

**City of Cupertino
SUBDIVISION IMPROVEMENT AGREEMENT**

20860 McClellan Road, Cupertino, CA 95014
APN: 359-20-030

This agreement ("Agreement") is made and entered into this 22 day of January, 2024, by and between the City OF CUPERTINO, a municipal corporation of the State of California, ("City"), and AlphaMcClellan LLC, a California limited liability company ("Subdivider"), for a seven-lot residential subdivision located at 20860 McClellan Road, Cupertino, CA (APN 359-20-030).

RECITALS

1. Pursuant to the Subdivision Map Act of the State of California and the City's local ordinances and regulations relating to subdivision maps, Subdivider has presented to the City for approval a final subdivision map, Tract No. 10608 (the "Map") for the subdivision of certain real property in the City of Cupertino, designated as Final Map for a seven-lot residential subdivision at 20860 McClellan Road (the "Subdivision").

2. Subdivider has prepared and City has approved the following plans and related specifications (the "Improvement Plans") for construction, installation and completion of certain public improvements in connection with the Subdivision (the "Improvements"). The Improvement Plans are on file in the City's Department of Public Works and are incorporated into this Agreement by this reference.

3. Subdivider, has also offered for dedication to City certain streets, ways and easements delineated on the Map (the "Dedications").

4. On _____, 20____, the City Council approved the Map and offers of dedication shown on the Map, conditioned on Subdivider entering into this Agreement to construct and complete the Improvements.

NOW, THEREFORE, in consideration of City's approval of the Map, and in order to insure satisfactory performance by Subdivider of its obligations under the Subdivision Map Act and the Cupertino Municipal Code, City and Subdivider agree as follows:

1. SUBDIVIDER'S OBLIGATION TO CONSTRUCT IMPROVEMENTS

a. Completion of Improvements. Subdivider, at its own expense, and in compliance with all provisions of the Subdivision Map Act, the Cupertino Municipal Code, the Map and any amendments thereto, and other applicable laws, shall perform the furnishing, installation, and construction of all required Improvements in conformance with the Improvement Plans ("the Work"). The decision of the City Engineer shall be final as to whether any material or workmanship meets the applicable plans, specifications, and standards as set forth herein and in the Improvement Plans.

b. Compliance with applicable laws and rules. Subdivider shall construct the Improvements in accordance with the most current applicable standards and specifications of the Department of Public Works, the State of California including without limitation the California Department of Transportation

(collectively the "State Specifications"), and in accordance with the specifications of the Cupertino Sanitary District where applicable. 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 take precedence over and be used in lieu of such conflicting portions.

c. Repair and replacement of damaged public facilities. Subdivider 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 the Work. Subdivider shall promptly notify the City Engineer of such damage and shall obtain the City Engineer's approval of all repair and replacement of damaged facilities.

d. Subdivider's responsibility until City's acceptance. Until City accepts the Improvements, Subdivider shall be responsible for the care and maintenance of such Improvements and shall bear all risks of loss or damage to the Improvements. City shall not have any liability for any accident, loss or damage to the Improvements prior to their completion and acceptance by City. City's acceptance of the Improvements shall not constitute a waiver of any defects in the Improvements or Subdivider's obligation to repair such defects as provided in Section 8 of this Agreement.

e. Time for installation of Improvements. Subdivider shall install and complete the Improvements within one (1) year from the date of execution of this Agreement, or such longer period as may be specifically authorized in writing by the City Engineer pursuant to section 1(f) of this Agreement. In the event the Subdivider fails or refuses to complete the Work within the specified period of time, the City is hereby authorized to complete the Work in whatever manner the City shall decide. In the event the City completes the Work, the City may recover all costs incurred thereby from the Subdivider or, pursuant to bonds posted as set out in Section 5 below, the Subdivider's surety, or both. No final inspection shall be granted or street improvements shall not be accepted unless all the requirements for safety purposes are installed, such as sidewalks, handicap ramps, street lights, etc.

f. Time extensions. The City Engineer, in his or her sole discretion, may approve, in writing, a request for extension of the time required for the Work upon a showing of good cause by the Subdivider. Good cause may include, without limitation, delay resulting from an act of the City, acts of God, strikes, boycotts, or similar job actions which prevent the conduct of the Work. In approving a request for time extension, the City Engineer may impose reasonable related conditions, such as requiring Subdivider 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 Improvements, as determined by the City Engineer.

g. Permits. Subdivider shall, at its own expense, obtain, and comply with the conditions of all necessary permits and licenses for the construction of the Improvements and give all necessary notices and pay all fees and taxes required by law.

2. ACQUISITION AND DEDICATION OF EASEMENTS OR RIGHTS OF WAY

a. Subdivider offers to dedicate the real property shown on Tract No. 10608 as filed for record with the County of Santa Clara, which is made a part hereof by reference (the "Dedicated Property"). Upon the

condition precedent that the Subdivider shall perform each and every covenant and condition of this Agreement, the City agrees to accept said real property offered for dedication.

The Dedicated Property shall be free and clear of all liens or encumbrances except those which the City agrees to waive in writing. Subdivider agrees not to revoke this offer of dedication, and to keep said offer open until the City accepts offer. Upon execution of this Agreement, Subdivider agrees to deliver a properly executed grant deed to the City of the real property described in Tract No. 10608, and such other executed conveyances, or instruments necessary to convey clear title as herein required. The Subdivider shall provide, at the Subdivider's sole cost and expense, to the City at the time of acceptance of dedication and recordation of deed, (1) a preliminary title report issued by a title insurance company relating to the property offered for dedication, and (2) a standard policy of title insurance issued by a title insurance company and insuring the City, showing that the Dedicated Property is free and clear of all liens or encumbrances except any that the City expressly agreed to waive.

b. Subdivider shall acquire any easement and right-of-way necessary for completion of the Project at its own cost and expense. However, that in the event eminent domain proceedings are required, the City for the purpose of securing said easement and right-of-way, Subdivider 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.

3. INSPECTION AND FINAL ACCEPTANCE

a. Subdivider shall at all times maintain proper facilities and safe access for inspection of the Improvements by the City Engineer.

b. Upon completion of the Improvements in compliance with the Improvement Plans and all applicable standards, the City Engineer or, for facilities to be accepted by the Cupertino Sanitary District, the District Engineer, shall perform a final inspection to determine the completeness of the Improvements. If the City and/or District Engineer determines the Improvements are complete and meet all applicable standards and specifications, he or she shall issue a Notice of Completion pursuant to Cupertino City Code section 18.32.400.

c. Subdivider shall bear all costs of inspection and certification for acceptance. Acceptance by the City Engineer and/or District Engineer shall not constitute a waiver by the City and/or Cupertino Sanitary District of any defects in the Improvements.

4. GROUNDWATER RIGHTS

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

5. SECURITY

a. Required Security. Prior to execution of this Agreement, Subdivider shall provide the following security to City in one of the forms set out in Section 5.b below.

(1) Faithful performance. Security for faithful performance of this Agreement in the amount set forth in Part A of Exhibit A.

(2) Labor and Materials. Security for labor and materials in the amount set forth in Part B of Exhibit A.

b. Form of Security. Subdivider 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 the Subdivider 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 the Subdivider's failure to do so.

In lieu of a surety bond, the Subdivider may, with the City's consent, which the City may grant or withhold in its sole and absolute 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 Subdivider set forth in Parts A and/or B of Exhibit A. In the event that the Subdivider 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.

c. Release of Security. Security shall be released as follows:

- (1) Upon the Director's issuance of a Notice of Completion for the Infrastructure in accordance with Section 3(b), 90 percent of the faithful performance security shall be released. The Security remaining following such release is referred to herein as the "Remaining Security."
- (2) Release of the remaining 10 percent of the faithful performance security at one year from acceptance, or if the City issues a written notice or notices of defect pursuant to Section 8, one year after all such defects have been corrected, provided that prior to the release of the remaining amount the Director of Public Works shall have certified that no claims regarding the workmanship or quality of the Infrastructure have been filed against the City, all such claims have been satisfied, withdrawn, or otherwise secured by bond or other security approved by the City Engineer.
- (3) Release of the entire labor and material security at six months from acceptance, or if the City issues a written notice or notices of defect pursuant to Section 8, six months after all such defects have been corrected, provided that prior to the release of the security, the Director of Public Works shall have certified that no claims by any contractor, subcontractor or person furnishing labor, materials or equipment for the Infrastructure has been filed against the City. In the event that claims have been filed, the land and materials security may 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, plus an amount reasonably determined by the City Engineer to be required to assure the performance of any other obligations secured by the security. The balance of the security shall be released upon settlement or release of all claims and obligations for which the security was given.

6. PAYMENT OF REQUIRED FEES

a. Permits and licenses. Subdivider shall, at its sole expense, obtain all necessary permits and licenses for the construction and installation of the Improvements, give all necessary notices, 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.

b. Fees. The Parties acknowledge that as a precondition to the execution of this Agreement, Subdivider has paid fees in the amounts set forth in Exhibit A, including but not limited to the following:

- (1) Inspection Fees. Subdivider shall pay all necessary direct expenses for inspection, checking, etc. incurred by City in connection with said Project, and that Subdivider shall have deposited sufficient funds with City, prior to execution of this Agreement. Should construction costs vary materially from the estimate from which this sum is calculated, the City Engineer shall notify Subdivider of any additional sum due and owing as a result thereof.
- (2) Storm Drainage Fee. Subdivider shall deposit with the City, prior to execution of this Agreement, a storm drainage charge in connection with the said Project in accordance with the requirements established in Resolution 4422, March 21, 1977.
- (3) Map Checking Fee. Subdivider shall deposit with City, prior to execution of this Agreement, for office checking of final map and field checking of street monuments, in compliance with Section 4:1 of Ordinance No. 47 (Revised 12/04/61) of City.
- (4) Park Fee. Subdivider shall pay such fees and/or dedicate such land to the City, prior to execution of this Agreement, as is required within Section 18.24.030, Park Land Dedication, Cupertino Municipal Code. Park fees are calculated in accordance with action originally adopted by the City Council on March 19, 1991 and Chapter 14.05 or Section 18.24.030 of the Cupertino Municipal Code and as subsequently amended.
- (5) Transportation Impact Fee. Subdivider shall pay such fees, prior to execution of this Agreement, as is required under Chapter 14.02 of the Cupertino Municipal Code.
- (6) Reimbursement Fee. Subdivider shall deposit with the City, prior to execution of this Agreement, a reimbursement fee for any street improvements that have been installed by the City, or by another property owner. Subdivider shall pay the City for the cost of the land at the cost to the City, or another property owner, and shall pay a street improvement reimbursement charge for the improvements which the City or another property owner, installed on the street abutting or included in the benefited property, in an amount equal to the total improvement costs for each particular benefited property as set forth in a reimbursement agreement. Payments for both land and improvements shall include simple interest in the amount of seven percent per year, to be calculated in the following manner:

(i) Land Cost. Interest to accrue from the date the street improvements are accepted by the City to the date the street improvements reimbursement charge is paid, or if the land is purchased by the City for a City project, from the date of purchase to the date the charge is paid.

(ii) Improvement Cost. Interest to accrue from the date the street improvements are accepted by the City to the date the street improvement reimbursement charge is paid, or if installed by the City, from the date installation commenced to the date the charge is paid.

(iii) Provided, however, that the interest shall be waived if the adjoining property owner dedicates or has dedicated to the City land necessary for the street improvements, or where no such dedication is necessary.

7. STREET TREE INSTALLATION

Subdivider shall provide funds in the amount specified in Part F of Exhibit A, to the City for purchase and planting of street trees as deemed appropriate by the City Engineer; or shall, at the discretion and at such time as deemed appropriate by the City Engineer, plant street trees in conformance with the standards of the City of Cupertino. The variety, number and location of trees are subject to City's prior approval.

8. MAINTENANCE AND WARRANTY

a. Warranty Period. Subdivider guarantees and warrants the Improvements and agrees to remedy any defects, damages, or imperfections in the Improvements arising from faulty or defective materials or construction of the Improvements for a period of one (1) year after City's acceptance of the Improvements. Subdivider's obligation under this section shall include the repair, replacement, or reconstruction of all irrigation systems and all trees, shrubs, ground cover and landscaping for the required one-year period.

b. Warranty repairs and replacements. If, within the warranty period, the Improvements or any part of the Improvements fail to fulfill any of the requirements of this Agreement or the Improvement Plans, Subdivider shall repair, replace or reconstruct any defective or otherwise unsatisfactory parts of the Improvements without delay and at no cost to City. If (a) Subdivider fails to commence repairs within thirty (30) days of the date of mailed written notice from City, or (b) City determines that public safety requires repair before Subdivider can be notified, City may, at its sole option, perform the required repair itself. Subdivider agrees to pay the cost of any repairs City performs pursuant to this agreement and City may, at its sole option, recover that cost through the security provide under this Agreement and, as to any deficiency after the application of the security, as a lien against Subdivider's property within the Subdivision.

9. SANITARY DISTRICT

Subdivider shall file with the City, upon execution of this Agreement, a letter from the Cupertino Sanitary District stating that the Subdivider has submitted plans for review by the District and that sanitary sewers are available to serve all lots within the Project.

10. GOVERNMENT COSTS

Subdivider shall file with the City, upon execution of this Agreement, substantial evidence that all provisions of Section 66493, Article 8, Chapter 4 of the Government Code, pertaining to special assessments or bonds, have been complied with.

11. UTILITIES

Subdivider shall pay to Pacific Gas and Electric Company, AT&T, and/or appropriate utility companies, all fees required for installation of overhead and/or underground wiring circuits to all electroliers within said property and all fees required for undergrounding as provided in Ordinance No. 331 or subsequently adopted ordinances of City or regulations of the appropriate utilities when the Subdivider 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.

12. HOLD HARMLESS AND INDEMNIFICATION

a. To the fullest extent allowed by law, Subdivider shall indemnify and hold harmless City, its City Council, boards and commissions, officers, officials, agents, employees, servants, consultants and volunteers (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, arising out of or in any way related to Subdivider's performance or nonperformance of his/her duties under this Agreement, or from negligent acts or omissions or willful misconduct of Subdivider, its agents, employees, contractors, or subcontractors. Subdivider shall, at his/her 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 council acceptable to City) in connection with this Agreement or arising out of Subdivider's performance or nonperformance of his/her duties and obligations hereunder, including all claims, demands, causes of action, liability or loss because of or arising out of, in whole or in part, the design and construction of the improvements. This indemnification and agreement to hold harmless shall extend to injuries to persons and damages or taking of property resulting from the design or construction of the Subdivision, and the public improvements described in this Agreement, and in addition, to adjacent property owners as a consequence of the diversion of waters from the design or construction of public drainage systems, streets and other public improvements, except to the extent any of the foregoing is caused by the negligence or willful misconduct of the City or the City's agents, employees and independent contractors.

b. Acceptance by City of the Improvements shall not constitute an assumption by City of any responsibility for any damage covered by this section. City shall not be responsible for the design or construction of the Subdivision or the improvements pursuant to the approved Improvement Plans or map, regardless of any negligent action or inaction taken by the City in approving the plans or map, unless the particular improvement design was specifically required by City over written objection by Subdivider, indicating that the particular improvement design was dangerous or defective and suggested an alternative safe and feasible design, submitted to the City Engineer before approval of the particular improvement design.

c. After City's acceptance of the Improvements, Subdivider shall remain obligated to correct or eliminate any defect in design or dangerous condition created by defects in design or construction, provided however, that Subdivider shall not be responsible for routine maintenance. Provisions of this section shall remain in full force and effect for ten (10) years following City's acceptance of the Improvements. Subdivider acknowledges and agrees that Subdivider shall be responsible and liable for the design and construction of the 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 improvement security shall not be required to cover the provisions of this paragraph beyond the guarantee and warranty period specified in this agreement.

13. INSURANCE

Prior to commencing any of the Work, Subdivider shall procure and maintain for the duration of the Work, plus an additional year from the date of acceptance for the Commercial General Liability coverage specified below, 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 Subdivider, its contractor, agents, representatives, employees or subcontractors.

Coverage shall be at least as broad as:

1. Commercial General Liability (CGL): Insurance Services Office (ISO) Form CG 00 01 covering CGL on an "occurrence" basis, written on a comprehensive general liability form, and must include coverage for liability arising from Subdivider's Contractors acts or omissions, including Contractor's protected coverage, blanket contractual, products and completed operations, vehicle coverage and employer's non-ownership liability coverage, with limits of at least **\$2,000,000** per occurrence. 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, either the general aggregate limit shall apply separately to this project/location (ISO CG 25 03 or 25 04) or the general aggregate limit shall be twice the required occurrence limit.

a. Any available insurance proceeds broader than or in excess of the specified minimum insurance coverage requirements and/or limits shall be made available to the Additional Insured and shall be (1) the minimum coverage/limits specified in this agreement; or (2) the broader coverage and maximum limits of coverage of any insurance policy, whichever is greater.

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

c. 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.

2. Automobile Liability covering owned, hired, and non-owned autos, with limit no less than **\$1,000,000** per accident for bodily injury and property damage.

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.

If Subdivider maintains broader coverage and/or higher insurance limits, City will be entitled to Subdivider's broader coverage and/or higher limits.

The City of Cupertino, its City Council, officers, officials, employees, agents, servants and volunteers 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.

For any claims related to this Agreement or the Work, Subdivider'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 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 allowed to expire 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.

Each required policy must include an endorsement providing that the carrier agrees to waive any right of subrogation it may have against City. Further, Subdivider agrees to waive any rights of subrogation which any of Subdivider's insurers may acquire from Subdivider by virtue of payment of any loss. Subdivider agrees to obtain any endorsement that may be necessary to affect this waiver of subrogation. The Workers' Compensation policy must be endorsed with a waiver of subrogation in favor of the City for all work performed by Subdivider or Subdivider's Contractor, its employees, agents and subcontractors.

Insurance must be issued by insurers licensed in the State of California and with an A.M. Best's financial strength rating of "A VII" or better.

14. ASSIGNMENT

Subdivider shall not assign this agreement without the prior written consent of the City. Any attempted or purported assignment in violation of this paragraph shall be null and void and have no force or effect. The sale or other disposition of the Project shall not relieve Subdivider of its obligations under this agreement. If Subdivider intends to sell the Project or any portion of the Project to any other person or entity, Subdivider may request a novation of this Agreement and substitution of improvement security.

15. 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, to which recording the Parties each hereby consent. 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 Subdivider by this Agreement.

16. DEFAULT, BREACH, AND REMEDIES TO CITY

a. Default. Default of Subdivider shall include, but not be limited to:

- (1) Subdivider's failure to timely commence construction of Public Improvements under this Agreement;
- (2) Subdivider's failure to timely complete construction of the Improvements;
- (3) Subdivider's failure to timely cure any defect in the Improvements;
- (4) Subdivider's failure to perform substantial construction work for a period of 20 consecutive calendar days after commencement of the work;
- (5) Subdivider's insolvency, appointment of a receiver, or the filing of any petition in bankruptcy, either voluntary or involuntary, which Subdivider fails to discharge within 30 days;
- (6) The commencement of a foreclosure action against the Subdivision or a portion thereof, or any conveyance in lieu or in avoidance of foreclosure;
- (7) Subdivider's failure to maintain any insurance policy required under this Agreement; or
- (8) Subdivider's failure to perform any other obligation under this Agreement.

b. The City reserves all remedies available to it at law or in equity for breach of Subdivider's obligations under this Agreement. The City shall have the right, subject to this section, to draw upon or use the appropriate security to mitigate the City's damages in the event of default by Subdivider. The City's right to draw upon or use the security is in addition to any other remedy available to the City. The parties acknowledge that the estimated costs and security amounts may not reflect the actual cost of construction of the improvements and, therefore, the City's damages for Subdivider's default shall be measured by the cost of completing the required improvements. The City may use the sums provided by the security for completion of the Improvements in accordance with the Improvement Plans.

c. In the event that the Subdivider fails to cure any default under this Agreement within twenty (20) days after the City mails written notice of such default to Subdivider and Subdivider's surety, Subdivider authorizes the City to perform the obligations for which Subdivider is in default and agrees to pay the entire cost of such performance by the City.

d. The City may take over the Work and complete the Improvements by contract or by any other method the City deems appropriate, at the expense of Subdivider, and Subdivider's surety shall be liable to the City for any excess cost or damages to the City resulting therefrom. In such event, the City, without liability for so doing, may take possession of and use any of Subdivider's materials, appliances, plant and other property that are at the work site and are necessary to complete the Improvements.

e. Subdivider hereby grants the City an easement over all lands Subdivider owns within the Subdivision, for the purposes of all access, egress, and occupation required to complete the Work in the event that the City exercises its right under this Agreement to do so. Such easement shall terminate without any further action of either Party upon the completion of all of Subdivider's obligations under this Agreement, including for avoidance of doubt, obligations under Section 12.c.

f. Subdivider's failure to comply with the terms of this Agreement constitutes Subdivider's consent for the City to file a notice of violation against all lots in the Subdivision or to rescind or otherwise revert the Subdivision to acreage. Subdivider specifically recognizes that the determination of whether a reversion to acreage or rescission of the Subdivision approval constitutes an adequate remedy for Subdivider's default shall be within the City's sole and absolute discretion. The remedy provided by this Subsection is in addition to all other remedies available to the City, and Subdivider agrees that the choice of remedy or remedies for Subdivider's breach shall be within the City's sole and absolute discretion.

g. In the event that Subdivider fails to perform any obligation under this Agreement, Subdivider 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.

h. 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 Subdivider.

17. SUBDIVIDER NOT AGENT OF CITY

Neither Subdivider nor any of Subdivider's agents or contractors are or shall be considered to be agents of City in connection with the performance of Subdivider's obligations under this Agreement.

18. SUBDIVIDER TO WARN PUBLIC

Until final acceptance of the improvements, Subdivider shall give good and adequate warning to the public of any dangerous condition of the Improvements, and shall take reasonable actions to protect the public from such dangerous condition.

19. NOTICES

All notices, demands, requests or approvals to be given under this Agreement shall be given in writing and conclusively shall be deemed served when delivered personally or on the second business day after the deposit thereof in the United States Mail, postage prepaid, registered or certified, addressed as hereinafter provided.

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

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

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

AlphaMcClellan LLC
97 Boston Avenue
San Jose, CA 95128
Attention: Chun Yi

20. NO VESTING OF RIGHTS

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

21. TIME IS OF THE ESSENCE

Time is of the essence in the performance of this agreement by subdivider.

22. NONDISCRIMINATION

Subdivider, its agents, employees, contractors and subcontractors shall not discriminate in any way against any person on the basis of age, sex, race, color, religion, sexual orientation, actual or perceived gender identity, disability, ethnicity, or national origin in connection with or related to the performance of this Agreement.

23. 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 which 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 with the courts of the County of Santa Clara, State of California.

If City sues to compel Subdivider's performance of this Agreement, or to recover damages or costs incurred in completing or maintaining the work on the Improvements, Subdivider agrees to pay all attorneys' fees and other costs and expenses of litigating incurred by the City, even if Subdivider subsequently resumes and completes the work.

24. RELATIONSHIP OF PARTIES

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

25. 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.

26. INTEGRATED AGREEMENT

This Agreement represents the full and complete understanding of every kind or nature whatsoever between the parties hereto, and all preliminary negotiations and agreements of whatsoever kind or nature 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 execution signed by both City and Subdivider. All unchecked boxes do not apply to this Agreement.

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:

Christopher D. Jensen
City Attorney

CITY OF CUPERTINO:

Chad Mosley
Director of Public Works & City Engineer

SUBDIVIDER:

AlphaMcClellan LLC, a California limited liability company

By: AlphaX RE Capital Inc., a California corporation



Chun Yi
Manager & Authorized Signatory

Attach Notary acknowledgement for Subdivider's signatures:

Attachment:

Exhibit "A" - Schedule of Bonds, Fees, Deposits

CALIFORNIA ALL-PURPOSE CERTIFICATE OF ACKNOWLEDGMENT

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 SANTA CLARA

On JAN 22, 2024 before me, ADA SHOCKLEY, Notary Public,
(Here insert name and title of the officer)

personally appeared CHUN YI

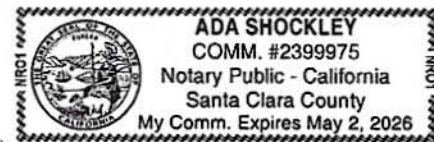
who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), 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.

Ada Shockley
Signature of Notary Public

(Notary Seal)



ADDITIONAL OPTIONAL INFORMATION

DESCRIPTION OF THE ATTACHED DOCUMENT

(Title or description of attached document)

(Title or description of attached document continued)

Number of Pages _____ Document Date _____

(Additional information)

CAPACITY CLAIMED BY THE SIGNER

- ☐ Individual (s)
☐ Corporate Officer

(Title)

- ☐ Partner(s)
☐ Attorney-in-Fact
☐ Trustee(s)
☐ Other _____

INSTRUCTIONS FOR COMPLETING THIS FORM

Any acknowledgment completed in California must contain verbiage exactly as appears above in the notary section or a separate acknowledgment form must be properly completed and attached to that document. The only exception is if a document is to be recorded outside of California. In such instances, any alternative acknowledgment verbiage as may be printed on such a document so long as the verbiage does not require the notary to do something that is illegal for a notary in California (i.e. certifying the authorized capacity of the signer). Please check the document carefully for proper notarial wording and attach this form if required.

- State and County information must be the State and County where the document signer(s) personally appeared before the notary public for acknowledgment.
- Date of notarization must be the date that the signer(s) personally appeared which must also be the same date the acknowledgment is completed.
- The notary public must print his or her name as it appears within his or her commission followed by a comma and then your title (notary public).
- Print the name(s) of document signer(s) who personally appear at the time of notarization.
- Indicate the correct singular or plural forms by crossing off incorrect forms (i.e. he/she/they, is/are) or circling the correct forms. Failure to correctly indicate this information may lead to rejection of document recording.
- The notary seal impression must be clear and photographically reproducible. Impression must not cover text or lines. If seal impression smudges, re-seal if a sufficient area permits, otherwise complete a different acknowledgment form.
- Signature of the notary public must match the signature on file with the office of the county clerk.
 - ❖ Additional information is not required but could help to ensure this acknowledgment is not misused or attached to a different document.
 - ❖ Indicate title or type of attached document, number of pages and date.
 - ❖ Indicate the capacity claimed by the signer. If the claimed capacity is a corporate officer, indicate the title (i.e. CEO, CFO, Secretary).
- Securely attach this document to the signed document

Exhibit A
SCHEDULE OF BONDS, FEES, AND DEPOSITS

Street Improvement Category:

PART A.	Faithful Performance Bond:
	\$148,800.00
PART B.	Labor and Material Bond:
	\$148,800.00
PART C.	Checking and Inspection Fee:
	\$7,440.00
PART D.	Transportation Impact Fee:
	\$33,985.00
PART E.	Storm Drainage Fee:
	\$7,375.00
PART F.	Street Tree Fee:
	\$1,443.00
PART G.	Map Checking Fee:
	\$12,306.00
PART H.	Park Fee:
	\$525,000.00
PART I.	Encroachment Permit Fee
	\$3,304.00
PART J.	Stormwater Management Plan Fee
	\$1,670.00
PART K.	Grading Permit Fee
	\$14,938.00
PART L.	Grading Bond
	\$250,000.00