10/2014, 10/10/2014, 10/10/2014

REV. 2: 10/10/2014, 10/10/2014, 10/10/2014

REV. 3: 10/10/2014, 10/10/2014, 10/10/2014

REV. 4: 10/10/2014, 10/10/2014, 10/10/2014

REV. 5: 10/10/2014, 10/10/2014, 10/10/2014

REV. 6: 10/10/2014, 10/10/2014, 10/10/2014

REV. 7: 10/10/2014, 10/10/2014, 10/10/2014

REV. 8: 10/10/2014, 10/10/2014, 10/10/2014

REV. 9: 10/10/2014, 10/10/2014, 10/10/2014

REV. 10: 10/10/2014, 10/10/2014, 10/10/2014

REV. 11: 10/10/2014, 10/10/2014, 10/10/2014

REV. 12: 10/10/2014, 10/10/2014, 10/10/2014

REV. 13: 10/10/2014, 10/10/2014, 10/10/2014

REV. 14: 10/10/2014, 10/10/2014, 10/10/2014

REV. 15: 10/10/2014, 10/10/2014, 10/10/2014

REV. 16: 10/10/2014, 10/10/2014, 10/10/2014

REV. 17: 10/10/2014, 10/10/2014, 10/10/2014

REV. 18: 10/10/2014, 10/10/2014, 10/10/2014

REV. 19: 10/10/2014, 10/10/2014, 10/10/2014

REV. 20: 10/10/2014, 10/10/2014, 10/10/2014

REV. 21: 10/10/2014, 10/10/2014, 10/10/2014

REV. 22: 10/10/2014, 10/10/2014, 10/10/2014

REV. 23: 10/10/2014, 10/10/2014, 10/10/2014

REV. 24: 10/10/2014, 10/10/2014, 10/10/2014

REV. 25: 10/10/2014, 10/10/2014, 10/10/2014

REV. 26: 10/10/2014, 10/10/2014, 10/10/2014

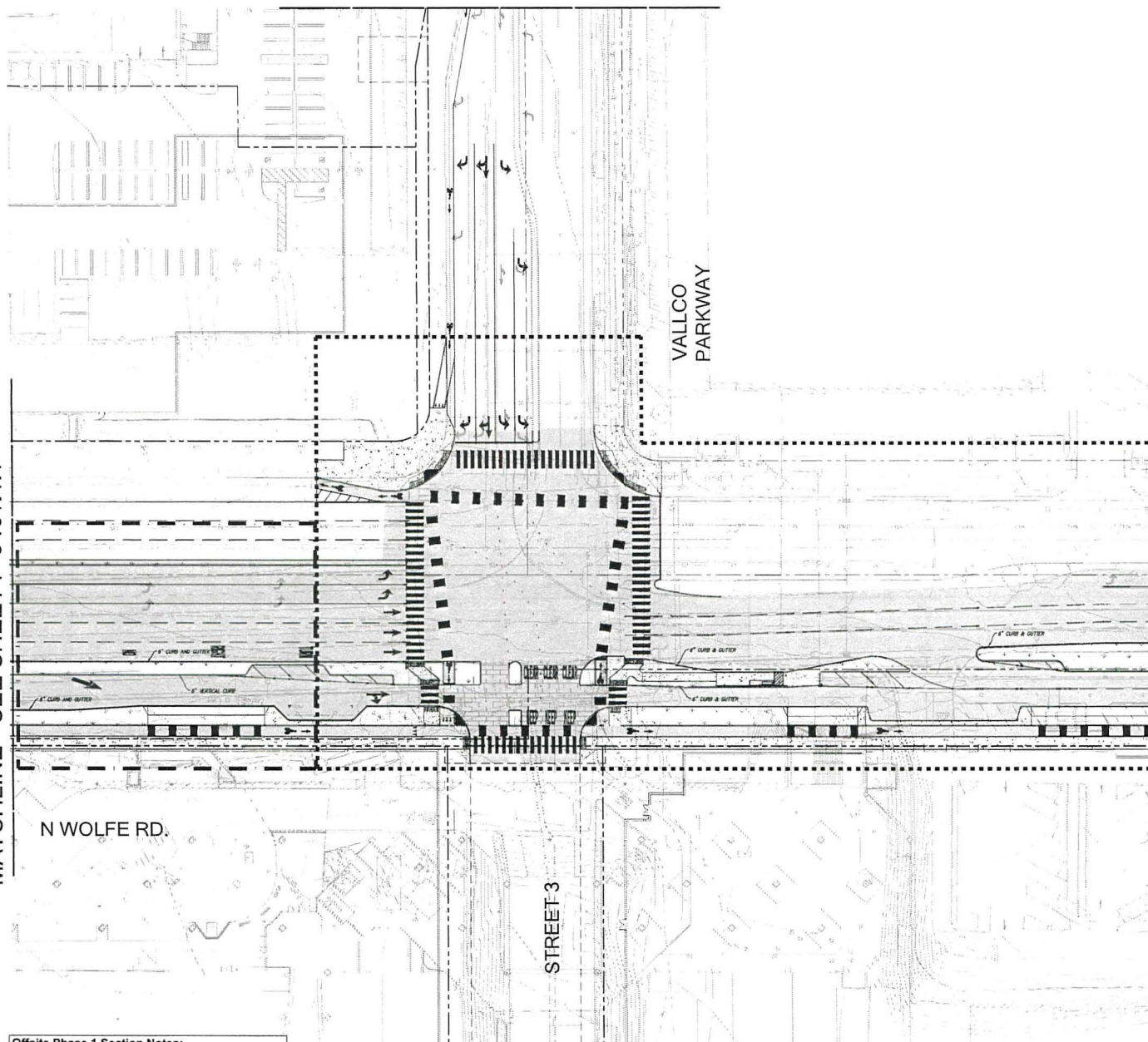
REV. 27: 10/10/2014, 10/10/2014, 10/10/2014

REV. 28: 10/10/2014, 10/10/2014, 10/10/2014

REV. 29: 10/10/2014, 10/10/2014, 10/10/2014

REV. 30: 10/10/2014, 10/10/2014, 10/10/2014

MATCHLINE - SEE SHEET P-0401.1.1



MATCHLINE - SEE SHEET P-0401.3.1

Offsite Phase 1 Section Notes:
Conceptual sections represent the anticipated construction sequencing of the offsite improvements to support potential partial bond releases.

LEGEND

- APPROX. LIMIT OF SECTION 1
- APPROX. LIMIT OF SECTION 2
- APPROX. LIMIT OF SECTION 3
- LANDSCAPING
- CONCRETE SIDEWALK
- BIKE PATH
- AC PAVEMENT
- CALTRANS INTERCHANGE IMPROVEMENTS (FOR REFERENCE ONLY)

NOT FOR CONSTRUCTION

PHASE 1 - OFFSITE IMPROVEMENT EXHIBIT

P-0401.2.1

N WOLFE RD.

14' VERTICAL CURB

10' INLET TO MAIN EXISTING LATERAL

STREET 2

MATCHLINE - SEE SHEET P-0401.4.

STEVENS CREEK BOULEVARD

MATCHLINE - SEE SHEET P-0401.4.1

	APPROX. LIMIT OF SECTION 1
	APPROX. LIMIT OF SECTION 2
	APPROX. LIMIT OF SECTION 3
	LANDSCAPING
	CONCRETE SIDEWALK
	BIKE PATH
	AC PAVEMENT

Offsite Phase 1 Section Notes:
Conceptual sections represent the anticipated construction sequencing of the offsite improvements to support potential partial bond releases.

Client
VALLO PROPERTY GROUP INC. 162
2001 CANAL BLVD., SUITE 410
FILADELPHIA, PA 19106
TEL: 215.564.1100

Architecture
KIMBERLY HENKIN FOR ARCHITECTURE
101 WEST 42ND STREET
NEW YORK, NY 10018
TEL: 212.757.4300

Architecture
KIMBERLY HENKIN FOR ARCHITECT
2 FARMACIA CENTER
SAN FRANCISCO, CA 94111
TEL: 415.434.1411

Landscape Architecture
SLP
10000 KENNEDY BOULEVARD, SUITE 100
PHILADELPHIA, PA 19152
TEL: 215.484.8001

Civil
SARGES
100 W. LAMAR STREET BOULEVARD, SUITE 200
CHAMBERLAIN, CA 95115
TEL: 916.483.4400

Lighting Design
HILL LIPF DESIGN
100 WEST 42ND STREET "PFLUGER"
NEW YORK, NY 10011
TEL: 212.512.0100

Geotechnical
LAWSON
100 W. LAMAR BOULEVARD, SUITE 200
CHAMBERLAIN, CA 95115
TEL: 916.483.4400

Traffic
KIMBLE-HORN
10 SOUTH MARSHALL BOULEVARD, SUITE 1002
SAN JOSE, CA 95119
TEL: 415.435.1000

SB-35 Conceptual Offsite Design

Reynolds

Revised 5/20/25 C:\MSOFT\PROL\OFFICE\OFFICE.DOC 01/29/02

Figure 1 consists of two diagrams. The top diagram shows a 1D array B with elements 10, 14, 12, 11. To the right of the array is a vertical dimension labeled 4. The bottom diagram shows a 2D array A with elements 10, 8, 5, 2, 9, 7, 4, 1, 6, 3. To the right of the array is a vertical dimension labeled 10.

**NOT FOR
CONSTRUCTION**

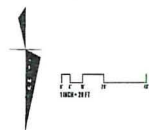
trial 100	trial 10	trial 10	trial 10
trial 100	trial 10	trial 10	trial 10

**PHASE 1 - OFFSITE
IMPROVEMENT EXHIBIT**

P-0401.3.1

© 2004 Blackwell Publishing Ltd, *Journal of Internal Medicine* 255: 105–112

MATCHLINE - SEE SHEET P-0401.3.1



STEVENS CREEK BOULEVARD

STREET A

LEGEND

-
- APPROX. LIMIT OF SECTION 1
- APPROX. LIMIT OF SECTION 2
- APPROX. LIMIT OF SECTION 3
- LANDSCAPING
- CONCRETE SIDEWALK
- BIKE PATH
- AC PAVEMENT
- CALTRANS
INTERCHANGE IMPROVEMENTS
(FOR REFERENCE ONLY)

Offsite Phase 1 Section Notes:
Conceptual sections represent the anticipated construction sequencing of the offsite improvements to support potential partial bond releases.

THE RISE

Client
VALLO PROPERTY COMM'L
10010 CHAMBERLAIN, SUITE 410
PALMDALE, CA 93550
TEL: 462-6444 / 1-800

Architecture
ROBIN PENDERGAST FOR ASSOCIATES PC
10000 CHAMBERLAIN, SUITE 410
NEW YORK, NY 10026
TEL: 212-512-1101

Architecture
ROBIN PENDERGAST FOR ASSOCIATES PC
10000 CHAMBERLAIN, SUITE 410
SAN FRANCISCO, CA 94111
TEL: 415-438-1400

Landscape Architecture
USPA
10000 CHAMBERLAIN BOULEVARD, SUITE 1000
PALMDALE, CA 93550
TEL: 462-6444

Civil
SACKS
10000 CHAMBERLAIN BOULEVARD, SUITE 200
CHAMPELL, CA 94115
TEL: 415-438-1400

Lighting Design
ONE LLP, 575-5700
10000 CHAMBERLAIN BOULEVARD, SUITE 410
NEW YORK, NY 10026
TEL: 212-512-1101

Geotechnical
LAWSON
10000 CHAMBERLAIN BOULEVARD, SUITE 510
SAN JOSE, CA 95111
TEL: 415-438-1400

Traffic
HARLEY-HOPKIN
10000 CHAMBERLAIN BOULEVARD, SUITE 200
SAN JOSE, CA 95111
TEL: 415-438-1400

SB-35 Conceptual Offsite Design

Revision

MS-W-1	MS-10	CLM&P/Down	OFF/5/10	01/05/2010
MS-W-2	MS-10	CLM&P/Down	OFF/5/10	01/06/2010

Ed. Par



16	12	of each
----	----	---------

14 11

11	10	8	5	2
----	----	---	---	---

100 JOURNAL OF DOCUMENTATION

Page 8 of 10

NOT FOR

CONSTRUCTION

100

[illegible]

Case	7	8
------	---	---

PHASE 4 - OFFSITE

IMPROVEMENT EXHIBIT

Journal of Management Education 30(6)p.789-806

|P-0401.4.1

© 2003 Blackwell Publishing Ltd, *Journal of Internal Medicine* 253: 103–110
