ATTACHMENT B

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AND WHEN RECORDED RETURN TO:

City of Cupertino
10300 Torre Avenue
Cupertino, CA 95014-3202

Attention: City Manager

Record for the Benefit of
The City of Cupertino
Pursuant to Government Code Section 27383

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DEVELOPMENT AGREEMENT

FOR THE HAMPTONS

BY AND BETWEEN

CITY OF CUPERTINO

AND

IAC AT CUPERTINO LLC
a Delaware Limited Liability Company

Effective Date: August 4, 2016

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DEVELOPMENT AGREEMENT

This Development Agreement ("**Agreement**"), dated as of August 4, 2016 ("**Effective Date**"), is entered into pursuant to the Development Agreement Law, by and between the CITY OF CUPERTINO, a California municipal corporation ("**City**") and IAC AT CUPERTINO LLC, a Delaware limited liability company ("**Developer**"). Developer and City are referred to individually in this Agreement as a "**Party**" and collectively as the "**Parties.**"

RECITALS

This Agreement is entered into on the basis of the following facts, understandings and intentions of the Parties. The following recitals are a substantive part of this Agreement; capitalized terms used herein and not otherwise defined are defined in Article 1 of this Agreement.

A. In order to strengthen the public planning process, encourage private participation in comprehensive planning, and reduce the economic costs and risks of development, the Legislature of the State of California enacted section 65864 *et seq.* of the Government Code ("**Development Agreement Statute**") which authorizes a city and a developer having a legal or equitable interest in real property to enter into a binding, long-term development agreement establishing certain development rights in the property.

B. In accordance with the Development Agreement Statute, the City Council of the City of Cupertino enacted Municipal Code section 19.144.010 *et seq.* ("**Development Agreement Regulations**"), which authorize the execution of development agreements and set forth the required contents and form of those agreements. The provisions of the Development Agreement Statute and the City's Development Agreement Regulations are collectively referred to herein as the "**Development Agreement Law.**"

C. Developer is the owner of that certain real property of approximately 12.44 acres in size (the "**Property**") more particularly described and depicted in Exhibits A and B attached hereto and incorporated herein. The Property is currently developed with 342 residential apartments currently owned and operated by the Developer.

D. Developer has submitted applications to the City for a Development Permit (DP-2015-04) (the "**Development Permit**"), an Architectural and Site Approval Permit (ASA-2015-13) (the "**Architectural and Site Approval Permit**"), a Use Permit (U-2015-05) (the "**Use Permit**"), a Tree Removal Permit (TR-2015-21) (the "**Tree Removal Permit**"), and a Development Agreement (DA-2015-01) (the "**Development Agreement**"), plus further applications for approvals necessary or convenient to develop the Property. These applications are in furtherance of the request by the Developer to redevelop an existing 342 unit apartment community on the Property with 942 apartment homes (600 Net New Residential Units), approximately 32,000 square feet of resident amenity space, and associated facilities and infrastructure ("**Project**").

E. The Project is the subject of a Mitigated Negative Declaration ("**MND**") prepared pursuant to the California Environmental Quality Act ("**CEQA**") (Public Resources Code

section 21000 *et seq.*). The MND is tiered from the General Plan EIR in accordance with Sections 15152 and 15168 of the CEQA Guidelines and CEQA Section 21094.

F. The Planning Commission on May 10, 2016 recommended to the City Council certification of the MND, and approval of the Development Permit, the Architectural and Site Approval Permit, the Use Permit, the Tree Removal Permit, and the Development Agreement, with the recommendation to negotiate the extension of the term of the Original Declaration and consider a reduction in Housing Impact Fees in exchange for additional Affordable Units by adoption of Resolutions Nos. DP-2015-04, ASA-2015-13, U-2015-05, TR-2015-21, and DA-2015-01.

G. Prior to or concurrently with approval of this Agreement, the City has taken or will take actions to review and plan for the future development and use of the Project ("**Existing Approvals**"). These include:

1. Certification of the MND by Resolution No. 16-065 adopted by the City Council on June 21, 2016.

2. Approval of the Development Permit by Resolution No. 16-065 adopted by the City Council on June 21, 2016;

3. Approval of the Architectural and Site Approval Permit by Resolution No. 16-066 adopted by the City Council on June 21, 2016;

4. Approval of the Use Permit by Resolution No. 16-067 adopted by the City Council on June 21, 2016; and

5. Approval of the Tree Removal Permit by Resolution No. 16-068 adopted by the City Council on June 21, 2016.

H. It is the intent of City and Developer to establish certain conditions and requirements related to review and development of the Project, which are or will be the subject of subsequent development applications and land use entitlements and this Agreement.

I. City specifically finds, as required by Municipal Code section 19.144.110, that the Agreement will promote orderly growth and quality development in accordance with the goals and policies set forth in the General Plan; is compatible with the uses authorized in, and the regulations prescribed for, the district in which the Property is located; will promote the public convenience, general welfare, and good land use practice; will not be detrimental to the health, safety and general welfare; will not adversely affect the orderly development of property or the preservation of property value; and will promote and encourage the development of the Project by providing a greater degree of requisite certainty.

J. City and Developer have reached mutual agreement and desire to voluntarily enter into this Agreement to facilitate development of the Project subject to the conditions and requirements set forth herein.

K. City has given the required notice of its intention to adopt this Agreement and has conducted public hearings thereon pursuant to Government Code section 65867 and Municipal Code section 19.144.090. The City has reviewed and evaluated this Agreement in accordance with the Development Agreement Law and found that the provisions of this Agreement and its purposes are consistent with the Development Agreement Law and the goals, policies, standards and land use designations specified in the General Plan.

L. On June 21, 2016, the City Council introduced Ordinance No. 16-2144, approving this Agreement and authorizing its execution, and adopted that Ordinance on July 5, 2016 (the "**Enacting Ordinance**"). The Enacting Ordinance became effective on August 4, 2016.

AGREEMENT

NOW, THEREFORE, in consideration of the mutual covenants and promises contained herein and other valuable consideration, the Parties hereby agree as follows:

ARTICLE 1
DEFINITIONS

1.1 Definitions.

"***Administrative Agreement Amendment***" is defined in Section 8.3.1.

"***Administrative Project Amendment***" is defined in Section 8.2.1.

"***Affiliated Party***" is defined in Section 10.1.

"***Affordable Housing Agreement***" is defined in Section 3.13.4.

"***Affordable Units***" is defined in Section 3.13.1.

"***Agreement***" shall mean this Development Agreement between City and Developer, including all Exhibits hereto.

"***Applicable City Regulations***" means (a) all City ordinances, rules, regulations, official policies, standards and specifications set forth in this Agreement and the Existing Approvals, including the specific conditions of approval adopted with respect to the Existing Approvals; (b) with respect to matters not addressed by this Agreement or the Existing Approvals but governing permitted uses of the Property; building locations, sizes, densities, intensities, design and heights; site design, setbacks, lot coverage and open space; parking; and Exactions, those ordinances, rules, regulations, official policies, standards and specifications in force and effect on the Effective Date; and (c) with respect to all other matters, including building, plumbing, mechanical and electrical codes, the ordinances, rules, regulations, official policies, standards and specifications in force and effect as may be enacted, adopted and amended from time to time, including New City Laws, except those in conflict with this Agreement or the Existing Approvals.

*"**Applicable Law**"* means the Applicable City Regulations and all State and Federal laws and regulations applicable to the Property and the Project as enacted, adopted and amended from time to time. City laws, rules, regulations and policies applicable to the Property and/or the Project are further described in Section 3.3.

*"**Architectural and Site Approval Permit**"* is defined in Recital D.

*"**Assignee**"* is defined in Section 10.1.

*"**Assignment**"* is defined in Section 10.1.2.

*"**CEQA**"* means the California Environmental Quality Act, California Public Resources Code section 21000, *et seq.*, as amended from time to time.

*"**CEQA Guidelines**"* means the State CEQA Guidelines (California Code of Regulations, Title 14, section 15000, *et seq.*), as amended from time to time.

*"**Certificate**"* is defined in Section 6.1.4.

*"**Changes in the Law**"* is defined in Section 3.9.

"***Civic Facilities Payment***" is defined in Section 5.1.1.1.

*"**City**"* means the City of Cupertino.

*"**City Council**"* means to the City Council of the City of Cupertino.

*"**City Manager**"* means the City's City Manager or his or her designee.

*"**City Parties**"* means and includes City and its elected and appointed officials, officers, employees, contractors and representatives.

"***Citywide Transportation Impact Fee***" is defined in Section 4.1.4.1.

"***Claims***" means liabilities, obligations, orders, claims, damages, fines, penalties and expenses, including attorneys' fees and costs.

*"**Connection Fees**"* means those fees charged by City on a citywide basis or by a utility provider to utility users as a cost for connecting water, sanitary sewer, and other applicable utilities, except for any such fee or portion thereof that constitutes an Impact Fee, as defined below.

"***Construction Tax***" is defined in Section 4.4.

*"**Consumer Price Index**"* shall mean the United States Department of Labor's Bureau of Labor Statistics Consumer Price Index, All Urban Consumer, All Items, San Francisco-Oakland-San Jose, California, or the successor of such index.

*"**Default**"* is defined in Section 12.1.

*"**Developer**"* means IAC at Cupertino LLC, a Delaware limited liability company and its permitted successor and assigns.

*"**Development Agreement**"* is defined in Recital D.

*"**Development Agreement Law**"* is defined in Recital B.

*"**Development Agreement Regulations**"* is defined in Recital B.

*"**Development Agreement Statute**"* is defined in Recital A.

*"**Development Permit**"* is defined in Recital D.

*"**Development Project**"* means a development project as defined by section 65928 of the California Government Code. Notwithstanding section 65928 of the California Government Code, Development Project shall also include all ministerial approvals required to carry out, construct, reconstruct, and occupy such a development project.

*"**Effective Date**"* means the date that this Agreement becomes effective as determined under Section 2.1.

*"**Enacting Ordinance**"* refers to the Ordinance identified in Recital L.

*"**Exactions**"* means exactions that may be imposed by the City as a condition of developing the Project, including requirements for acquisition, dedication or reservation of land; and obligations to construct on-site or off-site public and private infrastructure improvements such as roadways, utilities or other improvements necessary to support the Project, whether such exactions constitute subdivision improvements, mitigation measures in connection with environmental review of the Project, or impositions made under Applicable City Regulations. For purposes of this Agreement, Exactions do not include Impact Fees.

"***Existing Affordable Units***" is defined in Section 3.13.1.

"***Existing Affordable Unit Tenants***" is defined in Section 3.13.1.

*"**Existing Approvals**"* means and includes those permits and approvals for the Project granted by City to Developer as of the Effective Date as set forth in Recital G.

"***Existing Impact Fees***" is defined in Section 4.1.

"***Existing Residential Development***" means the approximately 330,000 square feet of Gross Floor Area of the Existing Residential Units.

"***Existing Residential Units***" means the three hundred and forty two (342) residential units in existence and in operation on the Property as of the Effective Date of this Agreement.

*"**Extension Term**"* is defined in Section 2.2.1.

"General Plan" means the City of Cupertino's General Plan 2000-2020, as amended through the Effective Date.

"General Plan EIR" means the General Plan Amendment, Housing Element Update, and associated Rezoning Project Environmental Impact Report ("EIR") that was certified by the City Council in December 2014 and the addendum to that EIR that was approved by the City Council in October 2015.

"*Gross Floor Area*" means the total floor area, measured in square feet, of all residential units as measured from the interior surfaces of the most exterior walls of each unit.

"Housing Mitigation Fees" are defined in Section 4.1.1.

"Impact Fees" means the monetary amount charged by City in connection with a Development Project for the purpose of defraying all or a portion of the cost of mitigating the impacts of the Development Project or development of the public facilities related to the Development Project, including, any "fee" as that term is defined by Government Code section 66000(b). For purposes of this Agreement, a fee that meets both the definitions of an Impact Fee and an Exaction will be considered to be an Impact Fee.

"Initial Term" is defined in Section 2.2.

"*Initial Suspension Period*" is defined in Section 3.13.3.

"Litigation Challenge" is defined in Section 9.3.

"Major Agreement Amendment" is defined in Section 8.3.2.

"Major Project Amendment" is defined in Section 8.2.2.

"Material Condemnation" is defined in Section 13.1.

"*Maximum Suspension Period*" is defined in Section 3.13.2.

"MND" is defined in Recital E.

"Mortgage" means any mortgage, deed of trust, security agreement, and other like security instrument encumbering all or any portion of the Property or any of the Developer's rights under this Agreement.

"Mortgagee" means the holder of any Mortgage, and any successor, assignee or transferee of any such Mortgage holder.

"Municipal Code" means and refers to the City of Cupertino's Municipal Code, as amended from time to time.

"Negotiated Transportation Infrastructure Contribution" is defined in Section 4.1.4.1.

"***New Affordable Units***" is defined in Section 3.13.1.

"***Net New Residential Development***" means the aggregate total Gross Floor Area, measured in square feet, of the Net New Residential Units in excess of the Existing Residential Development.

"***Net New Residential Units***" means all residential apartment homes in the Project in excess of the Existing Residential Units, which as of the Effective Date, is 600 Net New Residential Units.

"***New City Laws***" means and includes any ordinances, resolutions, orders, rules, official policies, standards, specifications, guidelines or other regulations, which are promulgated or adopted by the City (including but not limited to any City agency, body, department, officer or employee) or its electorate (through their power of initiative or otherwise) after the Effective Date.

"***Notice of Breach***" is defined in Section 12.1.

"***Original Declaration***" is defined in Section 3.13.1.

"***Other Agency Fees***" is defined in Section 4.3.

"***Other Agency Subsequent Approvals***" means Subsequent Project Approvals to be obtained from entities other than the City.

"***Park Impact Fees***" are defined in Section 4.1.2.

"***Parties***" shall mean City and Developer.

"***Permitted Delay***" is defined in Section 13.4.

"***Planning Commission***" means the City of Cupertino Planning Commission.

"***Prevailing Wage Laws***" is defined in Section 9.2.

"***Processing Fees***" means all fees for processing development project applications, including any required supplemental or other further environmental review, plan checking and inspection and monitoring for land use approvals, design review, grading and building permits, General Plan maintenance fees, and other permits and entitlements required to implement the Project, which are in effect at the time those permits, approvals or entitlements are applied for, and which are intended to cover the actual costs of processing the foregoing.

"***Project Approvals***" means the Existing Approvals and all Subsequent Approvals.

"***Project***" is defined in Recital D.

"***Property***" is defined in Recital C.

"***Public Art Contribution***" is defined in Section 4.1.3.

"***Relocation Notice***" is the ninety (90) day notice to Existing Affordable Unit Tenants prior to the requirement that the Existing Affordable Unit Tenant vacate an Existing Affordable Unit, given pursuant to Government Code Section 7267.3.

"***Relocation Plan***" is defined in Section 3.13.2.

"***Relocation Consultant***" is defined in Section 3.13.2.

"***Relocation Suspension Notice***" is defined in Section 3.13.2.

"***Residential Building Permit***" shall mean a building permit issued by the City for the vertical construction of any residential building (or buildings) within the Project, and shall not include any demolition permit, grading permit, or building permit issued for a foundation or subterranean parking garage.

"***Revised Net New Residential Development***" is defined in Section 4.1.

"***School Fees Agreement***" is defined in Section 5.1.2.

"***SCUSD***" is defined in Section 5.1.2.

"***SCVWD***" is defined in Section 5.1.1.2.

"***SCVWD Agreement***" is defined in Section 5.1.1.2.

"***Subdivision Map Act***" means California Government Code sections 66410 through 66499.58, as it may be amended from time to time.

"***Subsequent Approvals***" is defined in Section 7.1.

"***Term***" means the Initial Term plus any Extension Term, if such Extension Term is granted under the terms of this Agreement.

"***TMA***" is defined in Section 5.1.3.

"***TMA Payment***" is defined in Section 5.1.3.

"***Tree Removal Permit***" is defined in Recital D.

"***Use Permit***" is defined in Recital D.

"***Wolfe Road Interchange Project***" means improvements to the interchange of I-280 and Wolfe Road as may be finally determined and approved by Caltrans and the City and any other agencies with jurisdiction.

"***Wolfe Road Interchange Project Payment***" is defined in Section 5.1.1.3.

ARTICLE 2
EFFECTIVE DATE AND TERM

2.1 Effective Date. The Effective Date of this Agreement shall be the later of (a) the date that is thirty (30) days after the date that the Enacting Ordinance is adopted, and (b) the date this Agreement is fully executed by the Parties. The Effective Date is inserted at the beginning of this Agreement. The Parties acknowledge that section 65868.5 of the Development Agreement Statute requires that this Agreement be recorded with the County Recorder no later than ten (10) days after the City enters into this Agreement, and that the burdens of this Agreement shall be binding upon, and the benefits of this Agreement shall inure to, all successors in interest to the Parties to this Agreement. The City Clerk shall cause such recordation.

2.2 Initial Term of Agreement. The "**Initial Term**" of this Agreement shall commence on the Effective Date and shall expire on the tenth (10^{th}) anniversary of the Effective Date, unless earlier terminated.

2.2.1 Extension of Initial Term. The Initial Term of this Agreement shall be extended from the date of expiration of the Initial Term until the date which is five (5) years following the expiration of the Initial Term ("**Extension Term**"), provided that at the end of the Initial Term: (a) Developer is not, at the time, in Default of any of its obligations hereunder following notice and expiration of applicable cure periods; (b) the applicable Developer warranties and representations in Section 2.4 below continue to be true and correct; (c) no event has occurred which with the passage of time or giving of notice or both would constitute a Default by Developer hereunder; and (d) Developer has completed the underground parking structure and the City has issued certificates of occupancy for 50 percent of the residential units in the Project, including all required Affordable Units at the applicable percentage of the Project. Following the expiration of the Term, or the earlier completion of development of the Project and satisfaction of all of Developer's obligations in connection therewith, this Agreement shall be deemed terminated and of no further force and effect.

2.2.2 Memorandum of Extension. If the Extension Term is granted, City and Developer agree to execute, acknowledge and record in the Official Records of Santa Clara County a memorandum evidencing approval of the Extension Term.

2.3 City Representations and Warranties. City represents and warrants to Developer that, as of the Effective Date:

2.3.1 City is a municipal corporation, and has all necessary powers under the laws of the State of California to enter into and perform the undertakings and obligations of City under this Agreement.

2.3.2 The execution and delivery of this Agreement and the performance of the obligations of the City hereunder have been duly authorized by all necessary City Council action and all necessary approvals have been obtained.

2.3.3 This Agreement is a valid obligation of City and is enforceable in accordance with its terms.

During the Term of this Agreement, City shall, upon learning of any fact or condition which would cause of any of the warranties and representations in this Section 2.3 not to be true, immediately give written notice of such fact or condition to Developer.

2.4 Developer Representations and Warranties. Developer represents and warrants to City that, as of the Effective Date:

2.4.1 Developer is duly organized and validly existing under the laws of the State of Delaware, and is in good standing and has all necessary powers under the laws of the State of California to own property interests and in all other respects enter into and perform the undertakings and obligations of Developer under this Agreement.

2.4.2 The execution and delivery of this Agreement and the necessary performance of the obligations of Developer hereunder have been duly authorized by all necessary company action and all necessary approvals have been obtained.

2.4.3 This Agreement is a valid obligation of Developer and is enforceable in accordance with its terms.

2.4.4 Developer has not (a) made a general assignment for the benefit of creditors; (b) filed any voluntary petition in bankruptcy or suffered the filing of any involuntary petition by Developer's creditors; (c) suffered the appointment of a receiver to take possession of all, or substantially all, of Developer's assets; (d) suffered the attachment or other judicial seizure of all, or substantially all, of Developer's assets; or (e) admitted in writing its inability to pay its debts as they come due.

During the Term of this Agreement, Developer shall, upon learning of any fact or condition which would cause any of the warranties and representations in this Section 2.4 not to be true, immediately give written notice of such fact or condition to City.

ARTICLE 3
DEVELOPMENT OF THE PROPERTY

3.1 Vested Rights. The Property is hereby made subject to the provisions of this Agreement. Developer shall have the vested right to develop the Property and the Project in accordance with and subject to the Existing Approvals, the Subsequent Approvals, Applicable Law and this Agreement, which shall control the permitted uses, density and intensity of use of the Property and the maximum height and size of buildings on the Property.

3.2 Life of Approvals. Pursuant to Government Code section 66452.6(a) and this Agreement, the life of the Project Approvals shall automatically be extended to and until the later of the following: (1) the end of the Term of this Agreement; or (2) the end of the term or life of any such Approval. Notwithstanding the foregoing, the vested elements secured by Developer under this Agreement shall have a life no greater than the Term of this Agreement.

3.3 Permitted Uses. The permitted uses for the Property and the Project are those set forth in the Project Approvals, and include the following:

a) 942 apartment units (600 Net New Residential Units) in six buildings ranging in height from six to seven stories;

b) Five (5) uninhabitable model showrooms for lease-up purposes;

c) Parking structure with two (2) levels of below grade and one and one half (1.5) levels of at-grade parking;

d) Approximately 32,000 square feet of flexible use resident amenity space, which could include a fitness center, clubroom with bar, café, game room, and sale of food, alcohol, and sundry items, which uses and location of amenity space may change over time, but would remain within the same total area;

e) 4,000 square feet of leasing and resident service space; and,

f) Public amenities including an at-grade public bike hub, which may serve as flexible space to host various events such as a farmer's market, fairs, or similar social gatherings, and outdoor common-use seating area, which could include a lounge and juice/coffee bar.

The number of residential units and amount of square footage for each use are subject to the Project and Agreement amendment processes as set forth in Sections 8.2 and 8.3 herein. In the event of a conflict between the Existing Project Approvals and the terms of this Section 3.3, the Existing Project Approvals shall govern.

3.4 Intentionally Deleted.

3.5 Applicable Law. City and Developer acknowledge and agree that City is restricted in its authority to limit its police power by contract and that the limitations, reservations and exceptions contained in this Agreement are intended to reserve to City all of its police power that cannot be so limited. Notwithstanding the foregoing reservation of City, it is the intent of City and Developer that this Agreement be construed to provide Developer with the maximum rights afforded by law, including but not limited to, the Development Agreement Statute. Therefore, the laws, rules, regulations, official policies, standards and specifications of City applicable to the development of the Property and/or the Project shall be (collectively, "**Applicable Law**"):

a) Those rules, regulations, official policies, standards and specifications of the City set forth in the Project Approvals and this Agreement;

b) With respect to matters not addressed by and not otherwise inconsistent with the Project Approvals and this Agreement, those laws, rules, regulations, official policies, standards and specifications (including City ordinances and resolutions) governing permitted uses, building locations, timing and manner of construction, densities, intensities of uses, heights and sizes, requirements for on- and off-site infrastructure and public improvements, fees and exactions, including without limitation ordinances, regulations, policies and enactments regulating the timing or density on hillside development, in each case only to the extent in full force and effect on the Effective Date;

c) New City Laws that relate to hearing bodies, petitions, applications, notices, findings, records, hearings, reports, recommendations, appeals and any other matter of procedure imposed at any time, provided such New City Laws are uniformly applied on a City-wide basis to all substantially similar types of development projects and properties;

d) New City Laws that revise City's uniform construction codes, including City's building code, plumbing code, mechanical code, electrical code, fire code, grading code and other uniform construction codes, as of the date of permit issuance, provided, that such New City Laws are uniformly applied on a City-wide basis to all substantially similar types of development projects and properties;

e) New City Laws that are necessary to protect physical health and safety of the public; provided, that such New City Laws are uniformly applied on a City-wide basis to all substantially similar types of development projects and properties;

f) New City Laws that do not conflict with this Agreement or the Project Approvals, provided such New City Laws are uniformly applied on a City-wide basis to all substantially similar types of development projects and properties; and

g) New City Laws that do not apply to the Property and/or the Project due to the limitations set forth above, but only to the extent that such New City Laws are accepted in writing by Developer in its sole discretion.

3.6 Timing of Development. Developer shall have no obligation to develop the Project or any component of the Project. The Project may be built in phases in response to market conditions and other factors. The Parties acknowledge that Developer cannot at this time predict when or the rate at which or the order in which phases will be developed. Such decisions depend upon numerous factors which are not within the control of Developer, such as market orientation and demand, Developer's business needs, interest rates, competition and other similar factors. Without any limitation of the foregoing, it is the desire of the Parties hereto to avoid the result in *Pardee Construction Co. v. City of Camarillo*, 37 Cal.3d 465 (1984), in which the California Supreme Court held that the failure of the parties therein to consider, and expressly provide for, the timing of development resulted in a later-adopted initiative restricting the timing of development to prevail over such parties' agreement. Notwithstanding the adoption of any New City Laws, including an initiative adopted after the Effective Date by City's electorate to the contrary, the Parties acknowledge that, except for the Affordable Units, which shall be developed as set forth in Section 3.13 below, and as otherwise provided for in this Agreement, Developer shall have the vested right to develop the Project in such order and at such rate and at such times as Developer deems appropriate in its sole discretion.

3.7 Compliance with Laws. Developer, at its sole cost and expense, shall comply with the requirements of, and obtain all permits and approvals required by local, State and Federal agencies having jurisdiction over the Property or Project. Furthermore, Developer shall carry out the Project work in conformity with all Applicable Law, including applicable state labor laws and standards; Applicable City Regulations; and all applicable disabled and handicapped access requirements, including the Americans With Disabilities Act, 42 U.S.C.

section 12101, *et seq.*, Government Code section 4450, *et seq.*, Government Code section 11135, *et seq.*, and the Unruh Civil Rights Act, Civil Code section 51, *et seq.*

3.8 No Conflicting Enactments. Except as otherwise provided in this Agreement, City shall not impose on the Project (whether by action of the City Council or by initiative, referendum or other means) any New City Law that is in conflict with this Agreement or the Existing Approvals. Without limiting the generality of the foregoing, City shall not (a) apply to the Property any change in land use designation or permitted use of the Property; (b) limit or control the ability to obtain public utilities, services, or facilities (provided, however, nothing herein shall be deemed to exempt the Project or the Property from any water use rationing requirements that may be imposed from time to time in the future); (c) limit or control building setbacks, square footages or heights; the location of buildings and structures; parking requirements; or grading in a manner that is inconsistent with or more restrictive than the limitations included in the Existing Approvals or this Agreement; or (d) limit or control the rate, timing, phasing or sequencing of the approval, development or construction of all or any part of the Project.

3.9 Changes in the Law. As provided in section 65869.5 of the Development Agreement Law, this Agreement shall not preclude the applicability to the Project of changes in laws, regulations, plans or policies, to the extent that such changes are specifically mandated and required by changes in State or Federal laws or by changes in laws, regulations, plans or policies of special districts or other governmental entities, other than the City, created or operating pursuant to the laws of the State of California ("**Changes in the Law**"). In the event Changes in the Law prevent or preclude compliance with one or more provisions of this Agreement, the Parties shall meet and confer in good faith in order to determine whether such provisions of this Agreement shall be modified or suspended, or performance thereof delayed, as may be necessary to comply with Changes in the Law, and City and Developer shall agree to such action as may be reasonably required. Nothing in this Agreement shall preclude Developer from contesting by any available means (including administrative or judicial proceedings) the applicability to the Project of any such Changes in the Law.

3.10 Initiatives and Referenda. If any New City Law is enacted or imposed by initiative or referendum, or by the City Council directly or indirectly in connection with any proposed initiative or referendum, which New City Law would conflict with this Agreement or reduce the development rights provided by this Agreement, such New City Law shall not apply to the Project. No moratorium or other limitation (whether relating to the rate, timing, phasing, density, height or sequencing of development) affecting subdivision maps, building permits or other entitlements to use that are approved or to be approved, issued or granted within the City, or portions of the City, shall apply to the Project. City, except to submit to vote of the electorate initiatives and referendums required by applicable law to be placed on a ballot, shall not adopt or enact any New City Law, or take any other action which would violate the express provisions of this Agreement or the Project Approvals. Developer reserves the right to challenge in court any New City Law that would conflict with this Agreement or reduce the development rights provided by this Agreement. Notwithstanding the foregoing, the Parties acknowledge that City's approval of this Agreement is a legislative action subject to referendum. Developer acknowledges and agrees that City does not have authority or jurisdiction over any other public

agency's ability to grant governmental approvals or permits or to impose a moratorium or other limitation that may affect the Project.

3.11 Regulation by Other Public Agencies. Developer acknowledges that other public agencies not within the control of City possess authority to regulate aspects of the development of the Property separately from or jointly with City, and this Agreement does not limit the authority of such other public agencies. Developer will, at the time required in accordance with Developer's construction schedule, apply for all such other permits and approvals as may be required by other governmental or quasi-governmental entities in connection with the development of, or the provision of services to, the Project. Developer acknowledges that City does not control the amount of any fees imposed by such other agencies. In the event that such fees are imposed upon Developer and are in excess of those allowed by Applicable Law and Developer wishes to object to such fees, Developer may pay such fees under protest. The City agrees not to delay issuance of permits or other Subsequent Approvals and entitlements under these circumstances, provided Developer provides City with proof of payment of such fees.

3.12 No Reservation of Sanitary Sewer or Potable Water Capacity. City has found the Project to be consistent with the General Plan which anticipates that there will be sufficient potable water and sanitary sewer capacity to serve future development contemplated by the General Plan, including the Project, through the Term. However, nothing in this Agreement is intended to provide any reservation of potable water or sanitary sewer capacity.

3.13 Affordable Housing.

3.13.1 Original Declaration. Developer is subject to that certain "City of Cupertino Below Market Rate Rental Housing Declaration of Resale Controls" dated September 8, 1997 and recorded on October 20, 1997, as Document No. 13902426 in the Official Records of Santa Clara County (the "**Original Declaration**"). The Original Declaration requires that thirty-four (34) units (the "**Existing Affordable Units**") on the Property be occupied exclusively by, and rented to, households of low and very low income until October 20, 2027; and that any modification, amendment, or deletion of any terms of the Original Declaration must be requested in writing and approved by the City Council of the City of Cupertino. The Developer has requested in writing that the City amend and restate the Original Declaration to allow the Existing Affordable Units to be removed or unoccupied for a period of approximately four years so that the Project may be built. City's approval of Developer's request will result in the displacement of the tenants of the Existing Affordable Units, and City has determined that it is required to pay relocation benefits to tenants displaced from the Affordable Units (the "**Existing Affordable Unit Tenants**") as required by Government Code Section 7260 et seq. and implementing regulations (25 CCR Section 6000 et seq.) (collectively, "**State Relocation Laws**"). Developer desires to reimburse City for its costs of compliance with State Relocation Laws so that the Project may be built and to comply with the provisions of the Original Declaration to the maximum extent feasible.

3.13.2 Affordable Housing Relocation Agreement. Prior to or concurrently with the execution of this Agreement, Developer and City shall enter into an Affordable Housing Relocation Agreement in the form attached hereto as Exhibit C to provide, among other things: (1) the terms by which Developer will reimburse City for the costs of preparation of a relocation

plan ("**Relocation Plan**") and for the City's costs and payments to Existing Affordable Unit Tenants under State Relocation Laws through such Relocation Plan; (2) Developer's commitment to offer affordable units to the Existing Affordable Unit Tenants at Developer's North Park project in San Jose and, upon request by the Existing Affordable Unit Tenants, to consider on a case-by-case basis relocating such tenants to units in other residential developments owned by the Developer or Developer's affiliate that currently have affordable units as part of the development, subject to availability, while the Project is under construction; and (3) rights of the Existing Affordable Unit Tenants to elect to occupy Affordable Units (as defined below) in the Project. The Relocation Plan shall be prepared by a City-retained relocation consultant ("**Relocation Consultant**"). The Parties acknowledge their mutual goal to approve a Relocation Plan consistent with State Relocation Laws within one hundred and twenty (120) days following the Effective Date of this Agreement. In the event that the Developer decides, in its sole and absolute discretion, not to proceed with the demolition of the Existing Residential Development and notifies the City in writing of its decision prior to the City Council approval of the Relocation Plan ("**Relocation Suspension Notice**"), the City shall direct the Relocation Consultant to suspend work on the Relocation Plan. Upon further written notice to the City of the Developer's intent to proceed, the Developer shall pay for the costs of any necessary revisions to the Relocation Plan. In order to minimize disruption of the Existing Affordable Unit Tenants to the maximum extent practical, no Relocation Notices shall be sent subsequent to the adoption of a Relocation Plan until the Parties mutually agree in writing that the Developer intends to proceed with the Project. In the event that the revisions are necessary to the Relocation Plan prior to the time the Parties agree to send the Relocation Notices, the Developer shall pay all such costs. Once relocation commences, the Developer must complete the relocation of all Existing Affordable Tenants. All relocation of Existing Affordable Unit Tenants shall be completed prior to issuance of any demolition permit(s) for demolition of the Existing Residential Development.

3.13.3 Affordable Housing Agreement. Prior to or concurrently with the recordation of this Agreement, Developer and City shall enter into and record an Affordable Housing Agreement in the form attached as Exhibit D ("**Affordable Housing Agreement**"), which shall amend, restate and supersede the Original Declaration to provide, among other things: (1) Developer's right to initially suspend re-occupying the Existing Affordable Units prior to the adoption of the Relocation Plan ("**Initial Suspension Period**"); (2) provisions for suspension of the obligation to provide Existing Affordable Units from the time an Existing Affordable Unit Tenant vacates an Existing Affordable Unit until no later than January 1, 2021 ("**Maximum Suspension Period**"); (3) the provision of a total of seventy one (71) affordable units in the Project, which includes (i) replacement of the thirty four (34) Existing Affordable Units and (ii) the addition of thirty-seven (37) affordable units on the Property, seven (7) of which are to be occupied exclusively by, and rented to, households of low income and thirty (30) of which are to be occupied exclusively by, and rented to, households of moderate income in lieu of a portion of the Housing Impact Fees pursuant to Section 4.1.1. of this Agreement ("**New Affordable Units**"); (4) a concurrent term for all of the Existing Affordable Units and New Affordable Units (collectively the "**Affordable Units**") of the later of (i) fifty five (55) years from the issuance of the final certificate of occupancy for the Project or (ii) the date the Project buildings are either (X) demolished or (Y) converted to a non-residential use by the Developer with any City-issued approvals and permits that may be required; (5) rights of the Existing Affordable Unit Tenants to elect to occupy Affordable Units in the Project; and (6) the priority of

the Affordable Housing Agreement over any liens or deeds of trust recorded against the Property other than current unpaid taxes. In the event that the Developer does not submit an application for a demolition permit for the Existing Residential Development by the end of the Initial Suspension Period, or that the Developer re-offers any other units in the Existing Residential Development for rent, Developer shall re-open any unoccupied Existing Affordable Units to Eligible Households and comply fully with the terms of the Affordable Housing Agreement applicable to the Existing Affordable Units and include such new tenants in the Relocation Plan when and if the Developer proceeds with demolition.

ARTICLE 4
FEES

4.1 Impact Fees. Except as otherwise provided in Section 4.1.4 below with respect to the potential Citywide Transportation Impact Fee, during the Term, City has the right to impose only such Impact Fees as City has adopted as of the Effective Date, including those set forth in the Project Approvals ("**Existing Impact Fees**"). For convenience of reference, the Existing Impact Fees are identified in Exhibit E attached hereto and incorporated herein. Any Existing Impact Fees that are in existence as of the Effective Date but are inadvertently omitted from Exhibit E may still be charged. In the event of such inadvertent omission, the Parties shall revise Exhibit E to correct such error. Except as provided in Sections 4.1.1 and 4.1.2 below, payment of the Existing Impact Fees shall be at the rates in effect when such fees are due, provided, however, that Developer shall have the right, in its sole and absolute discretion, to elect to prepay in full any Existing Impact Fees (including the Citywide Transportation Impact Fee if and when adopted) otherwise required under this Agreement, and if such prepayment is made to the City, then the Existing Impact Fees (including the Citywide Transportation Impact Fee if and when adopted) shall be paid at the rate in effect at time of payment.

4.1.1 Housing Mitigation Fees. Notwithstanding anything to the contrary in City Resolution No. 15-036, in lieu of and in full satisfaction of, the affordable housing mitigation fees payable pursuant to the fee program adopted by City Resolution No. 15-036 (the "**Housing Mitigation Fees**") that would be applicable to all Net New Residential Units and currently estimated, as of the Effective Date, at Twelve Million Nine Hundred Thousand Dollars ($12,900,000), Developer shall comply with the obligation to provide the Affordable Units as set forth in Section 3.13.3 of this Agreement and shall pay a Housing Mitigation Fee balance of Nine Hundred Two Thousand Five Hundred Twenty Dollars ($902,520.00) payable at the time of issuance of the first Residential Building Permit (the "**Housing Mitigation Balance**"). The Housing Mitigation Balance will increase annually starting one year after the Effective Date based on increases in the Consumer Price Index over the prior one-year period.

4.1.2 Park Impact Fees. Notwithstanding anything to the contrary in Municipal Code Chapter 13.08, the Developer shall pay to the City at the time of issuance of the first Residential Building Permit for the Project in full those parkland impact fees payable pursuant to the fee program codified in Municipal Code Chapter 13.08 (the "**Park Impact Fees**"), with such fee amount to be determined based on the rate in effect at the time of payment, estimated as of the Effective Date at Twenty One Thousand Six Hundred Dollars ($21,600) per Net New Residential Unit. Based on an estimated 600 Net New Residential Units, and the exclusion of the Affordable Units to which the Park Impact Fees shall not apply as provided below, the total

Park Impact Fees for the Project are estimated as of the Effective Date to be Eleven Million Five Hundred Eighty Seven Thousand Nine Hundred and Sixty Eight Dollars ($11,587,968). If Developer modifies the Project pursuant to Section 8 of this Agreement and such amendment results in a change in the number of Net New Residential Units, the Park Impact Fees shall be calculated by multiplying the revised number of Net New Residential Units by the per unit rate in effect at time of payment. Developer hereby waives its right to claim a credit against park fees available to Developer pursuant to Section 13.08.070 of the Municipal Code for private and public recreation and open space within the Project. The thirty-seven (37) New Affordable Units shall be subject to a full (100%) credit against the Park Impact Fees. The thirty four (34) Existing Affordable Units shall receive a credit of 78% of the Park Impact Fee (currently estimated as of the Effective Date at a $16,848 per unit credit or $21,600 x 0.78). Notwithstanding anything to the contrary in this Section 4.1.2, if the Developer pays the Park Impact Fee by February 5, 2018, the amount of the Park Impact Fee shall be exactly Eleven Million Five Hundred Eighty Seven Thousand Nine Hundred and Sixty Eight Dollars ($11,587,968), and no further Park Impact Fees shall be applied to the Project unless the Developer modifies the Project pursuant to Section 8 of this Agreement and such amendment results in an increase in the number of Net New Residential Units, in which case the additional Park Impact Fees shall be calculated by multiplying only the additional Net New Residential Units by the per unit rate in effect at time of payment.

4.1.3 Public Art Contribution. Notwithstanding anything to the contrary in Municipal Code Chapter 19.148, Developer shall expend a minimum of One Hundred Thousand Dollars ($100,000) for public artwork, including but not limited to design, fabrication, and installation as part of the Project ("**Public Art Contribution**"). Developer shall be allowed to meet its Public Art Contribution obligation by providing Public Artwork within the Project at a cost of not less than $100,000. The Public Artwork shall be approved by City and installed prior to issuance of the first certificate of occupancy for the Project.

4.1.4 Transportation Impact Fees.

4.1.4.1 The Parties acknowledge that, as of the Effective Date, the City has not adopted Citywide traffic Impact Fees, but is in the process of considering a Citywide regional transportation Impact Fee that would be applicable to the Project and other similarly situated projects in the City ("**Citywide Transportation Impact Fee**"). If City has not adopted a Citywide Transportation Impact Fee prior to issuance of the first Residential Building Permit for the Project, the Developer shall pay to the City an amount of Three Thousand Dollars ($3,000) per Net New Residential Unit as a negotiated transportation infrastructure contribution ("**Negotiated Transportation Infrastructure Contribution**"). The Negotiated Transportation Infrastructure Contribution shall be payable at the time of building permit issuance for each Net New Residential Unit. Based on an estimated 600 Net New Residential Units, the total Negotiated Transportation Infrastructure Contribution for the Project shall not exceed One Million Eight Hundred Thousand Dollars ($1,800,000). If Developer modifies the Project pursuant to Section 8 of this Agreement and such amendment results in a change in the number of Net New Residential Units, the Negotiated Transportation Infrastructure Contribution shall be calculated by multiplying the revised number of Net New Residential Units by $3,000.00. If the City adopts a Citywide Transportation Impact Fee at any time prior to the final Residential Building Permit for the Project, the Developer shall pay, for all Net New Residential Units, the lesser of (i) the Negotiated Transportation Infrastructure Contribution or (ii) the Citywide

Transportation Impact Fee at the rate in effect at the time of payment, subject to potential reduction pursuant to section 4.1.4.2 below. In the event that the City adopts a Citywide Transportation Impact Fee after issuance of the final Residential Building Permit such that the Developer has paid the full amount of the Negotiated Transportation Infrastructure Contribution, and the amount of such Citywide Transportation Impact Fee is less than the amount of the Negotiated Transportation Infrastructure Contribution, including the potential reduction pursuant to section 4.1.4.2 below, the City shall credit the Developer the difference by (1) first applying the credit to any fees or payments owed to the City up to the date of issuance of the last certificate of occupancy; then (2) after application of all applicable credits, up to the date that is one year from the issuance of the final Residential Building Permit, refunding the remainder of the difference. On and after the date that is one year from the issuance of the final Residential Building Permit, Developer shall have no further rights to any refund of the difference between the amount of the Negotiated Transportation Infrastructure Contribution and the amount of such Citywide Transportation Impact Fee.

4.1.4.2 The Parties acknowledge that Developer is obligated to make a one-time payment to City in the amount of Seven Million Dollars ($7,000,000) to assist in funding the Wolfe Road Interchange Project as set forth in Section 5.1.1.2 below, and, as of the Effective Date, it is not anticipated that the Wolfe Road Interchange Project will be funded by the Citywide Transportation Impact Fee. Therefore, if the amount of the Citywide Transportation Impact Fee is based on any costs related to the Wolfe Road Interchange Project, the Citywide Transportation Impact Fee applicable to the Project shall be proportionately reduced based on the ratio that the amount of the Citywide Transportation Impact Fee allocable to the Wolfe Road Interchange Project bears to the total amount of the Citywide Transportation Impact Fee. (*For example only, if the cost basis for the Citywide Transportation Impact Fee includes the Wolfe Road Interchange Project and that project accounts for twenty percent (20%) of the fee, Developer would receive a credit that would reduce the amount of the Citywide Transportation Impact Fee by 20%.*)

4.2 Processing Fees. Subject to Developer's right to protest and/or pursue a challenge in law or equity to any new or increased Processing Fee, City may charge and Developer agrees to pay all fees for processing Development Project applications, including any required supplemental or other further environmental review, plan checking and inspection and monitoring for land use approvals, design review, grading and building permits, General Plan maintenance fees, and other permits and entitlements required to implement the Project ("**Processing Fees**"), which are in effect on a City-wide basis at the time those permits, approvals or entitlements are applied for, and which are intended to cover the actual costs of processing the foregoing.

4.3 Other Agency Fees. Nothing in this Agreement shall preclude City from collecting fees from Developer that are lawfully imposed on the Project by another agency having jurisdiction over the Project, which the City is required to collect pursuant to Applicable Law ("**Other Agency Fees**").

4.4 Taxes and Assessments. City may impose and Developer agrees to pay any and all existing, new, modified or increased taxes and assessments imposed in accordance with the laws in effect as of the date due, at the rate in effect at the time of payment, including without

limitation, the construction taxes imposed by Chapter 3.32 of the Municipal Code ("**Construction Tax**"). The City acknowledges and agrees that the Construction Tax shall only apply to the Net New Residential Units, which number shall be reduced by the number of Affordable Units which shall not be subject to the Construction Tax.

4.5 Connection Fees. Subject to Developer's right to protest and/or pursue a challenge in law or equity to any new or increased Connection Fee, City may charge and Developer shall pay any Connection Fee that is lawfully adopted.

4.6 Right to Challenge Fees. Developer reserves the right to protest or pursue a challenge in law or equity to any new or increased fee. In the event Developer desires to challenge such new or increased fee, Developer shall pay the fee under protest. The City agrees not to delay issuance of permits, approvals or entitlements pending resolution of such protest or challenge to the fee.

ARTICLE 5
PUBLIC BENEFITS

5.1 Public Benefits Obligations. In consideration of the rights and benefits conferred by City to Developer under this Agreement, Developer shall perform the public benefit obligations and pay to City the contributions set forth in this Article 5 all within the times set forth herein.

5.1.1 Public Facility Contributions. Developer shall make the following payments to City to fund public facilities:

5.1.1.1 Civic Facilities Payment. At the time of issuance of the first Residential Building Permit for the Project, Developer shall make a one-time payment to City in the amount of Seven Million Dollars ($7,000,000) to assist in funding a civic facility to be identified by the City Council in its discretion ("**Civic Facilities Payment**").

5.1.1.2 SCVWD Agreement. At the time of issuance of the first Residential Building Permit for the Project, Developer shall enter into a separate written agreement with the Santa Clara Valley Water District ("**SCVWD**") for Developer to extend to the Project, at Developer's cost, SCVWD's reclaimed water line ("**SCVWD Agreement**"). As of the Effective Date, the Parties acknowledge that the estimated value of the waterline improvements to be funded by Developer pursuant to the terms of the SCVWD Agreement is One Million Eight Hundred Thousand Dollars ($1,800,000).

5.1.1.3 Wolfe Road Interchange Payment. At the time of issuance of the first Residential Building Permit for the Project, Developer shall make a one-time payment to City in the amount of Seven Million Dollars ($7,000,000) to assist in funding the Wolfe Road Interchange Project ("**Wolfe Road Interchange Payment**"). The Parties acknowledge that, at the request of the City, Developer made a Two Hundred Thousand Dollar ($200,000) advance payment to the City prior to the Effective Date of this Agreement to assist with the City's efforts to

design the Wolfe Road Interchange Project and Developer shall be provided with a dollar of dollar credit in this amount against the Wolfe Road Interchange Payment.

5.1.2 School Fees Agreement. The Parties acknowledge that, prior to the Effective Date, Developer and the Santa Clara Unified School District ("**SCUSD**") entered into that certain School Impact Mitigation Agreement dated February 11, 2016, providing for the payment of statutory school impact fees and an additional voluntary community benefit contribution of Two Million Four Hundred Thousand Dollars ($2,400,000) by Developer ("**School Fees Agreement**"). Under the terms of the School Fees Agreement, the payments required under the School Fees Agreement are only imposed if and when Developer applies for building permits for the Project, and are payable directly to SCUSD by the Developer upon issuance of such building permits.

5.1.3 Transportation Demand Management (TDM) Program. Developer shall fund and fully implement the TDM Program attached hereto as Exhibit F and incorporated herein by this reference. In addition, the Parties agree that if (a) a Transportation Management Association ("**TMA**") is formed whose coverage area includes the Property, and (b) the TMA includes the operation or funding of a shuttle that includes a shuttle stop immediately adjacent to or within the Property, Developer shall (i) within thirty (30) days following City's demand, make a one-time payment to City in the amount of Two Hundred and Fifty Thousand Dollars ($250,000) to fund a portion of the start-up costs of such TMA, and (ii) on January 1 of the calendar year following (i) such initial payment and (ii) at least fifty percent (50%) initial occupancy of the Project, and each January 1 thereafter, make an annual payment to City equal to the lesser of (A) the Project's proportionate share of estimated ridership for the TMA program, or (B) the Annual Maximum Contribution (collectively, the "**TMA Payments**"). "Annual Maximum Contribution" means Fifty Thousand Dollars ($50,000) per year as increased annually based on increases in the Consumer Price Index over the prior one-year period. Except as the Parties may otherwise agree, the TMA Payments shall represent the Developer's sole contribution and obligation towards the formation of the TMA. If the City Council does not authorize the formation and ongoing operation of a TMA during the Term, the Developer shall have no further obligation under this Agreement to make the TMA Payments. Other than the obligations of this Section 5.1.3, the Developer shall have no further obligations under this Agreement with respect to any TMA in Cupertino. Developer reserves the right to elect, in its sole and absolute discretion, to join any TMA if and when formed. If a TMA is formed, the City and Developer shall review, on an annual basis, the TDM Program to ensure that there is a minimum of duplicative efforts. In addition, to the extent City is involved in the formation of the TMA, City shall exercise good faith efforts to ensure Developer has a role in the operation and management of the TMA.

5.2 City of Cupertino Business License. Developer, at its expense, shall obtain and maintain a City of Cupertino business license at all times during the Term, and shall include a provision in all general contractor agreements for the Project requiring each such general contractor to obtain and maintain a City of Cupertino business license during performance of the work of construction.

5.3 Sales Tax Point of Sale Designation. Developer shall use good faith, diligent efforts to the extent allowed by law to require all persons and entities providing bulk lumber, concrete, structural steel and pre-fabricated building components, such as roof trusses, to be used in connection with the construction and development of, or incorporated into, the Project, to (a) obtain a use tax direct payment permit; (b) elect to obtain a subcontractor permit for the job site of a contract valued at Five Million Dollars ($5,000,000) or more; or (c) otherwise designate the Property as the place of use of material used in the construction of the Project in order to have the local portion of the sales and use tax distributed directly to City instead of through the county-wide pool. Developer shall instruct its general contractor(s) for the Project to, and cause such general contractor(s) to instruct its/their subcontractors to, cooperate with City to ensure the local sales/use tax derived from construction of the Project is allocated to City to the fullest extent possible. To assist City in its efforts to ensure that such local sales/use tax is so allocated to City, Developer shall on an annual basis, or more frequently upon City's request, provide City with such information as shall be reasonably requested by City regarding subcontractors working on the Project with contracts in excess of the amount set forth above, including a description of all applicable work and materials and the dollar value of such subcontracts, and, if applicable, evidence of their designation, such as approvals or applications for the direct payment permit, of City as the place of use of such work and materials. City may use such information to contact each subcontractor who may qualify for local allocation of use taxes to City.

5.4 Gateway Signage and Treatment. Prior to issuance of the first certificate of occupancy for the Project, Developer shall install signage and treatments in the Project reflecting the fact that this area is a gateway into Cupertino from Interstate 280 and points north in accordance with General Plan Policy LU-20.5. As of the Effective Date, the Parties acknowledge that the estimated value of the signage and treatment is Twenty Five Thousand Dollars ($25,000).

ARTICLE 6
ANNUAL REVIEW

6.1 Annual Review.

6.1.1 Purpose. As required by California Government Code section 65865.1 and Municipal Code section 19.144.060(H), City and Developer shall review this Agreement and all actions taken pursuant to the terms of this Agreement with respect to the development of the Project every twelve (12) months to determine good faith compliance with this Agreement. Specifically, City's annual review shall be conducted for the purposes of determining compliance by Developer with its obligations under this Agreement. Each annual review shall also document: (a) the status of the Project development, and (b) any extension of the Initial Term of this Agreement pursuant to Section 2.2.1.

6.1.2 Conduct of Annual Review. The annual review shall be conducted as provided in this Section 6.1.2. By December 1st of each year, Developer shall provide documentation of its good faith compliance with this Agreement during the previous calendar year, including a completed Annual Review Form in the form provided in Exhibit G and such other information as may reasonably be requested by the Planning Director. If the Planning Director finds good faith compliance by Developer with the terms of this Agreement, Developer

shall be notified in writing and the review for that period shall be concluded. If the Planning Director is not satisfied that Developer is performing in accordance with the terms and conditions of this Agreement, the Planning Director shall prepare a written report specifying why the Developer may not be in good faith compliance with this Agreement, refer the matter to the City Council, and notify Developer in writing at least fifteen (15) business days in advance of the time at which the matter will be considered by the City Council. This notice shall include the time and place of the City Council's public hearing to evaluate good faith compliance with this Agreement, a copy of the Planning Director's report and recommendations, if any, and any other information reasonably necessary to inform Developer of the nature of the proceeding. The City Council shall conduct a public hearing at which Developer must submit evidence that it has complied in good faith with the terms and conditions of this Agreement. Developer shall be given an opportunity to be heard at the hearing. The findings of the City Council on whether Developer has complied with this Agreement for the period under review shall be based upon substantial evidence in the record. If the City Council determines, based upon substantial evidence, that Developer has complied in good faith with the terms and conditions of this Agreement, the review for that period shall be concluded. If the City Council determines, based upon substantial evidence in the record, that Developer has not complied in good faith with the terms and conditions of this Agreement, or there are significant questions as to whether Developer has complied with the terms and conditions of this Agreement, the City Council, at its option, may continue the hearing and may notify Developer of the City's intent to meet and confer with Developer within thirty (30) days of such determination, prior to taking further action. Following such meeting, the City Council shall resume the hearing in order to further consider the matter and to make a determination regarding Developer's good faith compliance with the terms and conditions of this Agreement. In the event City determines Developer is not in good faith compliance with the terms and conditions of this Agreement, City may give the Developer a written Notice of Breach, in which case the provisions of Section 12.1, below, shall apply.

6.1.3 Failure to Conduct Annual Review. Failure of City to conduct an annual review shall not constitute a waiver by the City of its rights to otherwise enforce the provisions of this Agreement nor shall Developer have or assert any defense to such enforcement by reason of any such failure to conduct an annual review.

6.1.4 Certificate of Compliance. If, at the conclusion of the annual review described in this Section 6.1.2, the Developer is found to be in compliance with this Agreement, City shall, upon request by Developer, issue a Certificate of Compliance ("**Certificate**") to Developer stating that after the most recent annual review and based upon the information actually known to an appropriate official of City specified in such Certificate that: (a) this Agreement remains in effect, and (b) the Developer is not in Default. The Certificate shall be in a recordable form, shall contain information necessary to communicate constructive record notice of the finding of compliance, and shall state the anticipated date of commencement of the next annual review. Developer may record the Certificate without cost or expense to City.

ARTICLE 7
COOPERATION AND IMPLEMENTATION

7.1 Subsequent Approvals. Certain subsequent land use approvals, entitlements, and permits other than the Existing Approvals, will be necessary or desirable for implementation of the Project ("**Subsequent Approvals**"). The Subsequent Approvals may include, without limitation, the following: amendments of the Existing Approvals, grading permits, building permits, design review permits, sewer and water connection permits, certificates of occupancy, lot line adjustments or lot merger, site plans, development plans, land use plans, building plans and specifications, and any amendments to, or repealing of, any of the foregoing. The Parties acknowledge that: 1) the Property includes two parcels with Assessor Parcel Numbers 316-06-032 and 316-06-037; 2) the Project includes a proposed building that would cross the boundary between the two parcels. The Developer reserves the right, in its discretion, to apply for, as a Subsequent Approval, either (1) a lot line adjustment (including, if applicable and warranted based on the configuration of the proposed adjusted lots crossing a proposed building, a recorded lot tying agreement in form and content acceptable to the City in its reasonable discretion), or (2) a lot merger. Except as otherwise expressly provided herein, the City shall not impose requirements or conditions upon the development and construction of the Project that are inconsistent with the Existing Approvals and the terms and conditions of this Agreement. Further, except as expressly provided herein, the City shall not exercise discretion in determining whether or how to grant Subsequent Approvals in a manner that would prevent development of the Project in accordance with Existing Approvals.

7.2 Scope of Review of Subsequent Approvals. By approving the Existing Approvals, City has made a final policy decision that the Project is in the best interests of the public health, safety and general welfare. Accordingly, City shall not use its authority in considering any application for a discretionary Subsequent Approval to change the policy decisions reflected by the Existing Approvals or otherwise to prevent or delay development of the Project as set forth in the Project Approvals.

7.3 Processing Applications for Subsequent Approvals.

7.3.1 Timely Submittals by Developer. Developer acknowledges that City cannot begin processing applications for Subsequent Approvals until Developer submits complete applications on a timely basis. Developer shall use diligent good faith efforts to (a) provide to City in a timely manner any and all documents, applications, plans, and other information necessary for City to carry out its obligations hereunder; and (b) cause Developer's planners, engineers, and all other consultants to provide to City in a timely manner all such documents, applications, plans and other materials required under Applicable Law. It is the express intent of Developer and City to cooperate and diligently work to obtain any and all Subsequent Approvals.

7.3.2 Timely Processing by City. Upon submission by Developer of all appropriate applications and Processing Fees for any pending Subsequent Approval, City shall, to the full extent allowed by Applicable Law, promptly and diligently, subject to City ordinances, policies and procedures regarding hiring and contracting, commence and complete all steps necessary to act on Developer's currently pending Subsequent Approval applications

including: (a) providing at Developer's expense and subject to Developer's request and prior approval, reasonable overtime staff assistance, additional staff and/or staff consultants for concurrent, expedited planning and processing of each pending Subsequent Approval application (Developer shall pay such costs at cost plus the then-applicable rate for administrative costs, which is 15% as of the Effective Date); (b) if legally required, providing notice and holding public hearings; and (c) acting on any such pending Subsequent Approval application.

7.4 Other Agency Subsequent Approvals; Authority of City. City shall cooperate with Developer, to the extent appropriate and as permitted by applicable law, in Developer's efforts to obtain, as may be required, Other Agency Subsequent Approvals. Notwithstanding the issuance to Developer of Other Agency Subsequent Approvals, Developer agrees that City shall have the right to review, modify, approve and/or reject any and all submissions subject to the Other Agency Subsequent Approvals which, but for the authority of the other governmental or quasi-governmental entities issuing the Other Agency Subsequent Approvals, would otherwise require City approval. Developer agrees that City may review, modify, approve and/or reject any such materials or applications to ensure consistency with this Agreement and the Project Approvals and Developer shall incorporate any and all changes required by City prior to submitting such materials and applications to the other governmental or quasi-governmental entities for review and/or approval.

ARTICLE 8
AMENDMENT OF AGREEMENT AND PROJECT APPROVALS

8.1 Amendment by Written Consent. Except as otherwise expressly provided herein (including Section 6.1 relating to City's annual review and Section 12.3 relating to termination in the event of a breach), this Agreement may be terminated, modified or amended only by mutual written consent of the Parties hereto or their successors in interest or assignees and in accordance with the provisions of Government Code sections 65967, 65867.5 and 65868.

8.2 Project Approval Amendments. To the extent permitted by Applicable Law, Project Approvals or Subsequent Project Approvals may, from time to time, be amended in the following manner:

8.2.1 Administrative Project Amendments. Upon Developer's written request for an amendment or modification to the Project Approvals or Subsequent Approvals, the City Manager shall determine: (i) whether the requested amendment or modification is minor when considered in light of the Project as a whole; and (ii) whether the requested amendment or modification is consistent with this Agreement and Applicable Law. If the City Manager or his/her designee finds, in his or her sole discretion, that the proposed amendment or modification is minor, consistent with this Agreement and Applicable Law, and will result in no new significant impacts not addressed and mitigated in the MND, the amendment or modification shall be determined to be an "**Administrative Project Amendment**" and shall not be considered an amendment to the applicable Project Approvals and shall not require an amendment to this Agreement. Upon the City Manager's approval, any Administrative Project Amendment shall be automatically incorporated into the applicable Project Approvals and this Agreement. Lot line adjustments, minor changes in land uses involving minimal acreage, minor alterations in vehicle circulation patterns or vehicle access points, minor changes in the amount of parking and parking

layout, changes in pathway alignments, substitutions of comparable landscaping for any landscaping shown on any final development plan or landscape plan, variations in the location of structures that do not substantially alter the infrastructure connections or facilities that do not substantially alter the design concepts of the Project, and minor adjustments to the Site Map or Property Description shall be treated as Administrative Project Amendments.

8.2.2 Major Project Amendments. Any amendment to the Project Approvals or Subsequent Project Approvals which is determined not to be an Administrative Project Amendment as set forth above in Section 8.2.1 shall be deemed a "**Major Project Amendment**" and shall require giving of notice and a public hearing before the Planning Commission and City Council in accordance with the Applicable Law. The City Manager or his or her designee shall have the authority to determine if an amendment is a Major Project Amendment subject to this Section 8.2.2 or an Administrative Project Amendment subject to Section 8.2.1 above.

8.3 Amendment of this Agreement. This Agreement may be amended from time to time, in whole or in part, by mutual written consent of the parties or their successors in interest, as follows:

8.3.1 Administrative Agreement Amendments. Any amendment to this Agreement which does not substantially affect (a) the term of this Agreement; (b) permitted uses of the Property; (c) provisions for the reservation or dedication of land; (d) conditions, terms restrictions or requirements for subsequent discretionary actions; (e) increases in the density or intensity of the use of the Property or the maximum height or size of proposed buildings; or (f) monetary contributions by Developer, shall be deemed an "**Administrative Agreement Amendment**" and the City Manager or his or her designee, except to the extent otherwise required by Applicable Law, shall approve the Administrative Agreement Amendment without notice and public hearing.

8.3.2 Major Agreement Amendments. Any amendment to this Agreement which is determined not to be an Administrative Agreement Amendment as set forth above in Section 8.3.1 shall be deemed a "**Major Agreement Amendment**" and shall require giving of notice and a public hearing before the Planning Commission and City Council in accordance with the Applicable Law. The City Manager or his or her designee shall have the authority to determine if an amendment is a Major Agreement Amendment subject to this Section 8.3.2 or an Administrative Agreement Amendment subject to Section 8.3.1 above.

8.4 Amendments to Development Agreement Statute. This Agreement has been entered into in reliance upon the provisions of the Development Agreement Statute as those provisions existed as of the date of execution of this Agreement. No amendment or addition to those provisions which would materially affect the interpretation or enforceability of this Agreement shall be applicable to this Agreement, unless such amendment or addition is specifically required by the California State Legislature, or is mandated by a court of competent jurisdiction. If such amendment or change is permissive (as opposed to mandatory), this Agreement shall not be affected by same unless the Parties mutually agree in writing to amend this Agreement to permit such applicability.

8.5 Requirement for Writing. No modification, amendment or other change to this Agreement or any provision hereof shall be effective for any purpose unless specifically set forth in a writing which refers expressly to this Agreement and is signed by duly authorized representatives of both Parties or their successors in interest. A copy of any change shall be provided to the City Council within thirty (30) days of its execution.

8.6 Reliance on Project MND. The MND which has been certified by City as being in compliance with CEQA, addresses the potential environmental impacts of the entire Project as it is described in the Project Approvals. It is agreed that, in acting on any discretionary Subsequent Approvals for the Project, City will rely on the MND to satisfy the requirements of CEQA to the fullest extent permissible by CEQA and City will not require a new initial study, negative declaration or subsequent or supplemental MND unless required by CEQA and will not impose on the Project any mitigation measures or other conditions of approval other than those specifically imposed by the Project Approvals or this Agreement or specifically required by Applicable Law.

8.7 Subsequent CEQA Review. In the event that any additional CEQA documentation is legally required for any discretionary Subsequent Approval, then the scope of such documentation shall be focused, to the extent possible consistent with CEQA, on the specific subject matter of the Subsequent Approval, and the City, at Developer's expense, shall conduct such additional CEQA review as expeditiously as possible.

ARTICLE 9
INSURANCE, INDEMNITY AND COOPERATION IN THE EVENT OF LEGAL CHALLENGE

9.1 Insurance Requirements. Prior to commencement of construction activities and through completion of all construction activities (including demolition) for the Project, Developer shall procure and maintain, or cause its contractor(s) to procure and maintain, a commercial general liability policy in an amount not less than two million ($2,000,000) combined single limit, including contractual liability together with a comprehensive automobile liability policy in the amount of one million ($1,000,000), combined single limit. Such policy or policies shall be written on an occurrence form, so long as such form of policy is then commonly available in the commercial insurance marketplace. Developer's insurance shall be placed with insurers with a current A.M. Best's rating of no less than A-:VII or a rating otherwise approved by the City in its sole discretion. Developer shall furnish at City's request appropriate certificate(s) of insurance evidencing the insurance coverage required hereunder, and City Parties shall be named as additional insured parties in such policies. The certificate of insurance shall contain a statement of obligation on the part of the carrier to notify City of any material change, cancellation or termination of the coverage at least thirty (30) days in advance of the effective date of any such material change, cancellation or termination (ten (10) days advance notice in the case of cancellation for nonpayment of premiums) where the insurance carrier provides such notice to the Developer. Coverage provided hereunder by Developer shall be primary insurance and shall not be contributing with any insurance, self-insurance or joint self-insurance maintained by City, and the policy shall contain such an endorsement. The insurance policy or the endorsement shall contain a waiver of subrogation for the benefit of City.

9.2 Indemnity and Hold Harmless. Developer shall indemnify, defend (with counsel reasonably acceptable to City) and hold harmless City Parties from and against any and all present and future liabilities, obligations, orders, claims, damages, fines, penalties and expenses (including attorneys' fees and costs), including claims for any bodily injury, death, or property damage, resulting directly or indirectly from the development or construction of the Project by or on behalf of Developer or relocation of any existing tenants on the Property, and/or from any other acts or omissions of Developer under this Agreement, whether such acts or omissions are by Developer or any of Developer's contractors, subcontractors, agents or employees, except to the extent such Claims arise from the sole active negligence or willful misconduct of City or City Parties. This Section 9.2 includes any and all present and future liabilities, obligations, orders, claims, damages, fines, penalties and expenses (including attorneys' fees and costs) arising out of or in any way connected with Developer's or its contractors' obligations to comply with all State Labor Code requirements and implementing regulations of the Department of Industrial Relations pertaining to "public works" (collectively, "**Prevailing Wage Laws**"), including all claims that may be made by contractors, subcontractors or other third party claimants pursuant to Labor Code sections 1726 and 1781.

9.3 Defense and Cooperation in the Event of a Litigation Challenge. City and Developer shall cooperate in the defense of any court action or proceeding instituted by a third party or other governmental entity or official challenging the validity of any provision of this Agreement, or the Project Approvals ("**Litigation Challenge**"), and the Parties shall keep each other informed of all developments relating to such defense, subject only to confidentiality requirements that may prevent the communication of such information. To the extent Developer desires to contest or defend such Litigation Challenge, (a) Developer shall take the lead role defending such Litigation Challenge and may, in its sole discretion, elect to be represented by the legal counsel of its choice; (b) City may, in its sole discretion, elect to be separately represented by the legal counsel of its choice in any such action or proceeding with the reasonable costs of such representation to be paid by Developer; (c) Developer shall reimburse City, within ten (10) business days following City's written demand therefor, which may be made from time to time during the course of such litigation, all reasonable costs incurred by City in connection with the Litigation Challenge, including City's administrative, legal, and court costs and City Attorney oversight expenses; and (d) Developer shall indemnify, defend, and hold harmless City Parties from and against any damages, attorneys' fees or cost awards, including attorneys' fees awarded under Code of Civil Procedure section 1021.5, assessed or awarded against City by way of judgment, settlement, or stipulation. Any proposed settlement of a Litigation Challenge shall be subject to City's approval not to be unreasonably withheld, conditioned or delayed. If the terms of the proposed settlement would constitute an amendment or modification of this Agreement or any Project Approvals, the settlement shall not become effective unless such amendment or modification is approved by City in accordance with Applicable Law, and City reserves its full legislative discretion with respect thereto. If Developer opts not to contest or defend such Litigation Challenge, City shall have no obligation to do so.

ARTICLE 10
ASSIGNMENT, TRANSFER AND NOTICE

10.1 Assignment. Because of the necessity to coordinate development of the entirety of the Property pursuant to plans for the Project, particularly with respect to the provision of on-

and off-site public improvements and public services and benefits, certain restrictions on the right of Developer to assign or transfer its interest under this Agreement with respect to the Property, or any portion thereof, are necessary in order to assure the achievement of the goals, objectives and public benefits of the Project and this Agreement. Developer agrees to and accepts the restrictions set forth in this Section 10.1 as reasonable and as a material inducement to City to enter into this Agreement. Developer shall have the right to sell or transfer its fee interest, or ground lease its interests in the Property, in whole or in part (provided that no such partial transfer shall violate the provisions of the Subdivision Map Act) to any person, partnership, joint venture, firm, company, corporation or other entity (any of the foregoing, an "**Assignee**") subject to the written consent of City, which shall not be unreasonably withheld, delayed or conditioned, provided that Developer may assign its rights under this Agreement without the consent of City to any corporation, limited liability company, partnership or other entity which is controlling of, controlled by, or under common control with Developer, and "control," for purposes of this definition, means effective management and control of the other entity, subject only to major events requiring the consent or approval of the other owners of such entity ("**Affiliated Party**"). City's written consent, as required above, shall be provided by City within thirty (30) days of City's receipt of the notice provided in Section 10.1.2 below, if Developer has satisfied all of the following conditions:

10.1.1 No Default. Developer is not in Default under this Agreement or the Assignee agrees to cure any Default;

10.1.2 Notice. Developer shall provide the City with written notice of any proposed transfer or assignment of Developer's rights or obligations hereunder (each, an "**Assignment**") at least thirty (30) days prior to such Assignment. Each such notice of proposed Assignment shall be accompanied by evidence of Assignee's assumption of Developer's obligations hereunder in the form of Exhibit H, which shall be recorded in the Official Records of Santa Clara County; and

10.1.3 Payment of Costs. Developer shall pay the actual costs borne by City in connection with its review of the proposed Assignment, including the costs incurred by the City Attorney's Office.

Assignee shall succeed to the rights, duties and obligations of Developer only with respect to the parcel or parcels, or portion of the Property so purchased, transferred, ground leased or assigned, and Developer shall continue to be obligated under this Agreement with respect to any remaining portions of the Property retained by Developer and not assigned.

10.2 Release of Transferring Developer. Except with respect to a permitted transfer and assignment to an Affiliated Party, notwithstanding any sale, transfer or assignment of all or a portion of the Property, Developer shall continue to be obligated under this Agreement as to all or the portion of the Property so transferred unless City has consented to the assignment as provided above.

10.3 Assignment to Financial Institutions or Mortgagee. Notwithstanding any other provisions of this Agreement, Developer may assign all or any part of its rights and duties under this Agreement to any financial institution or Mortgagee from which Developer has borrowed

funds for use in constructing the Project or otherwise developing the Property and such financing shall not require consent from City. Developer shall provide a copy of the deed of trust and notice of any such financing assignment to City within ten (10) business days following execution thereof. A conditional assignment or other transfer by a financial institution or Mortgagee back to Developer as part of any financing transaction shall not require the City's consent.

In addition, nothing contained in this Agreement shall prevent a transfer or assignment of the Property, or any portion thereof, to a financial institution or Mortgagee as a result of a foreclosure of a Mortgage or deed in lieu of foreclosure, and any lender or Mortgagee acquiring the Property, or any portion thereof, as a result of foreclosure or a deed in lieu of foreclosure shall take such Property subject to the terms of this Agreement; provided, however, in no event shall such lender or Mortgagee be liable for any Default of the Developer arising prior to acquisition of title to the Property by such lender or Mortgagee (other than continuing Defaults for which Mortgagee shall be liable); and provided further in no event shall any lender or Mortgagee or its successors or assigns be entitled to a building permit or occupancy certificate for any portion of the Project until all outstanding obligations of the Developer have been performed, and until any and all outstanding Defaults have been cured.

10.4 Successive Assignment. In the event there is more than one Assignment under the provisions of this Article 10, the provisions of this Article 10 shall apply to each successive Assignment and Assignee.

ARTICLE 11
MORTGAGEE PROTECTION

11.1 Mortgagee Protection. Neither entering into this Agreement nor a breach hereof shall defeat, render invalid, diminish or impair the lien of any Mortgage made in good faith and for value. Nothing in this Agreement shall prevent or limit Developer, at its sole discretion, from granting one or more Mortgages encumbering all or a portion of Developer's interest in the Property or portion thereof or improvement thereon as security for one or more loans or other financing, but all of the terms and conditions contained in this Agreement shall be binding upon and effective against and shall run to the benefit of Mortgagee who acquires title or possession to the Property, or any portion thereof, by foreclosure, trustee's sale, deed in lieu of foreclosure or otherwise. Developer shall provide the City with a copy of the deed of trust or mortgage within ten (10) days after its recording in the official records of Santa Clara County; provided, however, that Developer's failure to provide such document shall not affect any Mortgage, including without limitation, the validity, priority or enforceability of such Mortgage.

11.2 Mortgagee Not Obligated. No Mortgagee (including one who acquires title or possession to the Property, or any portion thereof, by foreclosure, trustee's sale, deed in lieu of foreclosure or otherwise) shall have any obligation to construct or complete construction of improvements, or to guarantee such construction or completion; provided, however, that a Mortgagee shall not be entitled to devote the Property to any use except in full compliance with this Agreement and the other Project Approvals nor to construct any improvements thereon or institute any uses other than those uses or improvements provided for or authorized by this Agreement, or otherwise under the Project Approvals. Except as otherwise provided in this

Section 11.2, all of the terms and conditions contained in this Agreement, the other Project Approvals, the Affordable Housing Relocation Agreement and the Affordable Housing Agreement, shall be binding upon and effective against and shall run to the benefit of any person or entity, including any Mortgagee, who acquires title or possession to the Property, or any portion thereof.

11.3 Notice of Default to Mortgagee. If City receives a notice from a Mortgagee requesting a copy of any Notice of Default given Developer hereunder and specifying the address for service thereof, then City agrees to use its diligent, good faith efforts to deliver to such Mortgagee, concurrently with service thereon to Developer, any Notice of Default given to Developer. Each Mortgagee shall have the right during the same period available to Developer to cure or remedy, or to commence to cure or remedy, the event of Default claimed or the areas of noncompliance set forth in City's Notice of Default. If a Mortgagee is required to obtain possession in order to cure any Default, the time to cure shall be tolled so long as the Mortgagee is attempting to obtain possession, including by appointment of a receiver or foreclosure, but in no event may this period exceed 120 days from the date the City delivers the Notice of Default to Developer.

11.4 No Supersedure. Nothing in this Section 11.4 shall be deemed to supersede or release a Mortgagee or modify a Mortgagee's obligations under any subdivision or public improvement agreement or other obligation incurred with respect to the Project outside this Agreement, nor shall any provision of this Section 11.4 constitute an obligation of City to such Mortgagee, except as to the notice requirements of Section 11.3.

11.5 Mortgagee Requested Amendments. The Parties agree that they will make reasonable amendments to this Agreement, at the expense of Developer, to meet the requirements of any lender or Mortgagee for the Project. For the purposes of this Section 11.5, a reasonable amendment is one that does not relieve Developer of any of its material obligations under this Agreement or impair the ability of the City to enforce the terms of this Agreement. The Parties further agree that any reasonable amendments to the Mortgagee Protection provisions of this Agreement required to conform to current industry practice would qualify as a Minor Amendment and may be processed in accordance with the provisions of Article 8 of this Agreement.

ARTICLE 12
DEFAULT; REMEDIES; TERMINATION

12.1 Breach and Default. Subject to a Permitted Delay in Section 12.1 or a mutual extension pursuant to Section 13.11, except as otherwise provided by this Agreement, breach of, failure, or delay by either Party to perform any term or condition of this Agreement shall constitute a "**Default**." In the event of any alleged Default of any term, condition, or obligation of this Agreement, the Party alleging such Default shall give the defaulting Party notice in writing specifying the nature of the alleged Default and the manner in which the Default may be satisfactorily cured ("**Notice of Breach**"). The defaulting Party shall cure the Default within thirty (30) days following receipt of the Notice of Breach, provided, however, if the nature of the alleged Default is non-monetary and such that it cannot reasonably be cured within such thirty (30) day period, then the commencement of the cure within such time period, and the diligent

prosecution to completion of the cure thereafter, shall be deemed to be a cure, provided that if the cure is not diligently prosecuted to completion, then no additional cure period shall be provided. If the alleged failure is cured within the time provided above, then no Default shall exist and the noticing Party shall take no further action to exercise any remedies available hereunder. If the alleged failure is not cured, then a Default shall exist under this Agreement and the non-defaulting Party may exercise any of the remedies available under this Agreement.

12.2 Withholding of Permits. In the event of a Default by Developer, or following notice of breach to Developer pursuant to Section 12.1 above and during the cure period provided therein, upon a finding by the City Manager that Developer is in breach, City shall have the right to refuse to issue any permit or other Subsequent Approvals to which Developer would otherwise have been entitled pursuant to this Agreement until such Default or breach is cured. This provision is in addition to and shall not limit any actions that City may take to enforce the conditions of the Project Approvals.

12.3 Termination. In the event of a Default by a Party, the non-defaulting Party shall have the right to terminate this Agreement upon giving notice of intent to terminate pursuant to Government Code section 65868 and regulations of City implementing such section. Following notice of intent to terminate, the matter shall be scheduled for consideration and review in the manner set forth in Government Code section 65867 and City regulations implementing said section. Following consideration of the evidence presented in said review before the City Council, a Party alleging Default by the other Party may give written notice of termination of this Agreement to the other Party. Termination of this Agreement shall be subject to the provisions of Section 12.9 hereof.

12.4 Specific Performance for Violation of a Condition. If City issues a Project Approval pursuant to this Agreement in reliance upon a specified condition being satisfied by Developer in the future, and if Developer then fails to satisfy such condition, City shall be entitled to specific performance for the purpose of causing Developer to satisfy such condition.

12.5 Legal Actions.

12.5.1 Institution of Legal Actions. In addition to any other rights or remedies, a Party may institute legal action to cure, correct or remedy any Default, to enforce any covenants or agreements herein, to enjoin any threatened or attempted violation thereof, or to obtain any other remedies consistent with the purpose of this Agreement. Any such legal action shall be brought in the Superior Court for Santa Clara County, California, except for actions that include claims in which the Federal District Court for the Northern District of the State of California has original jurisdiction, in which case the Northern District of the State of California shall be the proper venue.

12.5.2 Acceptance of Service of Process. In the event that any legal action is commenced by Developer against City, service of process on City shall be made by personal service upon the City Clerk of City or in such other manner as may be provided by law. In the event that any legal action is commenced by City against Developer, service of process on Developer shall be made by personal service upon Developer's General Counsel, Developer's registered agent for service of process, or in such other manner as may be provided by law.

12.6 Rights and Remedies Are Cumulative. The rights and remedies of the Parties are cumulative, and the exercise by a Party of one or more of such rights or remedies shall not preclude the exercise by it, at the same or different times, of any other rights or remedies for the same Default or any other Default by the other Party, except as otherwise expressly provided herein.

12.7 No Damages. In no event shall a Party, or its boards, commissions, officers, agents or employees, be liable in damages for any Default under this Agreement, it being expressly understood and agreed that the sole legal remedy available to a Party for a breach or violation of this Agreement by the other Party shall be an action in mandamus, specific performance or other injunctive or declaratory relief to enforce the provisions of this Agreement by the other Party, or to terminate this Agreement. This limitation on damages shall not preclude actions by a Party to enforce payments of monies or fees or the performance of obligations requiring an obligation of money from the other Party under the terms of this Agreement including, but not limited to, obligations to pay attorneys' fees and obligations to advance monies or reimburse monies. In connection with the foregoing provisions, each Party acknowledges, warrants and represents that it has been fully informed with respect to, and represented by counsel of such Party's choice in connection with, the rights and remedies of such Party hereunder and the waivers herein contained, and after such advice and consultation has presently and actually intended, with full knowledge of such Party's rights and remedies otherwise available at law or in equity, to waive and relinquish such rights and remedies to the extent specified herein, and to rely to the extent herein specified solely on the remedies provided for herein with respect to any breach of this Agreement by the other Party.

12.8 Resolution of Disputes. With regard to any dispute involving the Project, the resolution of which is not provided for by this Agreement or Applicable Law, a Party shall, at the request of another Party, meet with designated representatives of the requesting Party promptly following its request. The parties to any such meetings shall attempt in good faith to resolve any such disputes. Nothing in this Section 12.8 shall in any way be interpreted as requiring that Developer, City and/or City's designee reach agreement with regard to those matters being addressed, nor shall the outcome of these meetings be binding in any way on City or Developer unless expressly agreed to in writing by the parties to such meetings.

12.9 Surviving Provisions. In the event this Agreement is terminated, neither Party shall have any further rights or obligations hereunder, except for those obligations of Developer set forth in Section 9.2 and Section 9.3.

ARTICLE 13
GENERAL PROVISIONS

13.1 Condemnation. As used herein, "**Material Condemnation**" means a condemnation of all or a portion of the Property that will have the effect of materially impeding or preventing development of the Project in accordance with this Agreement and the Project Approvals. In the event of a Material Condemnation, Developer may (a) request the City to amend this Agreement in accordance with the Development Agreement Statute and/or to amend the Project Approvals or Applicable City Regulations, which amendment shall not be unreasonably withheld; (b) decide, in its sole discretion, to challenge the condemnation; or

(c) request that City agree to terminate this Agreement by mutual agreement, which agreement shall not be unreasonably withheld, by giving a written request for termination to the City. If the condemnation is not a Material Condemnation, Developer shall have no right to request termination of this Agreement pursuant to this Section 13.1. Nothing in this Agreement shall be deemed, or deemed to be, any waiver or release by Developer of any compensation or damages awarded pursuant to a Material Condemnation.

13.2 Covenants Binding on Successors and Assigns and Run with Land. Except as otherwise more specifically provided in this Agreement, this Agreement and all of its provisions, rights, powers, standards, terms, covenants and obligations, shall be binding upon the Parties and their respective successors (by merger, consolidation, or otherwise) and assigns, and all other persons or entities acquiring the Property, or any interest therein, and shall inure to the benefit of the Parties and their respective successors and assigns, as provided in Government Code section 65868.5.

13.3 Notice. Any notice, demand or request which may be permitted, required or desired to be given in connection herewith shall be given in writing and directed to the City and Developer as follows:

If to the City:
City Clerk
City of Cupertino
10300 Torre Avenue
Cupertino, CA 95014-3202
Telephone: (408)777-3200

with a copy to:
City Attorney
City of Cupertino
10300 Torre Avenue
Cupertino, CA 95014-3202
Telephone: (408)777-3200

And:
City Manager
City of Cupertino
10300 Torre Avenue
Cupertino, CA 95014-3202
Telephone: (408)777-3200

If to Developer:
Carlene Matchniff
Vice President
IAC at Cupertino LLC.
690 North McCarthy Boulevard, #100
Milpitas, CA 95035

with a copy to: Jennifer Hernandez
Partner
Holland & Knight LLC
50 California Street, Suite 2800
San Francisco, CA 94111

Notices to be deemed effective if delivered by certified mail, return receipt requested, or commercial courier, with delivery to be effective upon verification of receipt. Any Party may change its respective address for notices by providing written notice of such change to the other Parties.

13.4 Permitted Delays. Performance by either of the Parties of an obligation hereunder shall be excused during any period of "**Permitted Delay**." Permitted Delay shall mean delay beyond the reasonable control of a Party including, without limitation, an inability to perform caused by (a) calamities, including without limitation earthquakes, floods, and fire; (b) civil commotion; (c) riots or terrorist acts; (d) strikes or other forms of material labor disputes; (e) shortages of materials or supplies; or (f) vandalism. A Party's financial inability to perform or obtain financing or adverse economic conditions generally shall not be grounds for claiming a Permitted Delay. The Party claiming a Permitted Delay shall notify the other Party of its intent to claim a Permitted Delay, the specific grounds of the same and the anticipated period of the Permitted Delay within thirty (30) business days after the occurrence of the conditions which establish the grounds for the claim. If notice by the Party claiming such extension is sent to the other Party more than thirty (30) days after the commencement of the cause, the period shall commence to run only thirty (30) days prior to the giving of such notice. The period of Permitted Delay shall last no longer than the conditions preventing performance. In no event shall any Permitted Delay extend the Term of this Agreement.

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

13.6 Waivers. Notwithstanding any other provision in this Agreement, any failures or delays by any Party in asserting any of its rights and remedies under this Agreement shall not operate as a waiver of any such rights or remedies, or deprive any such Party of its right to institute and maintain any actions or proceedings which it may deem necessary to protect, assert or enforce any such rights or remedies. A Party may specifically and expressly waive in writing any condition or breach of this Agreement by the other Party, but no such waiver shall constitute a further or continuing waiver of any preceding or succeeding breach of the same or any other provision. Consent by one Party to any act by the other Party shall not be deemed to imply consent or waiver of the necessity of obtaining such consent for the same or similar acts in the future.

13.7 Construction of Agreement. All Parties have been represented by counsel in the preparation and negotiation of this Agreement, and this Agreement shall be construed according to the fair meaning of its language. The rule of construction to the effect that ambiguities are to be resolved against the drafting party shall not be employed in interpreting this Agreement.

Unless the context clearly requires otherwise, (a) the plural and singular numbers shall each be deemed to include the other; (b) the masculine, feminine, and neuter genders shall each be deemed to include the others; (c) "shall," "will," or "agrees" are mandatory, and "may" is permissive; (d) "or" is not exclusive; (e) "includes" and "including" are not limiting; and (f) "days" means calendar days unless specifically provided otherwise.

13.8 Headings. Section headings in this Agreement are for convenience only and are not intended to be used in interpreting or construing the terms, covenants, or conditions of this Agreement.

13.9 Severability. If any term or provision of this Agreement, or the application of any term or provision of this Agreement to a specific situation, is found to be invalid, or unenforceable, in whole or in part for any reason, the remaining terms and provisions of this Agreement shall continue in full force and effect unless an essential purpose of this Agreement would be defeated by loss of the invalid or unenforceable provisions, in which case any Party may terminate this Agreement by providing written notice thereof to the other Party.

13.10 Time is of the Essence. Time is of the essence of this Agreement. All references to time in this Agreement shall refer to the time in effect in the State of California.

13.11 Extension of Time Limits. The time limits set forth in this Agreement may be extended by mutual consent in writing of the Parties in accordance with the provisions of this Agreement.

13.12 Other Necessary Acts. Each Party shall execute and deliver to the other all such further instruments and documents as may be reasonably necessary to carry out the Project Approvals, Subsequent Approvals and this Agreement and to provide and secure to the other Party the full and complete enjoyment of its rights and privileges of this Agreement.

13.13 Signatures. The individuals executing this Agreement represent and warrant that they have the right, power, legal capacity, and authority to enter into and to execute this Agreement on behalf of the respective legal entities of Developer and the City.

13.14 Entire Agreement. This Agreement (including all Recitals, exhibits attached hereto, each of which is fully incorporated herein by reference), integrates all of the terms and conditions mentioned herein or incidental hereto, and constitutes the entire understanding of the Parties with respect to the subject matter hereof, and all prior or contemporaneous oral agreements, understandings, representations and statements, and all prior written agreements, understandings, representations, and statements are terminated and superseded by this Agreement.

13.15 Estoppel Certificate. Developer or its lender may, at any time, and from time to time, deliver written notice to the City requesting the City to certify in writing (a) that this Agreement is in full force and effect; (b) that this Agreement has not been amended or modified or, if so amended or modified, identifying the amendments or modifications; (c) that Developer is not in Default of the performance of its obligations, or if in Default, to describe therein the nature and extent of any such Defaults; (d) those obligations under this Agreement have been satisfied since the date of the last Annual Review and those obligations under this Agreement

that remain unsatisfied; and (e) such other information or matters relating to this Agreement and/or the Project as may be reasonably requested by Developer. Developer shall pay, within thirty (30) days following receipt of City's invoice, the actual costs borne by City in connection with its review of the proposed estoppel certificate, including the costs expended by the City Attorney's Office in connection therewith. The City Manager shall be authorized to execute any certificate requested by Developer hereunder. The form of estoppel certificate shall be in a form reasonably acceptable to the City Attorney. The City Manager shall execute and return such certificate within thirty (30) days following Developer's request therefor. Developer and City acknowledge that a certificate hereunder may be relied upon by tenants, transferees, investors, partners, bond counsel, underwriters, bond holders and Mortgagees. The request shall clearly indicate that failure of the City to respond within the thirty-day period will lead to a second and final request. Failure to respond to the second and final request within fifteen (15) days of receipt thereof shall be deemed approval of the estoppel certificate.

13.16 Recordation of Termination. Upon completion of the Project and Developer's payment of all Impact Fees under Article 4 and other payments under Article 5 and recordation of the Affordable Housing/Relocation Agreement, or upon any earlier termination of this Agreement upon the mutual written consent of the Parties or as otherwise expressly provided herein, a written statement acknowledging Developer's satisfaction of all obligations under this Agreement or such termination, in form and content reasonably satisfactory to the Parties, shall be executed by the Parties shall be recorded by City or Developer in the Official Records of Santa Clara County.

13.17 City Approvals and Actions. Whenever a reference is made herein to an action or approval to be undertaken by City, the City Manager or his or her designee is authorized to act on behalf of City, unless specifically provided otherwise or the context requires otherwise.

13.18 Negation of Partnership. The Parties specifically acknowledge that the Project is a private development, that no Party to this Agreement is acting as the agent of any other in any respect hereunder, and that each Party is an independent contracting entity with respect to the terms, covenants and conditions contained in this Agreement. None of the terms or provisions of this Agreement shall be deemed to create a partnership between or among the Parties in the businesses of Developer, the affairs of the City, or otherwise, or cause them to be considered joint venturers or members of any joint enterprise.

13.19 No Third Party Beneficiaries. This Agreement is made and entered into for the sole protection and benefit of the signatory Parties and their successors and assigns, including Mortgagees. No other person shall have any right of action based upon any provision in this Agreement.

13.20 Governing State Law. This Agreement shall be construed in accordance with the laws of the State of California, without reference to its choice of law provisions.

13.21 Exhibits. The following exhibits are attached to this Agreement and are hereby incorporated herein by this reference for all purposes as if set forth herein in full:

Exhibit A: Property Description

Exhibit B: Site Map

Exhibit C: Affordable Housing Relocation Agreement

Exhibit D: Affordable Housing Agreement

Exhibit E: Existing Impact Fees

Exhibit F: TDM Program

Exhibit G: Annual Review Form

Exhibit H: Form of Assignment and Assumption Agreement

If the recorder refuses to record any exhibit, the City Clerk may replace it with a single sheet bearing the exhibit identification letter, stating the title of the exhibit, the reason it is not being recorded, and that the original, certified by the City Clerk, is in the possession of the City Clerk and will be reattached to the original when it is returned by the recorder to the City Clerk.

[SIGNATURES ON FOLLOWING PAGE]

IN WITNESS WHEREOF, the City and Developer have executed this Agreement as of the Effective Date.

CITY:

CITY OF CUPERTINO, a municipal corporation

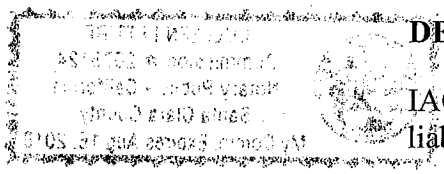
By: _____
David Brandt, City Manager
[Signature must be notarized]

ATTEST:

By: _____
Grace Schmidt, City Clerk

APPROVED AS TO FORM:

By: _____
Randolph Stevenson Hom, City Attorney



DEVELOPER:

IAC AT CUPERTINO LLC, a Delaware limited liability company

By: Arlene Matchniff
Name: Arlene MATCHNIFF
Its: Vice President Entitlements

By: _____
Name: _____
Its: _____

[Signatures must be notarized]

ACKNOWLEDGMENTS

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)
) ss
County of Santa Clara)

On June 29 2016, before me, Colleen Lettire,
(Name of Notary)

notary public, personally appeared Lenora Carene Matchniff
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.

(Notary Signature)

COLLEEN LETTIRE
Commission # 2078124
Notary Public - California
Santa Clara County
My Comm. Expires Aug 16, 2018

ACKNOWLEDGMENTS

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)
) ss
County of _____)

On _____, before me,_____,
(Name of Notary)

notary public, 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.

_____
(Notary Signature)

EXHIBIT A

PROPERTY DESCRIPTION

Real property in the City of Cupertino, County of Santa Clara, State of California, described as follows:

PARCEL A:

ALL OF PARCEL 1 AS SHOWN ON THAT CERTAIN PARCEL MAP FILED FOR RECORD ON SEPTEMBER 7, 1973 IN BOOK 329 OF MAPS, AT PAGE 49, RECORDS OF SANTA CLARA COUNTY. EXCEPTING THEREFROM THAT PORTION THEREOF DEDICATED AND CONVEYED TO THE CITY OF CUPERTINO, BY DEED RECORDED MAY 7, 1975 IN BOOK B397, PAGE 613, OFFICIAL RECORDS, DESCRIBED AS FOLLOWS:

BEGINNING AT THE INTERSECTION OF THE CENTERLINE OF PRUNERIDGE AVENUE WITH THE CENTERLINE OF WOLFE ROAD AS SHOWN ON THAT CERTAIN PARCEL MAP RECORDED IN BOOK 329 OF MAPS AT PAGE 49, SANTA CLARA COUNTY RECORDS; THENCE LEAVING SAID CENTERLINE OF SAID AVENUE, ALONG SAID CENTERLINE OF SAID ROAD, S. 0° 35' 45" W., 432.35 FEET; THENCE LEAVING SAID CENTERLINE OF SAID ROAD, S. 89° 24' 15" E., 54.00 FEET TO THE TRUE POINT OF BEGINNING, BEING ALSO A POINT IN THE EASTERLY LINE OF WOLFE ROAD AS SHOWN ON SAID MAP; THENCE ALONG SAID EASTERLY LINE N. 0° 35' 45" E., 326.33 FEET; THENCE LEAVING SAID EASTERLY LINE ALONG A TANGENT CURVE TO THE RIGHT, HAVING A RADIUS OF 60.00 FEET, THROUGH A CENTRAL ANGLE OF 63° 15' 31", AN ARC LENGTH OF 66.24 FEET; THENCE IN A SOUTHERLY DIRECTION ALONG A NON-TANGENT CURVE TO THE LEFT, HAVING A RADIUS OF 40.00 FEET, CONCAVE TO THE SOUTHWEST, WHOSE CENTER BEARS S. 26° 08' 44" E., THROUGH A CENTRAL ANGLE OF 63° 15' 31", AN ARC LENGTH OF 44.16 FEET TO A POINT THAT IS PARALLEL WITH AND 11.00 FEET EASTERLY MEASURED AT RIGHT ANGLES FROM SAID EASTERLY LINE; THENCE ALONG SAID PARALLEL LINE S. 0° 35' 45" W., 276.81 FEET; THENCE ALONG A TANGENT CURVE TO THE RIGHT, HAVING A RADIUS OF 100.00 FEET THROUGH A CENTRAL ANGLE OF 15° 00' 00", AN ARC LENGTH OF 26.18 FEET; THENCE S. 15° 35' 45" W., 16.17 FEET; THENCE ALONG A TANGENT CURVE TO THE LEFT, HAVING A RADIUS OF 100.00 FEET, THROUGH A CENTRAL ANGLE OF 15° 00' 00", AN ARC LENGTH OF 26.18 FEET TO THE TRUE POINT OF BEGINNING.

ALSO EXCEPTING THEREFROM THAT PORTION THEREOF GRANTED AND CONVEYED TO THE CITY OF CUPERTINO, A CALIFORNIA MUNICIPAL CORPORATION, LYING WITHIN AREA 1 AS SHOWN ON EXHIBIT "B" AND MORE PARTICULARLY DESCRIBED ON EXHIBIT "A" OF THAT CERTAIN GRANT DEED RECORDED NOVEMBER 4, 2014 AS INSTRUMENT NO. 22760862 OF OFFICIAL RECORDS.

EXCEPTING THEREFROM ALL OIL, OIL RIGHTS, MINERALS, MINERAL RIGHTS, NATURAL GAS RIGHTS, AND OTHER HYDROCARBONS BY WHATSOEVER NAME KNOWN, GEOTHERMAL STEAM, ANY OTHER MATERIAL RESOURCES AND ALL PRODUCTS DERIVED FROM ANY OF THE FOREGOING, THAT MAY BE WITHIN OR UNDER THE LAND, TOGETHER WITH THE PERPETUAL RIGHT OF DRILLING, MINING, EXPLORING AND OPERATING THEREFOR AND STORING IN AND REMOVING THE SAME FROM THE LAND OR ANY OTHER PROPERTY, INCLUDING THE RIGHT TO WHIPSTOCK OR DIRECTIONALLY DRILL AND MINE FROM PROPERTIES OTHER THAN THOSE CONVEYED HEREBY, OIL OR GAS WELLS, TUNNELS AND SHAFTS INTO, THROUGH OR ACROSS THE SUBSURFACE OF THE LAND, AND TO BOTTOM SUCH WHIPSTOCKED OR DIRECTIONALLY DRILLED WELLS, TUNNELS AND SHAFTS UNDER AND BENEATH OR BEYOND THE EXTERIOR LIMITS THEREOF, AND TO REDRILL, RETUNNEL, EQUIP, MAINTAIN, REPAIR, DEEPEN AND OPERATE ANY SUCH WELLS OR MINES; WITHOUT, HOWEVER, THE RIGHT TO DRILL, MINE, STORE, EXPLORE AND OPERATE THROUGH THE SURFACE OR THE UPPER 500 FEET OF THE SUBSURFACE OF THE LAND AS RESERVED IN THE DOCUMENT RECORDED MARCH 27, 2013, AS INSTRUMENT NO. 22148706 OF OFFICIAL RECORDS.

PARCEL B:

PARCEL TWO AS SHOWN ON EXHIBIT "A" AND MORE PARTICULARLY DESCRIBED ON EXHIBIT "C" ATTACHED TO LOT LINE ADJUSTMENT ATTACHED AS EXHIBIT "B" TO LOT LINE ADJUSTMENT GRANT DEED, RECORDED NOVEMBER 4, 2014 AS INSTRUMENT NO. 22760859 OF OFFICIAL RECORDS.

EXCEPTING THEREFROM THAT PORTION THEREOF GRANTED AND CONVEYED TO THE CITY OF CUPERTINO, A CALIFORNIA MUNICIPAL CORPORATION, LYING WITHIN AREA 1 AND 2 AS SHOWN ON EXHIBIT "B" AND MORE PARTICULARLY DESCRIBED ON EXHIBIT "A" OF THAT CERTAIN GRANT DEED RECORDED NOVEMBER 4, 2014 AS INSTRUMENT NO. 22760862 OF OFFICIAL RECORDS.

ALSO EXCEPTING THEREFROM ALL OIL, OIL RIGHTS, MINERALS, MINERAL RIGHTS, NATURAL GAS RIGHTS, AND OTHER HYDROCARBONS BY WHATSOEVER NAME KNOWN, GEOTHERMAL STEAM, ANY OTHER MATERIAL RESOURCES AND ALL PRODUCTS DERIVED FROM ANY OF THE FOREGOING, THAT MAY BE WITHIN OR UNDER THE LAND, TOGETHER WITH THE PERPETUAL RIGHT OF DRILLING, MINING, EXPLORING AND OPERATING THEREFOR AND STORING IN AND REMOVING THE SAME FROM THE LAND OR ANY OTHER PROPERTY, INCLUDING THE RIGHT TO WHIPSTOCK OR DIRECTIONALLY DRILL AND MINE FROM PROPERTIES OTHER THAN THOSE CONVEYED HEREBY, OIL OR GAS WELLS, TUNNELS AND SHAFTS INTO, THROUGH OR ACROSS THE SUBSURFACE OF THE LAND, AND TO BOTTOM SUCH WHIPSTOCKED OR DIRECTIONALLY DRILLED WELLS, TUNNELS AND SHAFTS UNDER AND BENEATH OR BEYOND THE EXTERIOR LIMITS THEREOF, AND TO REDRILL, RETUNNEL, EQUIP, MAINTAIN, REPAIR, DEEPEN AND OPERATE ANY SUCH WELLS OR MINES; WITHOUT, HOWEVER, THE RIGHT TO DRILL, MINE, STORE, EXPLORE AND OPERATE

THROUGH THE SURFACE OR THE UPPER 500 FEET OF THE SUBSURFACE OF THE LAND AS RESERVED IN THE DOCUMENT RECORDED MARCH 27, 2013, AS INSTRUMENT NO. 22148706 OF OFFICIAL RECORDS.

EXHIBIT B

SITE MAP

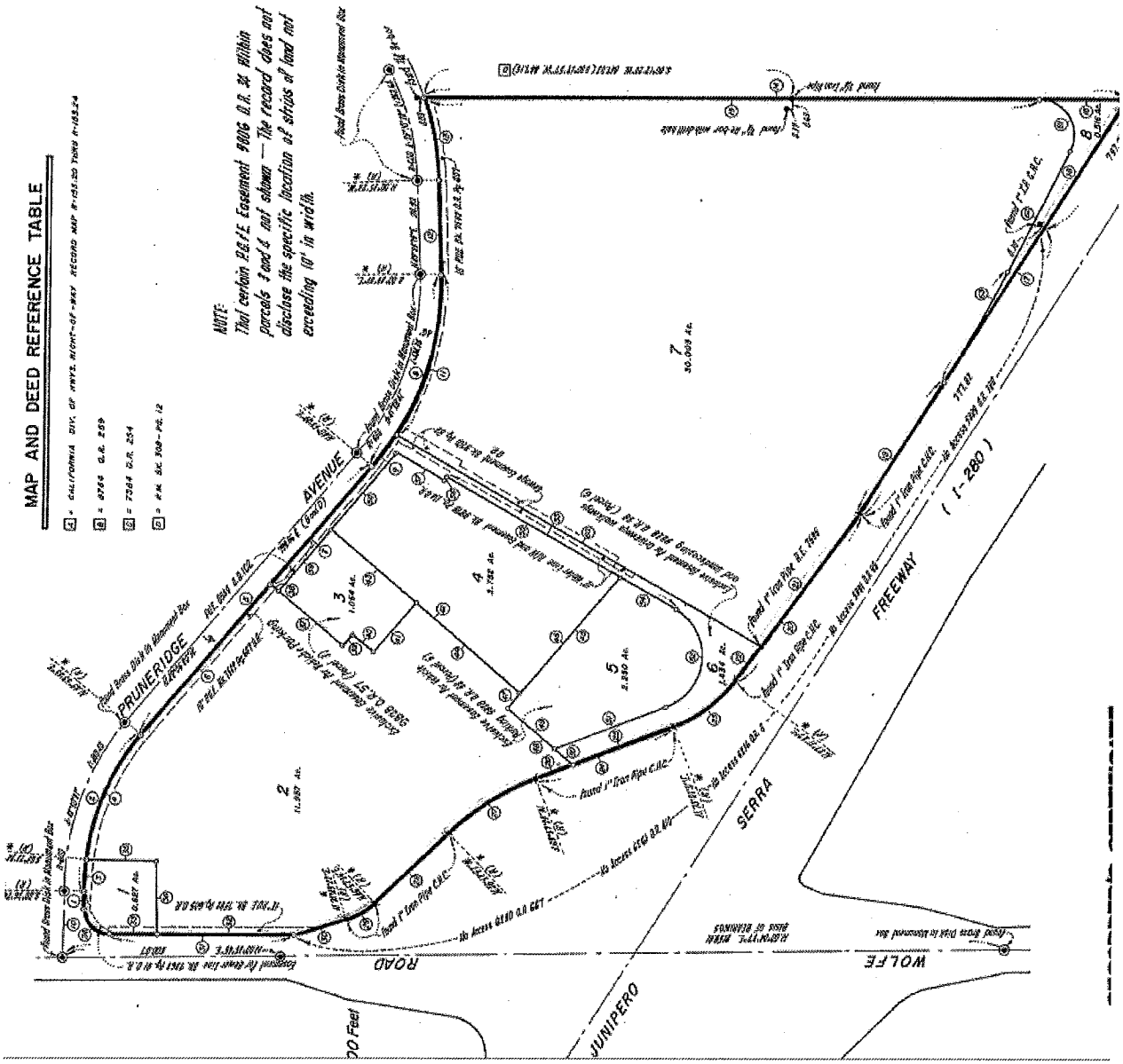


EXHIBIT C

AFFORDABLE HOUSING RELOCATION AGREEMENT

This AFFORDABLE HOUSING RELOCATION AGREEMENT ("Agreement") is entered into as of this __ day of ____ 2016 (the "Effective Date"), by and between the CITY OF CUPERTINO, a municipal corporation (the "City"), and IAC AT CUPERTINO, LLC, a Delaware limited liability company (the "Developer"), (individually a "Party" and together the "Parties"), with reference to the following facts:

A. Developer is the owner of that certain real property of approximately 12.44 acres located at 19500 Pruneridge Avenue, Cupertino, County of Santa Clara, California, as more particularly described in Attachment 1 attached hereto and incorporated herein by this reference (the "Property").

B. The Parties have entered into a Development Agreement ("Development Agreement"), effective _____ and recorded on _____ in the Official Records of Santa Clara County as Instrument No. _____, to facilitate development of the Property subject to certain terms and conditions. Developer intends to demolish the existing 342-unit apartment community on the property ("Existing Residential Development") and redevelop the property with 942 apartments and related uses, as further described in the Development Agreement (the "Project"). All capitalized terms not otherwise defined in this Agreement have the meaning ascribed to them in the Development Agreement.

C. As a material consideration for the long term assurances, vested rights, and other City obligations provided by the Development Agreement and as a material inducement to City to enter into the Development Agreement, Developer offered and agreed to certain conditions as specified in the Development Agreement. Section 3.13.2 of the Development Agreement specifies that the Parties shall enter into this Agreement prior to or concurrently with the execution of the Development Agreement. In addition, the Development Agreement Section 3.13.3 specifies that the Parties shall also enter an Affordable Housing Agreement and Declaration of Restrictive Covenants for the Affordable Units in the Project ("Affordable Housing Agreement").

D. Developer is the successor-in-interest of Irvine Apartment Communities, Inc., a Delaware corporation ("Original Declarant"), which executed that certain "City of Cupertino Below Market Rate Rental Housing – Declaration of Resale Controls" dated September 8, 1997 and recorded on October 20, 1997, as Document No. 13902426 in the Official Records of Santa Clara County (the "Original Declaration") and declared for itself, its successors, heirs, grantees, and assigns that its interest in the Property would be held subject to the Original Declaration. The Original Declaration provided, in part, that thirty-four (34) units (the "Original Affordable Units") that now exist on the Property would be occupied exclusively by, and rented to, persons or households of very low and low income in compliance with the provisions of the City's Housing Mitigation Procedural Manual for a period of thirty (30) years from the date of recordation, or until October 20, 2027; and that any modification, amendment, or deletion of any terms of the Original Declaration must be requested in writing and approved by the City Council of the City of Cupertino.

E. Developer, as successor-in-interest to the Original Declarant, has requested in writing that City modify the Original Declaration to allow the Original Affordable Units to (i) be unoccupied for a period of approximately four years so that the Project may be built and (ii) to allow the Original Affordable Units to be removed and replaced in the Project. City's approval of Developer's request will result in the displacement of the tenants of the Original Affordable Units, and the City has determined that it is required to pay relocation benefits to tenants displaced from the Original Affordable Units (the "Affordable Unit Tenants") as set forth in Government Code Section 7260 et seq. and implementing regulations (25 CCR Section 6000 et seq.) (collectively, "State Relocation Laws"). Developer desires to reimburse City for its costs of compliance with State Relocation Laws, to make replacement housing available to Affordable Unit Tenants, and otherwise to provide assistance to City in meeting its relocation obligations, thus enabling Developer to construct the Project. The Original Affordable Units are currently occupied by seventeen (17) very low income Affordable Unit Tenants and seventeen (17) low income Affordable Unit Tenants.

NOW, THEREFORE, in consideration of the mutual covenants and promises contained in this Agreement and other valuable consideration, it is mutually agreed by and between the Parties as follows.

AGREEMENT

The Parties agree and acknowledge that the above recitals are true and accurate, and are incorporated into this Agreement by this reference.

ARTICLE 1.
REIMBURSEMENT TO CITY OF COSTS OF RELOCATION

Section 1.1. Reimbursement of Relocation Costs. Subject to the express terms of this Agreement, Developer hereby agrees to reimburse City for all third-party consultant costs and payments to Affordable Unit Tenants made under State Relocation Laws, including without limitation relocation advisory services, preparation of a Relocation Plan, moving expenses, rent differential, if any, storage costs, and utility connection charges (collectively "Relocation Costs").

Section 1.2. Deposit and Accounting of Funds. The City shall establish an account in which the Developer's funds shall be deposited within thirty (30) days of the execution of this Agreement and from which funds shall be disbursed from time to time by the City to pay Relocation Costs in accordance with this Agreement. The City shall keep separate records of the account, showing all deposits made by the Developer and all disbursements made by the City. All interest shall be retained with the fund. Not more than once every six months during the term of this Agreement, Developer shall have the right to review and/or audit and copy all books and records of City pertaining to City's administration of this Agreement.

Section 1.3. Use of Funds and Additional Deposits. The City shall be permitted to utilize funds from the account to pay Relocation Costs as they are incurred. The Developer shall make an initial deposit equal to the cost of preparing the Relocation Plan within thirty (30) days of written notice of the cost from the City. If, at any time, a disbursement from the account will

result in the balance in such account being reduced below the sum of Seventy-Five Thousand Dollars ($75,000), City shall give written notice of such fact to Developer and Developer shall, within fifteen (15) days after receipt of such notice, deposit with City such additional amount as may be necessary to restore the balance of the account to Seventy-Five Thousand Dollars ($75,000). In the event of any failure or refusal by Developer to deposit such additional amounts, City shall be entitled to suspend all further work of any type related to the relocation of the tenants from the Original Affordable Units, subject to the default and dispute resolution procedures as described in Section 3.1 of this Agreement. At the City's option, written notice of payments due may be provided by e-mail to an address specified by the Developer, or by first class mail to the addresses specified in Section 4.2.

Section 1.4. Reports to Developer. The City shall provide a monthly report to Developer showing the amount and purpose of each expenditure from the account. With respect to disbursements to consultants for Relocation Costs, the report shall identify the consultant and include a description of the services rendered, hours spent by consultant staff, and amount charged for such services. Disbursements to tenants shall be identified by category of payment (moving expenses, rent differential, etc.). Records of deposits and expenditures from the account shall be available to the Developer for inspection during the City's regular business hours. Developer may submit written objections to any Relocation Costs that Developer believes are inconsistent with this Agreement within thirty (30) days after receipt of the monthly reports. Following completion of tenant relocation, any balance remaining in the account shall be refunded to Developer.

ARTICLE 2.
RELOCATION PROCESS

Section 2.1. Preparation and Implementation of Relocation Plan.

(a) City shall retain a consultant (the "Relocation Consultant") to prepare a Relocation Plan in conformance with State Relocation Laws, including, but not limited to, 25 CCR Section 6038, for approval by the City Council. The Relocation Plan shall provide relocation benefits to Affordable Unit Tenants as required by State Relocation Laws. The Relocation Consultant shall consult with the Developer in the preparation of the Relocation Plan. The Parties acknowledge their mutual goal to approve a Relocation Plan consistent with State Relocation Laws within one hundred and twenty (120) days following the Effective Date of this Agreement.

(b) Prior to the date of the Relocation Notice, any Affordable Unit Tenant who: (i) occupied an Original Affordable Unit in the Existing Residential Development for at least ninety (90) days prior to the Effective Date of the Development Agreement, and (ii) moves from the Existing Residential Development after the Effective Date of the Development Agreement shall be considered a "displaced person" under the State Relocation Laws and shall be entitled to Relocation Costs. Within ten (10) days after an Affordable Unit Tenant notifies Developer of its intent to vacate an Original Affordable Unit, the Developer shall provide the City with written notice and current contact information for any such Affordable Unit Tenant. The City, or, at the City's option, the Relocation Consultant, shall provide any such Affordable Unit Tenant with written notice of the Affordable Unit Tenant's rights as a displaced person as

required by State Relocation Laws and shall provide relocation benefits to such Affordable Unit Tenant as applicable.

(c) In the event that the Developer decides, in its sole and absolute discretion, not to proceed with the demolition of the Existing Residential Development and notifies the City in writing of its decision prior to the City Council approval of the Relocation Plan ("Relocation Suspension Notice"), the City shall direct the Relocation Consultant to suspend work on the approval and implementation of the Relocation Plan until further written notice. Upon further written notice to the City of the Developer's intent to proceed, the Developer shall pay for the costs of any necessary revisions to the Relocation Plan.

(d) In order to minimize disruption of the Affordable Unit Tenants to the maximum extent practical, no Relocation Notices pursuant to Government Code Section 7267.3 shall be sent subsequent to the adoption of a Relocation Plan until the Parties mutually agree in writing that the Developer intends to proceed with the Project. In the event that the revisions are necessary to the Relocation Plan prior to the time the Parties agree to send the Relocation Notices, the Developer shall pay all such costs.

(e) The consultant shall provide relocation advisory services to Affordable Unit Tenants as required by State Relocation Laws.

Section 2.2. Availability of Developer Property for Relocation during Construction. Developer has agreed that the Relocation Plan shall offer Affordable Unit Tenants comparable replacement dwellings in Developer's North Park Apartment Homes, located at 3500 Palmilla Drive, San Jose 95134 ("North Park"), to the extent such units are then available, at the rental rate permitted by Section 3.2 of the Affordable Housing Agreement, for the period from the initial occupancy of the North Park unit by the Affordable Unit Tenant until an Affordable Unit is available for occupancy by the Affordable Unit Tenant in the Project, as further described in Article 3 of the Affordable Housing Agreement. No North Park units offered to the Affordable Unit Tenants, however, shall have been designated as affordable housing by the City of San Jose. Upon request by the Affordable Unit Tenants, the Developer will also consider on a case-by-case basis relocating such tenants to units in other residential developments owned by the Developer or Developer's affiliate that currently have affordable units as part of the development, subject to availability, and provided that no units offered in another development shall have been designated as affordable housing by a regulating agency.

Section 2.3. Right of First Refusal to Return. All Affordable Unit Tenants who are Eligible Households, as defined in the Affordable Housing Agreement, shall be offered a one-time right of first refusal for rental of a comparable Affordable Unit in either: (i) the Existing Residential Development if units are re-offered for rent prior to demolition of the Existing Residential Development; (ii) Relocated Affordable Units, if the Developer does not complete construction of the Project within the Maximum Suspension Period; or (iii) rental of a comparable Affordable Unit in the Project at the time a comparable Affordable Unit first becomes available for occupancy after completion, as further described in Sections 3.5 and 5.4(b) of the Affordable Housing Agreement ("Right of First Refusal").

Section 2.4. Monthly Annual Report. Following completion of the Relocation Plan, the Relocation Consultant shall submit a monthly report to the City and Developer, in a form prescribed by or otherwise acceptable to the City, describing Relocation Consultant's activities and the progress of tenant relocation.

ARTICLE 3.
DEFAULT

Section 3.1. Default. Failure of the Developer to satisfy any of Developer's obligations under the terms of this Agreement within thirty (30) days after the delivery of a notice of default from the City, or, if the default cannot be cured within thirty (30) days, failure of the Developer to commence to cure within thirty (30) days and to thereafter diligently pursue such cure and complete such cure within ninety (90) days, will constitute a default under this Agreement and a default under the Development Agreement. The Parties agree to meet and confer during the cure period in a good faith effort to resolve any dispute regarding the asserted default or the cure thereof. In addition to remedies for breach of this Agreement, the City may exercise any and all remedies available to it, including but not limited to:

(a) withholding, conditioning, suspending or revoking any permit, license, subdivision approval or map, or other entitlement for the Project, including without limitation issuance of demolition permits and building permits.

(b) instituting against the Developer, or other parties, a civil action for declaratory relief, injunction or any other equitable relief, or relief at law, to compel or enforce Developer's performance of its obligations under this Agreement, including without limitation an action to rescind a transaction and/or to require repayment of any funds received in connection with such a default;

(c) where one or more persons have received financial benefit as a result of violation of this Agreement, the City may assess, and institute legal action to recover as necessary, a penalty in any amount up to and including the amount of financial benefit received, in addition to recovery of the benefit received;

(d) any other means authorized under the City of Cupertino Municipal Code or any other federal or state statute.

Section 3.2. Remedies Cumulative. No right, power, or remedy given to the City by the terms of this Agreement is intended to be exclusive of any other right, power, or remedy; and each and every such right, power, or remedy shall be cumulative and in addition to every other right, power, or remedy given to the City by the terms of this Agreement or by any statute or ordinance or otherwise against Developer and any other person. Neither the failure nor any delay on the part of the City to exercise any such rights and remedies shall operate as a waiver thereof, nor shall any single or partial exercise by the City of any such right or remedy preclude any other or further exercise of such right or remedy, or any other right or remedy.

ARTICLE 4.
GENERAL PROVISIONS

Section 4.1. Hold Harmless. Developer will indemnify and hold harmless (without limit as to amount) City and its elected officials, officers, employees and agents in their official capacity (hereinafter collectively referred to as "Indemnitees"), and any of them, from and against all loss, all risk of loss and all damage (including expense) sustained or incurred because of or by reason of any and all claims, demands, suits, actions, judgments and executions for damages of any and every kind and by whomever and whenever made or obtained, allegedly caused by, arising out of or relating in any manner to Developer's performance or non-performance under this Agreement or due to a legal action, claim, or proceeding instituted by a third party arising, directly or indirectly, from any damage to persons or property arising or resulting directly or indirectly from this Agreement or the relocation of the tenants from the Original Affordable Units and shall protect and defend Indemnitees, and any of them with respect thereto, except to the extent arising from the negligence or willful misconduct of the Indemnitees. The provisions of this Section shall survive expiration or other termination of this Agreement and the provisions of this Section shall remain in full force and effect.

Section 4.2. Notices. Except as provided in Section 1.3, all notices required pursuant to this Agreement shall be in writing and may be given by personal delivery or by registered or certified mail, return receipt requested, to the Party to receive such notice at the addressed set forth below:

TO THE CITY:

City of Cupertino
Office of City Attorney
250 Hamilton Avenue
Cupertino, CA 94301

TO THE DEVELOPER:

Carlene Matchniff
IAC at Cupertino LLC
890 North McCarthy Boulevard, #100
Milpitas, CA 95035

WITH A COPY TO:

Jennifer L. Hernandez
Holland & Knight LLP
50 California Street, Suite 2800
San Francisco, CA 941111

Any Party may change the address to which notices are to be sent by notifying the other Parties of the new address, in the manner set forth above.

Section 4.3. Integrated Agreement; Relationship to Other Related Agreements and Documents. This Agreement constitutes the entire Agreement between the Parties and no modification hereof shall be binding unless reduced to writing and signed by the Parties hereto. The parties acknowledge that this Agreement was negotiated and entered concurrently with the Development Agreement and the Affordable Housing Agreement. The Parties hereby agree that in effect of a direct conflict between this Agreement and the Development Agreement, the Development Agreement shall control. In the event of a direct conflict between this Agreement and the Affordable Housing Agreement, the Affordable Housing Agreement shall control.

Section 4.4. Each Party's Role in Drafting the Agreement. Each Party to this Agreement has had an opportunity to review the Agreement, confer with legal counsel regarding the meaning of the Agreement, and negotiate revisions to the Agreement. Accordingly, neither Party shall rely upon Civil Code Section 1654 in order to interpret any uncertainty in the meaning of the Agreement.

Section 4.5. Amendment of Agreement; Approvals and Consents.

(a) Amendments to this Agreement shall be subject to the review and approval of the City Council. No amendment may be approved that is inconsistent with State law, the Cupertino Municipal Code, the Development Agreement, or the Relocation Plan. Upon approval, a restated Agreement or amendments to this Agreement, as appropriate, shall be executed.

(b) The City has authorized the City Manager to execute this Agreement and has authorized the Director to deliver such approvals or consents as are required by this Agreement. Any consents or approvals required under this Agreement shall not be unreasonably withheld or made, unless it is specifically provided that a sole discretion standard applies.

Section 4.6. No Claims. Nothing contained in this Agreement shall create or justify any claim against the City by any person that Developer may have employed or with whom Developer may have contracted relative to the purchase of materials, supplies or equipment, or the furnishing or the performance of any work or services with respect to the Property or the construction of the Project or construction of the Affordable Units.

Section 4.7. Applicable Law. This Agreement shall be governed by California law. Venue shall be the County of Santa Clara.

Section 4.8. Waivers. Any waiver by the City of any obligation or condition in this Agreement must be in writing. No waiver will be implied from any delay or failure by the City to take action on any breach or default of Developer or to pursue any remedy allowed under this Agreement or applicable law. Any extension of time granted to Developer to perform any obligation under this Agreement shall not operate as a waiver or release from any of its obligations under this Agreement. Consent by the City to any act or omission by Developer shall not be construed to be a consent to any other or subsequent act or omission or to waive the requirement for the City's written consent to future waivers.

Section 4.9. Title of Parts and Sections. Any titles of the sections, subsections, or subparagraphs of this Agreement are inserted for convenience of reference only and shall be disregarded in interpreting any part of the Agreement's provisions.

Section 4.10. Multiple Originals; Counterpart. This Agreement may be executed in multiple originals, each of which is deemed to be an original, and may be signed in counterparts.

Section 4.11. Severability. In the event any limitation, condition, restriction, covenant, or provision contained in this Agreement is to be held invalid, void or unenforceable by any court of competent jurisdiction, the remaining portions of this Agreement shall nevertheless be and remain in full force and effect.

Section 4.12. Termination. This Agreement shall be deemed terminated upon either (A) mutual written agreement of the parties or (B) the occurrence of the all of the following: (i) satisfaction of all Developer obligations under the Relocation Plan, (ii) full reimbursement to the City under Section 1.1, (iii) satisfaction of the Developer obligation to offer the Right of First Refusal in the Project under Section 2.3, and (iv) the execution and recording of the Affordable Housing Agreement.

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be executed as of the day and year first above written.

DEVELOPER:

IAC at Cupertino LLC, a Delaware limited liability company

By: Cullene Mackenzie
Its: Vice President Entitlements

CITY:

City of Cupertino, a municipal corporation

By: _____
Its: _____

APPROVED AS TO FORM:

By: _____

ATTACHMENT 1

LEGAL DESCRIPTION OF THE PROPERTY

Real property in the City of Cupertino, County of Santa Clara, State of California, described as follows:

PARCEL A:

ALL OF PARCEL 1 AS SHOWN ON THAT CERTAIN PARCEL MAP FILED FOR RECORD ON SEPTEMBER 7, 1973 IN BOOK 329 OF MAPS, AT PAGE 49, RECORDS OF SANTA CLARA COUNTY.

EXCEPTING THEREFROM THAT PORTION THEREOF DEDICATED AND CONVEYED TO THE CITY OF CUPERTINO, BY DEED RECORDED MAY 7, 1975 IN BOOK B397, PAGE 613, OFFICIAL RECORDS, DESCRIBED AS FOLLOWS:

BEGINNING AT THE INTERSECTION OF THE CENTERLINE OF PRUNERIDGE AVENUE WITH THE CENTERLINE OF WOLFE ROAD AS SHOWN ON THAT CERTAIN PARCEL MAP RECORDED IN BOOK 329 OF MAPS AT PAGE 49, SANTA CLARA COUNTY RECORDS; THENCE LEAVING SAID CENTERLINE OF SAID AVENUE, ALONG SAID CENTERLINE OF SAID ROAD, S. 0° 35' 45" W., 432.35 FEET; THENCE LEAVING SAID CENTERLINE OF SAID ROAD, S. 89° 24' 15" E., 54.00 FEET TO THE TRUE POINT OF BEGINNING, BEING ALSO A POINT IN THE EASTERLY LINE OF WOLFE ROAD AS SHOWN ON SAID MAP; THENCE ALONG SAID EASTERLY LINE N. 0° 35' 45" E., 326.33 FEET; THENCE LEAVING SAID EASTERLY LINE ALONG A TANGENT CURVE TO THE RIGHT, HAVING A RADIUS OF 60.00 FEET, THROUGH A CENTRAL ANGLE OF 63° 15' 31", AN ARC LENGTH OF 66.24 FEET; THENCE IN A SOUTHERLY DIRECTION ALONG A NON-TANGENT CURVE TO THE LEFT, HAVING A RADIUS OF 40.00 FEET, CONCAVE TO THE SOUTHWEST, WHOSE CENTER BEARS S. 26° 08' 44" E., THROUGH A CENTRAL ANGLE OF 63° 15' 31", AN ARC LENGTH OF 44.16 FEET TO A POINT THAT IS PARALLEL WITH AND 11.00 FEET EASTERLY MEASURED AT RIGHT ANGLES FROM SAID EASTERLY LINE; THENCE ALONG SAID PARALLEL LINE S. 0° 35' 45" W., 276.81 FEET; THENCE ALONG A TANGENT CURVE TO THE RIGHT, HAVING A RADIUS OF 100.00 FEET THROUGH A CENTRAL ANGLE OF 15° 00' 00", AN ARC LENGTH OF 26.18 FEET; THENCE S. 15° 35' 45" W., 16.17 FEET; THENCE ALONG A TANGENT CURVE TO THE LEFT, HAVING A RADIUS OF 100.00 FEET, THROUGH A CENTRAL ANGLE OF 15° 00' 00", AN ARC LENGTH OF 26.18 FEET TO THE TRUE POINT OF BEGINNING.

ALSO EXCEPTING THEREFROM THAT PORTION THEREOF GRANTED AND CONVEYED TO THE CITY OF CUPERTINO, A CALIFORNIA MUNICIPAL CORPORATION, LYING WITHIN AREA 1 AS SHOWN ON EXHIBIT "B" AND MORE PARTICULARLY DESCRIBED ON EXHIBIT "A" OF THAT CERTAIN GRANT DEED RECORDED NOVEMBER 4, 2014 AS INSTRUMENT NO. 22760862 OF OFFICIAL RECORDS.

EXCEPTING THEREFROM ALL OIL, OIL RIGHTS, MINERALS, MINERAL RIGHTS, NATURAL GAS RIGHTS, AND OTHER HYDROCARBONS BY WHATSOEVER NAME KNOWN, GEOTHERMAL STEAM, ANY OTHER MATERIAL RESOURCES AND ALL PRODUCTS DERIVED FROM ANY OF THE FOREGOING, THAT MAY BE WITHIN OR

UNDER THE LAND, TOGETHER WITH THE PERPETUAL RIGHT OF DRILLING, MINING, EXPLORING AND OPERATING THEREFOR AND STORING IN AND REMOVING THE SAME FROM THE LAND OR ANY OTHER PROPERTY, INCLUDING THE RIGHT TO WHIPSTOCK OR DIRECTIONALLY DRILL AND MINE FROM PROPERTIES OTHER THAN THOSE CONVEYED HEREBY, OIL OR GAS WELLS, TUNNELS AND SHAFTS INTO, THROUGH OR ACROSS THE SUBSURFACE OF THE LAND, AND TO BOTTOM SUCH WHIPSTOCKED OR DIRECTIONALLY DRILLED WELLS, TUNNELS AND SHAFTS UNDER AND BENEATH OR BEYOND THE EXTERIOR LIMITS THEREOF, AND TO REDRILL, RETUNNEL, EQUIP, MAINTAIN, REPAIR, DEEPEN AND OPERATE ANY SUCH WELLS OR MINES; WITHOUT, HOWEVER, THE RIGHT TO DRILL, MINE, STORE, EXPLORE AND OPERATE THROUGH THE SURFACE OR THE UPPER 500 FEET OF THE SUBSURFACE OF THE LAND AS RESERVED IN THE DOCUMENT RECORDED MARCH 27, 2013, AS INSTRUMENT NO. 22148706 OF OFFICIAL RECORDS.

PARCEL B:

PARCEL TWO AS SHOWN ON EXHIBIT "A" AND MORE PARTICULARLY DESCRIBED ON EXHIBIT "C" ATTACHED TO LOT LINE ADJUSTMENT ATTACHED AS EXHIBIT "B" TO LOT LINE ADJUSTMENT GRANT DEED, RECORDED NOVEMBER 4, 2014 AS INSTRUMENT NO. 22760859 OF OFFICIAL RECORDS.

EXCEPTING THEREFROM THAT PORTION THEREOF GRANTED AND CONVEYED TO THE CITY OF CUPERTINO, A CALIFORNIA MUNICIPAL CORPORATION, LYING WITHIN AREA 1 AND 2 AS SHOWN ON EXHIBIT "B" AND MORE PARTICULARLY DESCRIBED ON EXHIBIT "A" OF THAT CERTAIN GRANT DEED RECORDED NOVEMBER 4, 2014 AS INSTRUMENT NO. 22760862 OF OFFICIAL RECORDS.

ALSO EXCEPTING THEREFROM ALL OIL, OIL RIGHTS, MINERALS, MINERAL RIGHTS, NATURAL GAS RIGHTS, AND OTHER HYDROCARBONS BY WHATSOEVER NAME KNOWN, GEOTHERMAL STEAM, ANY OTHER MATERIAL RESOURCES AND ALL PRODUCTS DERIVED FROM ANY OF THE FOREGOING, THAT MAY BE WITHIN OR UNDER THE LAND, TOGETHER WITH THE PERPETUAL RIGHT OF DRILLING, MINING, EXPLORING AND OPERATING THEREFOR AND STORING IN AND REMOVING THE SAME FROM THE LAND OR ANY OTHER PROPERTY, INCLUDING THE RIGHT TO WHIPSTOCK OR DIRECTIONALLY DRILL AND MINE FROM PROPERTIES OTHER THAN THOSE CONVEYED HEREBY, OIL OR GAS WELLS, TUNNELS AND SHAFTS INTO, THROUGH OR ACROSS THE SUBSURFACE OF THE LAND, AND TO BOTTOM SUCH WHIPSTOCKED OR DIRECTIONALLY DRILLED WELLS, TUNNELS AND SHAFTS UNDER AND BENEATH OR BEYOND THE EXTERIOR LIMITS THEREOF, AND TO REDRILL, RETUNNEL, EQUIP, MAINTAIN, REPAIR, DEEPEN AND OPERATE ANY SUCH WELLS OR MINES; WITHOUT,

HOWEVER, THE RIGHT TO DRILL, MINE, STORE, EXPLORE AND OPERATE THROUGH THE SURFACE OR THE UPPER 500 FEET OF THE SUBSURFACE OF THE LAND AS RESERVED IN THE DOCUMENT RECORDED MARCH 27, 2013, AS INSTRUMENT NO. 22148706 OF OFFICIAL RECORDS.

EXHIBIT D

RECORDING REQUESTED BY AND
WHEN RECORDED MAIL TO:

City of Cupertino
10300 Torre Avenue
Cupertino, CA 95014
Attn.: City Manager

No fee for recording pursuant to
Government Code Section 27383

(Space above for Recorder's Use)

AFFORDABLE HOUSING AGREEMENT AND DECLARATION OF RESTRICTIVE COVENANTS

This AFFORDABLE HOUSING AGREEMENT AND DECLARATION OF RESTRICTIVE COVENANTS ("Agreement") is entered into as of this __ day of ____ 2016 ("Effective Date") by and between the CITY OF CUPERTINO, a municipal corporation (the "City"), and IAC AT CUPERTINO, LLC, a Delaware limited liability company (the "Developer"), (individually a "Party" and together the "Parties"), with reference to the following facts:

A. Developer is the owner of that certain real property of approximately 12.44 acres located at 19500 Pruneridge Avenue, Cupertino, County of Santa Clara, California, as more particularly described in Attachment 1 attached hereto and incorporated herein by this reference (the "Property").

B. The Parties have entered into a Development Agreement ("Development Agreement"), effective _____ and recorded on _____ in the Official Records of Santa Clara County as Instrument No. _____, to facilitate development of the Property subject to certain terms and conditions. Developer intends to demolish the existing 342-unit apartment community on the property ("Existing Residential Development") and redevelop the property with 942 apartments and related uses, as further described in the Development Agreement (the "Project"). All capitalized terms not otherwise defined in this Agreement have the meaning ascribed to them in the Development Agreement.

C. As a material consideration for the long term assurances, vested rights, and other City obligations provided by the Development Agreement and as a material inducement to City to enter into the Development Agreement, Developer offered and agreed to certain terms as specified in the Development Agreement. Section 3.13.3 of the Development Agreement specifies that the Parties shall enter into and record this Agreement prior to or concurrently with the recordation of the Development Agreement.

D. Developer is the successor-in-interest of Irvine Apartment Communities, Inc., a Delaware corporation ("Original Declarant"), which executed that certain "City of Cupertino Below Market Rate Rental Housing – Declaration of Resale Controls" dated September 8, 1997 and recorded on October 20, 1997, as Document No. 13902426 in the Official Records of Santa Clara County (the "Original Declaration") and declared for itself, its successors, heirs, grantees, and assigns that its interest in the Property would be held subject to the Original Declaration. The Original Declaration provided, in part, that thirty-four (34) units (the "Original Affordable Units") that now exist on the Property would be occupied exclusively by, and rented to, persons or households of very low to low income in compliance with the provisions of the City's Housing Mitigation Procedural Manual for a period of thirty (30) years from the date of recordation, or until October 20, 2027; and that any modification, amendment, or deletion of any terms of the Original Declaration must be requested in writing and approved by the City Council of the City of Cupertino. The Parties acknowledge and agree that the Original Declaration requires the Original Affordable Units to provide eighteen (18) Affordable Units affordable to Very Low Income Households and sixteen (16) Affordable Units affordable to Low Income Households with the bedroom counts as depicted on Table 1 on Attachment 2 , but that the Existing Residential Development is currently occupied by the Affordable Unit Tenants as follows: seventeen (17) Very Low Income Households and seventeen (17) Low Income Households with the bedroom counts indicated on the footnote to Table 1 Attachment 2.

E. Developer, as successor-in-interest to the Original Declarant, has requested in writing that City modify the Original Declaration to allow the Original Affordable Units to (i) continue to be operated with the existing income levels and bedroom counts noted on Table 1 of Attachment 2 for as long as necessary to minimize disruption to the Affordable Unit Tenants, as further described in Section 2.3(f); (ii) be unoccupied for a period of approximately four years so that the Project may be built; and (iii) to allow the Original Affordable Units to be removed and replaced in the Project.

F. To facilitate development of the Project, the Parties desire to release the Property from the terms of the Original Declaration and subject the Property to the terms of this Agreement. Should demolition of the Original Affordable Units not commence in the time period set forth in this Agreement, the Original Affordable Units shall be regulated in accordance with this Agreement.

G. Should the Project proceed as contemplated, pursuant to Section 4.1.1 of the Development Agreement, in lieu of payment of some Housing Impact Fees (as that term is defined in the Development Agreement), the Developer has voluntarily committed to (1) provide an additional thirty-seven (37) affordable units in the Project, seven (7) of which are to be occupied exclusively by, and rented to, households of low income and thirty (30) of which are to be occupied exclusively by, and rented to, households of moderate income ("New Affordable Units"), (2) to replace the Original Affordable Units consistent with the requirements of the Original Declaration as reflected on Table 1 of Attachment 2, and (3) extend the term applicable to the Original Affordable Units in the Project to a term that is concurrent with the New Affordable Units.

H. This Agreement allows the Developer to suspend the obligation to provide affordable units on the Property for a limited period, subject to the terms and conditions of this Agreement; provides for inclusion of Affordable Units in the Project; and provides for the rights of Affordable Unit Tenants to occupy Affordable Units in the Project. The Parties intend that this Agreement shall embody the entire agreement between the Parties regarding the subject matter of the Original Declaration and, except as expressly provided in this Agreement, shall thereby supersede the Original Declaration on and after the Effective Date of this Agreement.

NOW, THEREFORE, in consideration of the mutual covenants and promises contained in this Agreement and other valuable consideration, it is mutually agreed by and between the Parties as follows.

AGREEMENT

The Parties agree and acknowledge that the above recitals are true and accurate, and are incorporated into this Agreement by this reference.

ARTICLE 1.
DEFINITIONS AND EXHIBITS

Section 1.1. Definitions. When used in this Agreement, the following terms shall have the respective meanings assigned to them in this Article 1.

(a) "Affordable Rent" is the maximum allowable Rent for an Affordable Unit, equal to, for Affordable Units occupied by Moderate Income Households: one-twelfth (1/12th) of thirty percent (30%) of one hundred ten percent (110%) of Area Median Income; for Affordable Units occupied by Low Income Households: one-twelfth (1/12th) of thirty percent (30%) of sixty percent (60%) of Area Median Income; and, for Affordable Units occupied by Very Low Income Households: one-twelfth (1/12th) of thirty percent (30%) of fifty percent (50%) of Area Median Income, each adjusted for assumed household size of one person in a studio Affordable Unit, two persons in a one-bedroom Affordable Unit, three persons in a two-bedroom Affordable Unit, and one additional person for every additional bedroom thereafter.

(b) "Affordable Units" are those units to be constructed as part of the Project to be available at Affordable Rent to Very Low, Low, and Moderate Income Households. "Affordable Units" also include Original Affordable Units, Relocated Affordable Units, and the New Affordable Units, where applicable.

(c) "Affordable Unit Tenants" are tenants displaced from Original Affordable Units.

(d) "Agreement" is defined in the first paragraph on page 1 of this Agreement.

(e) "Area Median Income" is the median Household Income in Santa Clara County as determined periodically by the State of California pursuant to California Code of Regulations, Title 25, Section 6932 or successor provision.

(f) "City" is defined in the first paragraph on page 1 of this Agreement.

(g) "City Council" is the City Council of the City of Cupertino.

(h) "Developer" is defined in the first paragraph on page 1 of this Agreement.

(i) "Development Agreement" is defined in Recital B.

(j) "Director" is the Community Development Director or successor position.

(k) "Effective Date" is defined in the first paragraph on page 1 of this Agreement.

(l) "Eligible Household" is a household which has been determined to be eligible to rent an Affordable Unit in compliance with this Agreement.

(m) "Household Income" of a Tenant is determined as provided in the City's Policy and Procedures Manual or successor publication.

(n) "Initial Suspension Period" is defined in Section 3.1(a).

(o) "Low Income Household" is a household with a Household Income between fifty percent (50%) and eighty percent (80%) of Area Median Income, adjusted for actual household size.

(p) "Market Rate Units" are units in the Project which are not Affordable Units.

(q) "Maximum Suspension Period" is defined in Section 3.1(b).

(r) "Moderate Income Household" is a household with a Household Income between the Low Income limit and one hundred twenty percent (120%) of Area Median Income, adjusted for actual household size

(s) "Mortgagee" is the holder of any mortgage, deed of trust, security agreement, and other like security instrument encumbering all or any portion of the Property or any of the Developer's rights under this Agreement.

(t) "New Affordable Units" is defined in Recital G.

(u) "North Park" is Developer's North Park Apartment Homes, located at 3500 Palmilla Drive, San Jose 95134.

(v) "Original Affordable Units" is defined in Recital D.

(w) "Original Declarant" is defined in Recital D.

(x) "Original Declaration" is defined in Recital D.

(y) "Original Term" is defined in Section 2.2(a).

(z) "Party" or "Parties" are defined in the first paragraph on page 1 of this Agreement.

(aa) "Policy and Procedures Manual" is the Policy and Procedures Manual for Administering Deed Restricted Affordable Housing Units, or successor publication, adopted from time to time by the City Council to the extent such successor publication does not conflict with any material terms of this Agreement.

(bb) "Project" is defined in Recital B.

(cc) "Property" is defined in Recital A.

(dd) "Relocated Affordable Unit" is defined in Section 3.4.

(ee) "Relocation Notice" is the ninety (90) day notice to Tenants prior to the requirement that the Tenants vacate an Original Affordable Housing Unit given pursuant to Government Code Section 7267.3.

(ff) "Relocation Plan" is a plan adopted by the City regarding the relocation of the Affordable Unit Tenants as required by Government Code Section 7260 et seq. and implementing regulations (25 CCR Section 6000 et seq.).

(gg) "Relocation Suspension Period" is defined in Section 3.1(b).

(hh) "Rent" includes monthly rent paid to the Developer, utilities, and all mandatory fees for parking and other housing services associated with the Affordable Unit, including but not limited to parking, bicycle storage, storage lockers, and use of all common areas. An allowance for utilities paid by the Tenant is established by the Santa Clara County Housing Authority, and includes garbage collection, sewer, water, electricity, gas and other heating, cooking and refrigeration fuel, but not telephone service or cable TV, and such allowance must be deducted from the monthly rent paid to the Developer.

(ii) "Tenant" is a household occupying an Affordable Unit pursuant to a valid lease or rental agreement with the Developer.

(jj) "Tenant Lease" is defined in Section 6.4.

(kk) "Term" is defined in Section 5.2.

(ll) "Very Low Income Household" is a household with a Household Income at or below fifty percent (50%) of Area Median Income, adjusted for actual household size.

Section 1.2. Attachments. The following attachments are incorporated into this Agreement:

Attachment 1 Legal Description of the Property.

Attachment 2 Schedule of Affordable Units.

Attachment 3 Example of Affordable Rents and Maximum Income Level of Tenants for Affordable Units.

ARTICLE 2.
PRE-DEMOLITION RENT REGULATORY PROVISIONS

Section 2.1. Effect of Article 2. The terms and conditions of this Article 2 shall apply as of the Effective Date of this Agreement. Upon Developer's application for, and City's issuance of, a demolition permit to demolish all or part of the Existing Residential Development in connection with the Project, the terms and conditions of this Article 2 shall be of no further force and effect, and the terms and conditions of Article 4 and Article 5 shall govern the affordability and occupancy of the Affordable Units. Upon the termination of the applicability of this Article 2, the Parties shall cooperate in good faith to prepare and record a notice of such termination in a mutually-acceptable form.

Section 2.2. Original Term.

(a) The "Original Term" of this Agreement is the period in which each of the Original Affordable Units shall be rented to Very Low and Low Income Households for so long as this Article 2 remains in effect. For all of the Original Affordable Units, the Original Term shall be that period of time that is thirty (30) years from the effective date of the Original Declaration (or October 20, 2027) plus a day-for-day extension equal to the time, if any, from the date the first Original Affordable Unit is vacated during the Initial Suspension Period or the Relocation Suspension Period through the end of the Relocation Suspension Period; provided, however, that upon Developer's application for, and City's issuance of, a demolition permit pursuant to Section 2.1, this Section shall have no further force and effect, and the Original Term shall be superseded by the Term, pursuant to Section 5.2.

Section 2.3. Affordability and Occupancy Covenants.

(a) Occupancy Requirements. Subject to the provisions of subsections (e) and (f) of this Section, the Affordable Units shall be rented to and occupied by Tenants meeting the following income requirements in accordance with Table 1 on Attachment 2:

(1) Very Low Income Units. Eighteen (18) of the Affordable Units shall be rented at Affordable Rent to Very Low Income Households.

(2) Low Income Units. Sixteen (16) of the Affordable Units shall be rented at Affordable Rent to Low Income Households.

(3) The Affordable Units shall not be kept vacant or used for any purpose except for residential use and shall be offered for rent to Eligible Households at Affordable Rents, except as expressly provided in Section 3.1 below.

(b) Allowable Rent. Subject to the provisions of subsection (e) of this Section below, the maximum Rent charged to Tenants of the Affordable Units shall not exceed Affordable Rent.

(c) City Approval of Rent Increases. The City shall review all proposed Rent increases to determine whether the proposed increases are consistent with the provisions of this Agreement. Developer shall certify to the City that Developer is not charging any fee other than Affordable Rent to Tenants of the Affordable Units for all of the components of Rent defined in Section 1.1(hh) above.

(d) Schedule of Affordable Rents. The City has provided the Developer with a schedule of Affordable Rents for the Affordable Units in effect on the date of this Agreement, set forth in attached Attachment 3. The City annually determines Affordable Rents (including utility allowances) based on changes in Area Median Income and utility allowances, and Developer shall annually obtain a copy of the schedule from the Director.

(e) Increased Income of Tenants.

(1) Increase from Very Low Income to Low Income. If, upon annual recertification of a Tenant's Household Income, the Developer determines that a former Very Low Income Household's income has increased and exceeds the qualifying income for a Very Low Income Household, but does not exceed the qualifying limit for a Low Income Household, then, upon expiration of the Tenant's lease and after sixty (60) days written notice to the Tenant, the Tenant's Rent may be increased to Affordable Rent for Low Income Households. The Developer shall rent the next available Affordable Unit to a Very Low Income Household at a Rent not exceeding Affordable Rent for Very Low Income Households.

(2) Increase above Low Income. If, upon recertification of a Tenant's Household Income, the Developer determines that the Tenant's Household Income has increased and exceeds the qualifying income for a Low Income Household, then the Tenant shall be given written notice that Tenant shall vacate the Affordable Unit three (3) months from the date of the notice or upon expiration of the Tenant's lease, whichever is later. A three (3) month extension may be granted by the Director in cases of extreme hardship. If, prior to the date by which the Tenant must vacate the Affordable Unit, another unit in the Project is vacated which is not designated as an Affordable Unit and is of appropriate bedroom size, the Developer may, at the Developer's option, request the Director to approve a change in the location of the Affordable Unit; allow the Tenant to remain in the original unit at market rent; and designate the newly vacated unit as an Affordable Unit if approved by the Director.

(f) Affordable Unit Tenants. In order to minimize the disruption of the Affordable Unit Tenants to the maximum extent practical, the Developer shall have the right to operate the Original Affordable Units with the income levels and bedroom size as indicated by the footnote on Table 1 of Attachment 2 until the end of the Relocation Suspension Period or the end of the Initial Suspension Period, as applicable. At the end of either Suspension Period, the Developer shall consult with the City as the Affordable Unit Tenants vacate the Original Affordable Units and as replacement units become available to (a) bring the Existing Residential Development (if it has not been demolished) into full compliance with the Original Declaration

with the income levels and bedroom size shown in Table 1 of Attachment 2, excluding the footnote; or (b) provide Relocated Affordable Units in compliance with the Original Declaration, with the income levels and bedroom size shown in Table 1 of Attachment 2, excluding the footnote.

ARTICLE 3.
SUSPENSION OF AFFORDABLE UNIT REQUIREMENTS; TENANT RELOCATION

Section 3.1. Suspension Periods.

(a) From and after the Effective Date of this Agreement, the requirement to maintain the Original Affordable Units at the Property shall be suspended for the period between the date an Affordable Unit Tenant voluntarily vacates an Original Affordable Unit and the earlier to occur of the following: (i) the date of the Relocation Notice, (ii) ninety (90) days after the Original Affordable Unit is vacated, or (iii) one (1) year after the Effective Date (the "Initial Suspension Period").

(b) The requirement to maintain the Original Affordable Units at the Property shall further be suspended for the period between the date an Affordable Unit Tenant vacates an Original Affordable Unit following the date of the Relocation Notice and the date that a replacement Affordable Unit is available for rent in the Project to that Affordable Unit Tenant (the "Relocation Suspension Period"). In no event shall the Relocation Suspension Period extend past January 1, 2021 (the "Maximum Suspension Period").

Section 3.2. Relocation of Affordable Unit Tenants.

(a) Prior to the date of the Relocation Notice, any Affordable Unit Tenant who: (i) occupied an Affordable Unit in the Existing Residential Development for at least ninety (90) days prior to the Effective Date of the Development Agreement, and (ii) moves from the Existing Residential Development after the Effective Date of the Development Agreement shall be considered a "displaced person" under the State Relocation Laws and shall be entitled to Relocation Costs. Within ten (10) days after an Affordable Unit Tenant notifies Developer of its intent to vacate an Affordable Unit, the Developer shall provide the City with written notice and current contact information for any such Affordable Unit Tenant. The City, or, at the City's option, the Relocation Consultant, shall provide any such Affordable Unit Tenant with written notice of the Affordable Unit Tenant's rights as a displaced person as required by State Relocation Laws and shall provide relocation benefits to such Affordable Unit Tenant as applicable.

(b) Following the date of the Relocation Notice, if an Affordable Unit Tenant is provided relocation assistance pursuant to the Relocation Plan and vacates the Original Affordable Unit, the Original Affordable Unit may remain vacant until: (i) it is demolished, (ii) units in the Existing Residential Development are re-offered for rent, or (iii) January 1, 2021, whichever is earlier.

(c) Affordable Unit Tenants that elect to be relocated to North Park or another development owned by the Developer or Developer's affiliate pursuant to the Relocation Agreement shall be charged Affordable Rent based on the Tenant's Household Income, subject

to the provisions of subsection (d) of this Section below, during the period between the initial occupancy of the North Park unit (or a unit in an alternative development) by the Affordable Unit Tenant and the earliest of: (i) the date that the Affordable Unit Tenant voluntarily vacates the unit in North Park (or a unit in an alternative development), or (ii) thirty (30) days after the date that the sixty (60)-day period described in Section 3.5 expires.

(d) Increased Income of Tenants.

(1) Increase from Very Low Income to Low Income. If, upon annual recertification of a Tenant's Household Income, the Developer determines that a former Very Low Income Household's income has increased and exceeds the qualifying income for a Very Low Income Household, but does not exceed the qualifying limit for a Low Income Household, then, upon expiration of the Tenant's lease and after sixty (60) days written notice to the Tenant, the Tenant's Rent may be increased to Affordable Rent for Low Income Households.

(2) Increase from Very Low or Low Income to Moderate Income. If, upon annual recertification of a Tenant's Household Income, the Developer determines that a former Very Low or Low Income Household's income has increased and exceeds the qualifying income for a Very Low or Low Income Household, as applicable, but does not exceed the qualifying limit for a Moderate Income Household, then, upon expiration of the Tenant's lease and after sixty (60) days written notice to the Tenant, the Tenant's Rent may be increased to thirty-five percent (35%) of the Tenant's Household Income.

(3) Increase above Moderate Income. If, upon recertification of a Tenant's Household Income, the Developer determines that the Tenant's Household Income has increased and exceeds the qualifying income for a Moderate Income Household, then the Tenant shall be given written notice that Tenant shall vacate the North Park unit (or a unit in an alternative development) three (3) months from the date of the notice or upon expiration of the Tenant's lease, whichever is later. The Developer may, at the Developer's option, allow the Tenant to remain in the North Park unit (or a unit in an alternative development) at market rent.

Section 3.3. Original Affordable Units Not Demolished within Maximum Suspension Period. If any Original Affordable Units are not demolished within the Maximum Suspension Period, the Original Affordable Units shall be made available for rent to an Eligible Household in the income category required under Article 2 of this Agreement; or the Developer shall make available a Relocated Affordable Unit as specified in Section 3.4.

Section 3.4. Original Affordable Units Demolished; Construction Not Completed within Maximum Suspension Period. If Developer does not complete vertical construction of an Affordable Unit to replace an Original Affordable Unit at the Project before the end of the Maximum Suspension Period, Developer shall, no later than 90 days after the end of such Maximum Suspension Period, make available a "Relocated Affordable Unit" for rent to an Eligible Household in the same income category as the Original Affordable Unit. The Relocated Affordable Unit may be provided at an alternate location either within any existing structures at the Property or at such other alternate location within the City of Cupertino as mutually acceptable to City and Developer.

Section 3.5. Right of First Refusal to Return.

(a) The Developer shall provide all Affordable Unit Households who are Eligible Households a one-time right of first refusal for rental of a comparable Affordable Unit in either: (i) the Existing Residential Development if units are re-offered for rent prior to demolition of the Existing Residential Development; (ii) Relocated Affordable Units, if the Developer does not complete construction of the Project within the Maximum Suspension Period; or (iii) rental of a comparable Affordable Unit in the Project at the time a comparable Affordable Unit first becomes available for occupancy after completion.

(b) The Developer shall provide the City with written notice at least sixty (60) days before any units in the Existing Residential Development are re-offered for rent pursuant to this Article 3; before any Relocated Affordable Unit is offered for rent; or before an Affordable Unit in the Project becomes available for occupancy after completion.

(c) After receiving notice from the Developer, the City shall provide an Affordable Unit Tenant with written notice of its one-time right to rent the Affordable Unit, subject to that tenant's qualifying as an Eligible Household. The Affordable Unit Tenant shall have sixty (60) days from the date of such notice to qualify as an Eligible Household and to notify the City that the tenant elects to occupy the Affordable Unit, and shall have an additional thirty (30) days to occupy the Affordable Unit. If the Affordable Unit Tenant does not notify the City within the sixty (60)-day period, qualify as an Eligible Household, and occupy the Affordable Unit within the additional thirty (30)-day period, the Affordable Unit Tenant shall have no further rights to occupy an Affordable Unit.

ARTICLE 4.
CONSTRUCTION OF PROJECT AND AFFORDABLE RENTAL UNITS

Section 4.1. Applicability. The terms and conditions of this Article 4 shall apply upon Developer's application for, and City's issuance of, a demolition permit to demolish all or part of the Existing Residential Development in connection with the Project, upon which time the terms and conditions of Article 2 shall be of no further force and effect.

Section 4.2. Construction of Affordable Units. The Affordable Units shall be constructed in the Project in proportion to construction of the Market-Rate Units, at a ratio of one Affordable Unit to each fifteen (15) Market-Rate Units. No building permit shall be issued for any Market-Rate Unit unless a proportional number of building permits have been issued for Affordable Units, and no certificates of occupancy or final inspections shall be issued for any Market-Rate Units unless a proportional number of certificates of occupancy or final inspections have been issued for Affordable Units. The Director may approve a modified construction schedule if this timing requirement will create unreasonable delays in the issuance of certificates of occupancy for Market-Rate Units and if the Developer provides satisfactory assurance, as approved by the Director, that the Affordable Units will be completed prior to completion of all of the Market-Rate Units. Each Affordable Unit shall be inspected by the City prior to occupancy to determine that it meets the construction and other standards required by this Agreement.

Section 4.3. Appearance, Size and Bedroom Count of Affordable Units.

(a) Appearance and Maintenance of Affordable Units. The Affordable Units in the Project shall be comparable to Market-Rate Units in terms of unit type, number of bedrooms per unit, quality of exterior appearance, and overall quality of construction. Affordable Unit sizes should be generally representative of the unit sizes of the Market-Rate Units, and the Affordable Units shall be dispersed throughout the Project, in accordance with Table 2 on Attachment 2. Interior features and finishes of Affordable Units shall be durable, of good quality, and consistent with contemporary standards for new housing. Developer shall allocate and assign parking spaces, bicycle storage, storage lockers, and other spaces reserved for use by individual units to the Affordable Units on the same basis as for the Market-Rate Units, and Tenants of the Affordable Units shall have equal access to the Project's common areas as is given to the residents of the Market-Rate Units, but any fee charged for use of common areas or for spaces reserved for individual units shall be included in the Tenant's Rent, as defined in Section 1.1(hh). Once completed, the Affordable Units shall not be kept vacant or used for any purpose except for residential use and, if vacant, shall be marketed concurrently with the Market-Rate Units and offered for rent to Eligible Households at Affordable Rents.

(b) Location and Characteristics of Affordable Units. Developer shall provide Affordable Units in the Project in accordance with the schedule shown in on Table 2 on Attachment 2. As provided in Table 2 on Attachment 2, the Affordable Units have a bedroom mix equivalent to the bedroom mix of the Market-Rate Units, except that the Developer may elect to provide the Affordable Units with more bedrooms.

(c) Location of Affordable Units. Prior to issuance of a building permit for the Project, Developer shall submit to the Director the proposed location of the Affordable Units, for the Director's reasonable approval consistent with Table 2 on Attachment 2.

ARTICLE 5.
PROJECT RENT REGULATORY PROVISIONS

Section 5.1. Effect of Article 5. The terms and conditions of this Article 5 shall apply upon Developer's application for, and City's issuance of, a demolition permit to demolish all or part of the Existing Residential Development in connection with the Project, upon which time the terms and conditions of Article 2 shall be of no further force and effect.

Section 5.2. Term; Expiration of Term. The "Term" of this Agreement is the period in which each Affordable Unit shall be rented to Very Low and Low Income Households. For all Affordable Units, the Term shall be that period of time that is the later of (i) fifty five (55) years from the issuance of the final certificate of occupancy for the Project or (ii) the date the Project buildings are either (1) demolished or (2) converted to a non-residential use by the Developer with any City-issued approvals and permits that may be required.

Section 5.3. Affordability and Occupancy Covenants.

(a) Occupancy Requirements. Subject to the provisions of subsection (e) of this Section, the Affordable Units shall be rented to and occupied by Tenants meeting the following income requirements:

(1) Very Low Income Units. Eighteen (18) of the Affordable Units shall be rented at Affordable Rent to Very Low Income Households.

(2) Low Income Units. Twenty three (23) of the Affordable Units shall be rented at Affordable Rent to Low Income Households.

(3) Moderate Income Units. Thirty (30) of the Affordable Units shall be rented at Affordable Rent to Moderate Income Households.

(4) The Affordable Units shall not be kept vacant or used for any purpose except for residential use and shall be offered for rent to Eligible Households at Affordable Rents.

(b) Allowable Rent. Subject to the provisions of subsection (e) of this Section below, the maximum Rent charged to Tenants of the Affordable Units shall not exceed Affordable Rent.

(c) City Approval of Rents. Initial Rents for all Affordable Units shall be approved by the City prior to occupancy, which approval shall be in accordance with Affordable Rent as defined in Section 1.1(a) above. The City shall review all proposed Rent increases to determine whether the proposed increases are consistent with the provisions of this Agreement. Developer shall certify to the City that Developer is not charging any fee other than Affordable Rent to Tenants of the Affordable Units for all of the components of Rent defined in Section 1.1(hh) above.

(d) Schedule of Affordable Rents. The City has provided the Developer with a schedule of Affordable Rents for the Affordable Units in effect on the date of this Agreement, set forth in attached Attachment 3. The City annually determines Affordable Rents (including utility allowances) based on changes in Area Median Income and utility allowances, and Developer shall annually obtain a copy of the schedule from the Director.

(e) Increased Income of Tenants.

(1) Increase from Very Low Income to Low Income. If, upon annual recertification of a Tenant's Household Income, the Developer determines that a former Very Low Income Household's income has increased and exceeds the qualifying income for a Very Low Income Household, but does not exceed the qualifying limit for a Low Income Household, then, upon expiration of the Tenant's lease and after sixty (60) days written notice to the Tenant, the Tenant's Rent may be increased to Affordable Rent for Low Income Households. The Developer shall rent the next available Affordable Unit to a Very Low Income Household at a Rent not exceeding Affordable Rent for Very Low Income Households.

(2) Increase from Very Low or Low Income to Moderate Income. If, upon annual recertification of a Tenant's Household Income, the Developer determines that a former Very Low or Low Income Household's income has increased and exceeds the qualifying income for a Low Income Household, but does not exceed the qualifying limit for a Moderate Income Household, then, upon expiration of the Tenant's lease and after sixty (60) days written notice to the Tenant, the Tenant's Rent may be increased to Affordable Rent for Moderate

Income Households. The Developer shall rent the next available Affordable Unit to a Very Low or Low Income Household, as applicable, at a Rent not exceeding Affordable Rent for Very Low or Low Income Households, as applicable.

(3) Increase above Moderate Income. If, upon recertification of a Tenant's Household Income, the Developer determines that the Tenant's Household Income has increased and exceeds the qualifying income for a Moderate Income Household, then the Tenant shall be given written notice that Tenant shall vacate the Affordable Unit three (3) months from the date of the notice or upon expiration of the Tenant's lease, whichever is later. A three (3) month extension may be granted by the Director in cases of extreme hardship. If, prior to the date by which the Tenant must vacate the Affordable Unit, another unit in the Project is vacated which is not designated as an Affordable Unit and is of appropriate bedroom size, the Developer may, at the Developer's option, request the Director, pursuant to Section 6.7 below, to approve a change in the location of the Affordable Unit; allow the Tenant to remain in the original unit at market rent; and designate the newly vacated unit as an Affordable Unit if approved by the Director.

Section 5.4. Marketing; Right of First Refusal to Return to Project.

(a) Required City Approvals. At least sixty (60) days before any Affordable Units in the Project receive a final inspection or certificate of occupancy, the Developer shall notify City of the availability of the Affordable Units and certify in writing to the City its intent to manage the Affordable Units consistent with the Policy and Procedures Manual; the proposed form of Tenant Lease to confirm conformance with the provisions of Section 6.4 below; and proposed Affordable Rents for the Affordable Units, all for City review and approval. The Affordable Units shall be marketed concurrently with the marketing of the Market-Rate Units.

(b) Tenants of Original Affordable Housing Prior to Construction. When each Affordable Unit at the Project is first made available for rent, the City shall provide an Affordable Unit Tenant with written notice of its one-time right to rent the Affordable Unit, as provided in and subject to the conditions in Section 3.5 above.

ARTICLE 6.
GENERALLY APPLICABLE RENT REGULATORY PROVISIONS

Section 6.1. Effect of Article 6. The terms and conditions of this Article 6 shall apply as of the Effective Date and continue through the later of the Original Term or the Term, regardless of whether Article 2 or Article 5 is in effect.

Section 6.2. Agreement to Limitation on Rents. The Developer hereby covenants that the City's agreements to modify the Original Declaration and to enter into a Development Agreement for the Project are forms of assistance specified in Chapter 4.3 (commencing with Section 65915) of Division 1 of Title 7 of the Government Code. The Developer further covenants that it has agreed to limit Rents in the Affordable Units in consideration for the City's agreements to modify the Original Declaration and to enter into a Development Agreement for the Project under Civil Code Sections 1954.52(b) and 1954.53(a)(2). The Developer hereby agrees that any Affordable Units provided pursuant to this Agreement are not subject to Civil

Code Section 1954.52(a) or any other provision of the Costa-Hawkins Act inconsistent with controls on rents, and further agrees that any limitations on Rents imposed on the Affordable Units are in conformance with the Costa-Hawkins Act.

Section 6.3. Notice to Developer. Developer further acknowledges and agrees that the City, in its review of the Project and the Development Agreement, provided adequate and proper notice pursuant to Government Code Section 66020 of Developer's right to protest any requirements for fees, dedications, reservations, and other exactions as may be included in this Agreement, that no protest in compliance with Section 66020 was made within ninety (90) days of the date that notice was given, and that the period has expired in which Developer may protest any and all fees, dedications, reservations, and other exactions as may be included in this Agreement.

Section 6.4. Lease Provisions. The Developer shall use a form of Tenant lease (the "Tenant Lease") approved by the City for the Affordable Units. The City shall either approve or specify its basis for disapproval, if any, within thirty (30) days after Developer submits such proposed form lease to City. The Tenant Lease shall, among other matters:

(a) provide for termination of the lease for failure: (1) to provide any information required under this Agreement or reasonably requested by the Developer to establish or recertify the Tenant's qualification, or the qualification of the Tenant's household, as an Eligible Household in accordance with this Agreement, or (2) to qualify as an Eligible Household as a result of any material misrepresentation made by such Tenant with respect to the Household Income computation or certification;

(b) provide that the Rent may not be raised more often than once every twelve (12) months. The Developer will provide each Tenant with at least sixty (60) days written notice of any increase in Rent applicable to such Tenant;

(c) prohibit subleasing of the Affordable Unit or any portion of the Affordable Unit or any spaces reserved for the use of the Tenant, contain nondiscrimination provisions, and include the Tenant's obligation to inform the Developer of any need for maintenance or repair;

(d) allow termination of the tenancy only for an increase in Tenant's Household Income above qualifying income for Low Income Households or for good cause, including violation of the terms and conditions of the Tenant Lease, violations of applicable federal, state, or local law, or other good cause;

(e) include, at Developer's option, the obligation for Tenant to provide a security deposit not exceeding two months' rent;

(f) be for an initial term of one year; and

(g) otherwise conform to the Policy and Procedures Manual.

Section 6.5. Income Certification and Reporting.

(a) Section 8 Vouchers and Certificate Holders. The Developer will review applications from prospective tenants of Affordable Units, on the same basis as all other prospective tenants, from persons who are recipients of federal certificates for rent subsidies pursuant to the existing housing program under Section 8 of the United States Housing Act or any successor. The Developer shall not apply selection criteria to Section 8 certificate or voucher holders that are more burdensome than criteria applied to all other prospective tenants for the Affordable Units, nor shall the Developer apply or permit the application of management policies or lease provisions with respect to the Project which have the effect of precluding occupancy of Affordable Units by such prospective tenants.

(b) Income Certification.

(1) Prior to Developer's entering into a lease with a prospective tenant of an Affordable Unit, the prospective tenant household shall be certified by the City or its assignee as an Eligible Household. Developer may rely upon such certification by City without being required to independently verify such certification.

(2) Annually thereafter, the Developer will obtain, complete and maintain on file Household Income certifications for each Tenant renting any of the Affordable Units. Developer shall make a good faith effort to verify that the Household Income statement provided by a Tenant is accurate by taking two or more of the following steps as a part of the verification process for all members of the Tenant household age eighteen (18) or older: (a) obtaining a minimum of the three (3) most current pay stubs; (b) obtaining an income tax return for the most recent tax year; (c) conducting a credit agency or similar search; (d) obtaining the three (3) most current savings and checking account bank statements; (e) obtaining an income verification form from a current employer; (f) obtaining an income verification form from the Social Security Administration and/or the California Department of Social Services if an adult member of the Tenant's household receives assistance from either of such agencies; or (g) if the Tenant is unemployed and has no such tax return, obtain another form of independent verification. Copies of annual Tenant Household Income certifications shall be provided to the City or its assignee for review.

(3) As an alternative to the procedure described in subparagraph (2) of this subsection (b), Developer may contract with a provider approved by the City to certify Tenant Household Incomes on an annual basis.

(c) Reports to City.

(1) Annual Report. The Developer shall submit to the City on April 1st of each year a report, in a form prescribed by or otherwise acceptable to the City, verifying compliance by Developer with the terms of this Agreement and certified as correct by the Developer. The annual report shall include without limitation: Household Income for all Tenants of Affordable Units at the time of initial occupancy and at recertification; number of persons in each Affordable Unit; amount of Rent charged; other information reasonably required by the City.

(2) Other Reports. Within fifteen (15) days after receipt of a written request, Developer shall provide any other information or completed forms reasonably requested by the City to ensure compliance with this Agreement.

Section 6.6. Management of Property and Property Maintenance.

(a) Management Responsibilities. Except for the City's initial certification of a Tenant as an Eligible Household, the Developer is responsible for all management functions with respect to the Project, including, without limitation, the annual recertification of household size and Household Income (subject to review by the City or its assignee), selection of Tenants, evictions, collection of Rents and deposits, maintenance, landscaping, routine and extraordinary repairs, replacement of capital items, and security. The City shall have no responsibility over management of the Project.

(b) Property Maintenance. The City places prime importance on quality maintenance to ensure that all developments within the City which include affordable housing units are not allowed to deteriorate due to below-average maintenance. Developer shall provide the Affordable Units with the same level and quality of maintenance, including performance of repairs and periodic replacement of fixtures as the Market-Rate Units. The Developer agrees to maintain all interior and exterior improvements, including landscaping, on the Property in good condition and repair (and, as to landscaping, in a healthy condition) and in accordance with all applicable laws, rules, ordinances, orders and regulations of all federal, state, county, municipal, and other governmental agencies and bodies having or claiming jurisdiction and all their respective departments, bureaus, and officials.

(c) Taxes and Assessments. Developer shall pay all real and personal property taxes, assessments, if any, and charges and all franchise, income, employment, old age benefit, withholding, sales, and other taxes assessed against it, or payable by it, at such times and in such manner as to prevent any penalty from accruing, or any lien or charge from attaching to the Property; provided, however, that Developer shall have the right to contest in good faith, any such taxes, assessments, or charges. In the event Developer exercises its right to contest any tax, assessment, or charge against it, Developer, on final determination of the proceeding or contest, shall immediately pay or discharge any decision or judgment rendered against it, together with all costs, charges and interest.

Section 6.7. Change in Location of Affordable Units. If, after recordation of this Agreement, Developer desires to change the location of any Affordable Unit within the Property, Developer shall submit a written request for such change to the Director, who may approve such request provided that any relocated Affordable Units shall be comparable to those listed in Attachment 2 and shall contain the same number of bedrooms.

Section 6.8. Notice of Expiration of Term. Prior to the expiration of the Term (or the Original Term, if Article 2 remains in effect), Developer shall provide all notifications required by Government Code Sections 65863.10 and 65863.11 or successor provisions and any other notification required by any state, federal, or local law. In addition, at least six (6) months prior to the expiration of the Term for an Affordable Unit, the Developer shall provide a notice by first-class mail, postage prepaid, to all Tenants in the Affordable Units whose Term is expiring.

The notice shall contain (a) the anticipated date of the expiration of the Term, (b) any anticipated Rent increase upon the expiration of the Term, (c) a statement that a copy of such notice will be sent to the City, and (d) a statement that a public hearing may be held by the City on the issue and that the Tenant will receive notice of the hearing at least fifteen (15) days in advance of any such hearing. The Developer shall file a copy of the above-described notice with the City Manager.

ARTICLE 7.
ENFORCEMENT

Section 7.1. Covenants Running with the Land. The City and Developer hereby declare their express intent that the covenants and restrictions set forth in this Agreement shall apply to and bind Developer and its heirs, executors, administrators, successors, transferees, and assignees having or acquiring any right, title or interest in or to any part of the Property and shall run with and burden such portions of the Property until terminated in accordance with Sections 2.2 or 5.2. Until all or portions of the Property are expressly released from the burdens of this Agreement, each and every contract, deed or other instrument hereafter executed covering or conveying the Property or any portion thereof shall be held conclusively to have been executed, delivered, and accepted subject to such covenants and restrictions, regardless of whether such covenants or restrictions are set forth in such contract, deed or other instrument. In the event of foreclosure or transfer by deed-in-lieu of all or any portion of the Property prior to completion and sale of all of the Affordable Units, title to all or any portion of the Property shall be taken subject to this Agreement. Developer acknowledges that compliance with this Agreement is a land use requirement and a requirement of the Development Agreement, and that no event of foreclosure or trustee's sale may remove these requirements from the Property.

Section 7.2. No Subordination; Notice to Mortgagees. In no event shall this Agreement be subordinated to, or recorded subordinate to, a mortgage, deed of trust, or other method of security encumbering the Property, other than current unpaid taxes. If City receives a notice from a Mortgagee requesting a copy of any notice of default given Developer hereunder and specifying the address for service thereof, then City agrees to use its diligent, good faith efforts to deliver to such Mortgagee, concurrently with service thereon to Developer, any notice of default given to Developer. Each Mortgagee shall have the right during the same period available to Developer to cure or remedy, or to commence to cure or remedy, the event of default claimed or the areas of noncompliance set forth in City's notice of default. If a Mortgagee is required to obtain possession in order to cure any default, the time to cure shall be tolled so long as the Mortgagee is attempting to obtain possession, including by appointment of a receiver or foreclosure, but in no event may this period exceed 120 days from the date the City delivers the notice of default to Developer.

Section 7.3. Release of Property from Agreement. Upon the expiration of the Term for all Affordable Units, Original Affordable Units, and Relocated Affordable Units, City shall execute and record a release of the Project, the Property, and each unit in the Project from the burdens of this Agreement within thirty (30) days following written notice from the Developer, if at the time the Developer is in compliance with all terms of this Agreement, including without limitation the provisions of Section 6.8 regarding notice of the expiration of the Term.

Section 7.4. Default. Failure of the Developer to satisfy any of Developer's obligations under the terms of this Agreement within thirty (30) days after the delivery of a notice of default from the City, or, if the default cannot be cured within thirty (30) days, failure of the Developer to commence to cure within thirty (30) days and to thereafter diligently pursue such cure and complete such cure within ninety (90) days, will constitute a default under this Agreement and a default under the Development Agreement. The Parties agree to meet and confer during the cure period in a good faith effort to resolve any dispute regarding the asserted default or the cure thereof. In addition to remedies for breach of this Agreement, the City may exercise any and all remedies available to it, including but not limited to:

(a) withholding, conditioning, suspending or revoking any permit, license, subdivision approval or map, or other entitlement for the Project, including without limitation final inspections for occupancy and/or certificates of occupancy;

(b) instituting against the Developer, or other parties, a civil action for declaratory relief, injunction or any other equitable relief, or relief at law, including without limitation an action to rescind a transaction and/or to require repayment of any funds received in connection with such a violation;

(c) where one or more persons have received financial benefit as a result of violation of this Agreement, the City may assess, and institute legal action to recover as necessary, a penalty in any amount up to and including the amount of financial benefit received, in addition to recovery of the benefit received;

(d) requiring the Developer or his/her successors in interest to the Property to pay the City Rent or any other payment received by the Developer for the Affordable Unit from the date of any unauthorized use of the Affordable Unit or in excess of Affordable Rent; and

(e) any other means authorized under the City of Cupertino Municipal Code or any other federal or state statute.

Section 7.5. Remedies Cumulative. No right, power, or remedy given to the City by the terms of this Agreement is intended to be exclusive of any other right, power, or remedy; and each and every such right, power, or remedy shall be cumulative and in addition to every other right, power, or remedy given to the City by the terms of this Agreement or by any statute or ordinance or otherwise against Developer and any other person. Neither the failure nor any delay on the part of the City to exercise any such rights and remedies shall operate as a waiver thereof, nor shall any single or partial exercise by the City of any such right or remedy preclude any other or further exercise of such right or remedy, or any other right or remedy.

Section 7.6. Force Majeure. In addition to specific provisions of this Agreement, performance by either Party shall not be deemed to be in Default where delays or defaults are due to causes beyond the Parties' reasonable control, including but not limited to acts of God or of the public enemy, fires, floods, earthquakes, terrorism, and strikes, and unusually severe weather. An extension of time for any cause will be deemed granted if notice by the Party claiming such extension is sent to the other within ten (10) days from the commencement of the cause and such extension of time is not rejected in writing by the other Party within ten (10) days

of receipt of the notice. In no event shall the City be required to agree to cumulative delays in excess of one hundred eighty (180) days.

ARTICLE 8.
GENERAL PROVISIONS

Section 8.1. Appointment of Other Agencies. At its sole discretion, the City may designate, appoint or contract with any other public agency, for-profit or non-profit organization to perform some or all of the City's obligations under this Agreement.

Section 8.2. Records. Developer shall retain all records related to compliance with obligations under this Agreement for a period not less than five (5) years from the date of origination of such records, and make them available to City employees or others designated by the City for inspection and copying on five (5) business days' written notice. The City shall be entitled to monitor compliance with this Agreement, and Developer shall cooperate with City monitoring, including obtaining Rent and Household Income verification upon request of the City.

Section 8.3. Monitoring Fee. Developer agrees to pay an annual monitoring fee as may be adopted by resolution of the City Council which is in force and effect for a similar class of affordable units.

Section 8.4. Nondiscrimination. All of the Affordable Units shall be available for occupancy to members of the general public. Except as provided in this Agreement, the Developer shall not give preference to any particular class or group of persons in renting or selling the Affordable Units, except to the extent that the Affordable Units are required to be rented and sold to Eligible Households and as required by this Agreement; provided, however, there shall be no discrimination against or segregation of any person or group of persons, on account of any bases prohibited by the Fair Housing Act and Fair Employment and Housing Act in the leasing, transferring, use, occupancy, tenure, or enjoyment of any unit in the Project, nor shall the Developer or any person claiming under or through the Developer, establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use, or occupancy of any unit or in connection with the employment of persons for the construction, operation and management of the Project.

Section 8.5. Hold Harmless. Developer will indemnify and hold harmless (without limit as to amount) City and its elected officials, officers, employees and agents in their official capacity (hereinafter collectively referred to as "Indemnitees"), and any of them, from and against all loss, all risk of loss and all damage (including expense) sustained or incurred because of or by reason of any and all claims, demands, suits, actions, judgments and executions for damages of any and every kind and by whomever and whenever made or obtained, allegedly caused by, arising out of or relating in any manner to development or operation of the Project, the Affordable Units, or Developer's performance or non-performance under this Agreement, and shall protect and defend Indemnitees, and any of them with respect thereto, except to the extent arising from the negligence or willful misconduct of the Indemnitees. The provisions of this Section shall survive expiration or other termination of this Agreement or any release of part or

all of the Property from the burdens of this Agreement, and the provisions of this Section shall remain in full force and effect.

Section 8.6. Notices. All notices required pursuant to this Agreement shall be in writing and may be given by personal delivery or by registered or certified mail, return receipt requested, to the Party to receive such notice at the addressed set forth below:

TO THE CITY:

City of Cupertino
Office of City Attorney
250 Hamilton Avenue
Cupertino, CA 94301

TO THE DEVELOPER:

Carlene Matchniff
IAC at Cupertino LLC
890 North McCarthy Boulevard, #100
Milpitas, CA 95035

WITH A COPY TO:

Jennifer L. Hernandez
Holland & Knight LLP
50 California Street, Suite 2800
San Francisco, CA 941111

Any Party may change the address to which notices are to be sent by notifying the other Parties of the new address, in the manner set forth above.

Section 8.7. Integrated Agreement; Relationship to Other Related Agreements and Documents. This Agreement constitutes the entire Agreement between the Parties and no modification hereof shall be binding unless reduced to writing and signed by the Parties hereto. The parties acknowledge that this Agreement was negotiated and entered concurrently with the Development Agreement and the Relocation Agreement. The Parties hereby agree that in the event of a direct conflict between this Agreement and either of those, this Agreement shall control. In addition, in the event of any direct conflict between a material term of this Agreement (including but not limited to, the Term of this Agreement) and the terms of the Policy and Procedures Manual, this Agreement shall control.

Section 8.8. Each Party's Role in Drafting the Agreement. Each Party to this Agreement has had an opportunity to review the Agreement, confer with legal counsel regarding the meaning of the Agreement, and negotiate revisions to the Agreement. Accordingly, neither Party shall rely upon Civil Code Section 1654 in order to interpret any uncertainty in the meaning of the Agreement.

Section 8.9. Amendment of Agreement; Approvals and Consents.

(a) Amendments to this Agreement shall be subject to the review and approval of the City Council. No amendment may be approved that is inconsistent with State law, the Cupertino Municipal Code, the Development Agreement, or the Policy and Procedure Manual. Upon approval, a restated Agreement or amendments to this Agreement, as appropriate, shall be executed and recorded.

(b) The City has authorized the City Manager to execute this Agreement and has authorized the Director to deliver such approvals or consents as are required by this Agreement. Any consents or approvals required under this Agreement shall not be unreasonably withheld or made, unless it is specifically provided that a sole discretion standard applies.

Section 8.10. No Claims. Nothing contained in this Agreement shall create or justify any claim against the City by any person that Developer may have employed or with whom Developer may have contracted relative to the purchase of materials, supplies or equipment, or the furnishing or the performance of any work or services with respect to the Property or the construction of the Project or construction of the Affordable Units.

Section 8.11. Applicable Law. This Agreement shall be governed by California law. Venue shall be the County of Santa Clara.

Section 8.12. Waivers. Any waiver by the City of any obligation or condition in this Agreement must be in writing. No waiver will be implied from any delay or failure by the City to take action on any breach or default of Developer or to pursue any remedy allowed under this Agreement or applicable law. Any extension of time granted to Developer to perform any obligation under this Agreement shall not operate as a waiver or release from any of its obligations under this Agreement. Consent by the City to any act or omission by Developer shall not be construed to be a consent to any other or subsequent act or omission or to waive the requirement for the City's written consent to future waivers.

Section 8.13. Title of Parts and Sections. Any titles of the sections, subsections, or subparagraphs of this Agreement are inserted for convenience of reference only and shall be disregarded in interpreting any part of the Agreement's provisions.

Section 8.14. Multiple Originals; Counterpart. This Agreement may be executed in multiple originals, each of which is deemed to be an original, and may be signed in counterparts.

Section 8.15. Recording of Agreement. This Agreement shall be recorded against the Property in the Official Records of the County of Santa Clara prior to the recordation of any parcel map or final subdivision map or issuance of any building permit for the Project, whichever occurs first.

Section 8.16. Estoppel Certificate. Developer or its lender may, at any time, and from time to time, deliver written notice to the City requesting the City to certify in writing that, to the knowledge of the City (a) this Agreement is in full force and effect and is a binding obligation of the Parties, (b) this Agreement has not been amended or modified or, if so amended or modified, identifying the amendments or modifications, and (c) Developer is not in Default in the

performance of its obligations under this Agreement, or if in Default, to describe the nature of any Defaults. Developer and City acknowledge that a certificate hereunder may be relied upon by the Developer and Mortgagees. The Developer may request the estoppel certificate to be in a recordable form and may record such certificate in the Official Records of Santa Clara County at its sole cost and expense. The City Manager shall be authorized to execute any certificate requested by Developer in a form reasonably approved by the City Attorney. The Developer shall pay all costs borne by City in connection with its review of any proposed estoppel certificate.

Section 8.17. Severability. In the event any limitation, condition, restriction, covenant, or provision contained in this Agreement is to be held invalid, void or unenforceable by any court of competent jurisdiction, the remaining portions of this Agreement shall nevertheless be and remain in full force and effect.

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be executed as of the day and year first above written.

DEVELOPER:

IAC AT CUPERTINO, LLC, a Delaware limited liability company

By: Ullene Mutcheff

Its: Vice President Entitlements

CITY:

City of Cupertino, a municipal corporation

By: _____

Its: _____

APPROVED AS TO FORM:

_____

By: _____

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 June 29, 2016, before me, Colleen Lettire, Notary Public, personally appeared Lenora Carene Matchnit, 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.

COLLEEN LETTIRE
Commission # 2078124
Notary Public - California
Santa Clara County
My Comm. Expires Aug 16, 2018

Name: Colleen Lettire
Notary Public

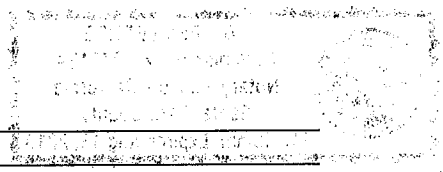
A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

STATE OF CALIFORNIA)
)
COUNTY OF _____)

On _____, before me, _____, Notary Public, 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.



_____
Name: _____
Notary Public

ATTACHMENT 1

LEGAL DESCRIPTION OF THE PROPERTY

Real property in the City of Cupertino, County of Santa Clara, State of California, described as follows:

PARCEL A:

ALL OF PARCEL 1 AS SHOWN ON THAT CERTAIN PARCEL MAP FILED FOR RECORD ON SEPTEMBER 7, 1973 IN BOOK 329 OF MAPS, AT PAGE 49, RECORDS OF SANTA CLARA COUNTY.

EXCEPTING THEREFROM THAT PORTION THEREOF DEDICATED AND CONVEYED TO THE CITY OF CUPERTINO, BY DEED RECORDED MAY 7, 1975 IN BOOK B397, PAGE 613, OFFICIAL RECORDS, DESCRIBED AS FOLLOWS:

BEGINNING AT THE INTERSECTION OF THE CENTERLINE OF PRUNERIDGE AVENUE WITH THE CENTERLINE OF WOLFE ROAD AS SHOWN ON THAT CERTAIN PARCEL MAP RECORDED IN BOOK 329 OF MAPS AT PAGE 49, SANTA CLARA COUNTY RECORDS; THENCE LEAVING SAID CENTERLINE OF SAID AVENUE, ALONG SAID CENTERLINE OF SAID ROAD, S. 0° 35' 45" W., 432.35 FEET; THENCE LEAVING SAID CENTERLINE OF SAID ROAD, S. 89° 24' 15" E., 54.00 FEET TO THE TRUE POINT OF BEGINNING, BEING ALSO A POINT IN THE EASTERLY LINE OF WOLFE ROAD AS SHOWN ON SAID MAP; THENCE ALONG SAID EASTERLY LINE N. 0° 35' 45" E., 326.33 FEET; THENCE LEAVING SAID EASTERLY LINE ALONG A TANGENT CURVE TO THE RIGHT, HAVING A RADIUS OF 60.00 FEET, THROUGH A CENTRAL ANGLE OF 63° 15' 31", AN ARC LENGTH OF 66.24 FEET; THENCE IN A SOUTHERLY DIRECTION ALONG A NON-TANGENT CURVE TO THE LEFT, HAVING A RADIUS OF 40.00 FEET, CONCAVE TO THE SOUTHWEST, WHOSE CENTER BEARS S. 26° 08' 44" E., THROUGH A CENTRAL ANGLE OF 63° 15' 31", AN ARC LENGTH OF 44.16 FEET TO A POINT THAT IS PARALLEL WITH AND 11.00 FEET EASTERLY MEASURED AT RIGHT ANGLES FROM SAID EASTERLY LINE; THENCE ALONG SAID PARALLEL LINE S. 0° 35' 45" W., 276.81 FEET; THENCE ALONG A TANGENT CURVE TO THE RIGHT, HAVING A RADIUS OF 100.00 FEET THROUGH A CENTRAL ANGLE OF 15° 00' 00", AN ARC LENGTH OF 26.18 FEET; THENCE S. 15° 35' 45" W., 16.17 FEET; THENCE ALONG A TANGENT CURVE TO THE LEFT, HAVING A RADIUS OF 100.00 FEET, THROUGH A CENTRAL ANGLE OF 15° 00' 00", AN ARC LENGTH OF 26.18 FEET TO THE TRUE POINT OF BEGINNING.

ALSO EXCEPTING THEREFROM THAT PORTION THEREOF GRANTED AND CONVEYED TO THE CITY OF CUPERTINO, A CALIFORNIA MUNICIPAL CORPORATION, LYING WITHIN AREA 1 AS SHOWN ON EXHIBIT "B" AND MORE PARTICULARLY DESCRIBED ON EXHIBIT "A" OF THAT CERTAIN GRANT DEED RECORDED NOVEMBER 4, 2014 AS INSTRUMENT NO. 22760862 OF OFFICIAL RECORDS.

EXCEPTING THEREFROM ALL OIL, OIL RIGHTS, MINERALS, MINERAL RIGHTS, NATURAL GAS RIGHTS, AND OTHER HYDROCARBONS BY WHATSOEVER NAME KNOWN, GEOTHERMAL STEAM, ANY OTHER MATERIAL RESOURCES AND ALL PRODUCTS DERIVED FROM ANY OF THE FOREGOING, THAT MAY BE WITHIN OR

UNDER THE LAND, TOGETHER WITH THE PERPETUAL RIGHT OF DRILLING, MINING, EXPLORING AND OPERATING THEREFOR AND STORING IN AND REMOVING THE SAME FROM THE LAND OR ANY OTHER PROPERTY, INCLUDING THE RIGHT TO WHIPSTOCK OR DIRECTIONALLY DRILL AND MINE FROM PROPERTIES OTHER THAN THOSE CONVEYED HEREBY, OIL OR GAS WELLS, TUNNELS AND SHAFTS INTO, THROUGH OR ACROSS THE SUBSURFACE OF THE LAND, AND TO BOTTOM SUCH WHIPSTOCKED OR DIRECTIONALLY DRILLED WELLS, TUNNELS AND SHAFTS UNDER AND BENEATH OR BEYOND THE EXTERIOR LIMITS THEREOF, AND TO REDRILL, RETUNNEL, EQUIP, MAINTAIN, REPAIR, DEEPEN AND OPERATE ANY SUCH WELLS OR MINES; WITHOUT, HOWEVER, THE RIGHT TO DRILL, MINE, STORE, EXPLORE AND OPERATE THROUGH THE SURFACE OR THE UPPER 500 FEET OF THE SUBSURFACE OF THE LAND AS RESERVED IN THE DOCUMENT RECORDED MARCH 27, 2013, AS INSTRUMENT NO. 22148706 OF OFFICIAL RECORDS.

PARCEL B:

PARCEL TWO AS SHOWN ON EXHIBIT "A" AND MORE PARTICULARLY DESCRIBED ON EXHIBIT "C" ATTACHED TO LOT LINE ADJUSTMENT ATTACHED AS EXHIBIT "B" TO LOT LINE ADJUSTMENT GRANT DEED, RECORDED NOVEMBER 4, 2014 AS INSTRUMENT NO. 22760859 OF OFFICIAL RECORDS.

EXCEPTING THEREFROM THAT PORTION THEREOF GRANTED AND CONVEYED TO THE CITY OF CUPERTINO, A CALIFORNIA MUNICIPAL CORPORATION, LYING WITHIN AREA 1 AND 2 AS SHOWN ON EXHIBIT "B" AND MORE PARTICULARLY DESCRIBED ON EXHIBIT "A" OF THAT CERTAIN GRANT DEED RECORDED NOVEMBER 4, 2014 AS INSTRUMENT NO. 22760862 OF OFFICIAL RECORDS.

ALSO EXCEPTING THEREFROM ALL OIL, OIL RIGHTS, MINERALS, MINERAL RIGHTS, NATURAL GAS RIGHTS, AND OTHER HYDROCARBONS BY WHATSOEVER NAME KNOWN, GEOTHERMAL STEAM, ANY OTHER MATERIAL RESOURCES AND ALL PRODUCTS DERIVED FROM ANY OF THE FOREGOING, THAT MAY BE WITHIN OR UNDER THE LAND, TOGETHER WITH THE PERPETUAL RIGHT OF DRILLING, MINING, EXPLORING AND OPERATING THEREFOR AND STORING IN AND REMOVING THE SAME FROM THE LAND OR ANY OTHER PROPERTY, INCLUDING THE RIGHT TO WHIPSTOCK OR DIRECTIONALLY DRILL AND MINE FROM PROPERTIES OTHER THAN THOSE CONVEYED HEREBY, OIL OR GAS WELLS, TUNNELS AND SHAFTS INTO, THROUGH OR ACROSS THE SUBSURFACE OF THE LAND, AND TO BOTTOM SUCH WHIPSTOCKED OR DIRECTIONALLY DRILLED WELLS, TUNNELS AND SHAFTS UNDER AND BENEATH OR BEYOND THE EXTERIOR LIMITS THEREOF, AND TO REDRILL, RETUNNEL, EQUIP, MAINTAIN, REPAIR, DEEPEN AND OPERATE ANY SUCH WELLS OR MINES; WITHOUT,

HOWEVER, THE RIGHT TO DRILL, MINE, STORE, EXPLORE AND OPERATE THROUGH THE SURFACE OR THE UPPER 500 FEET OF THE SUBSURFACE OF THE LAND AS RESERVED IN THE DOCUMENT RECORDED MARCH 27, 2013, AS INSTRUMENT NO. 22148706 OF OFFICIAL RECORDS.

ATTACHMENT 2

SCHEDULE OF AFFORDABLE UNITS

Table 1:Original Affordable Units Pursuant to Article 2			
Number of Bedrooms	**Very Low Income**	**Low Income**	**Totals**
One	7	6	13
Two	9 *[*7*]	8 *[*10*]	17
Three	2 *[*3*]	2 *[*1*]	4
TOTALS:	**18 *[*17*]**	**16 *[*17*]**	**34**

*[*Affordable Unit Tenants as of the date of this Agreement*].

Table 2: New Affordable Units Pursuant to Article 4 and Article 5					
Number of Bedrooms	**Very Low Income to Replace Original Affordable Units**	**Low Income to Replace Original Affordable Units**	**Low Income for New Affordable Units**	**Moderate Income for New Affordable Units**	**Totals**
Studio	-	-	1	8	9
One	5	4	4	14	27
Two	13	12	2	8	35
TOTALS:	**18**	**16**	**7**	**30**	**71**

ATTACHMENT 3

MAXIMUM INITIAL AFFORDABLE RENTS FOR AFFORDABLE UNITS AND MAXIMUM INCOME LEVEL OF TENANTS

(Provided for reference. These limits are adjusted annually, as determined and published by the City. Project shall be subject to the Affordable Rents and Household Income limits in effect at the time Developer submits marketing plan to City.)

A. Affordable Rents.

Affordable Rent is defined in Section 1.1 of this Agreement. The table below illustrates how Affordable Rent is calculated, based upon 2016 State Income Limits adopted by the California Department of Housing and Community Development and contained in California Code of Regulations, Title 25, Section 6932.

Number of Bedrooms	AMI* for Assumed Household Size	Percent of AMI	Maximum Annual Rent	Maximum Monthly Affordable Rent** (1/12 of Maximum Annual Rent)
Studio	$74,950	50	$11,243	**$937**
		60	$13,491	**$1,124**
		110	$24,734	**$2,062**
One	$85,700	50	$12,855	**$1,072**
		60	$15,426	**$1,286**
		110	$28,281	**$2,357**
Two	$96,400	50	$14,460	**$1,205**
		60	$17,352	**$1,446**
		110	$31,812	**$2,651**

** AMI is Area Median Income.*

***A reasonable allowance for tenant-paid utilities must be deducted from the Tenant's monthly payments to the Developer. See definition of Rent in Section 1.1 for other fees and charges that must be deducted from the Tenant's monthly payments to the Developer. 2016 utility allowances are available at: http://www.hacsc.org/assets/1/6/2016_Utility_Allowances_for_website_update.pdf*

B. Maximum Household Income of Tenants (Income Limits)

Household Size (Number of Persons)	Maximum Gross Annual Household Income		
	Very Low Income	Low Income	Moderate Income
1	$39,100	$59,400	$89,950
2	$44,650	$67,900	$102,800
3	$50,250	$76,400	$115,650

Income limits for larger households available upon request from the City.

EXHIBIT E

EXISTING IMPACT FEES

1. Housing Mitigation Fees Section 4.1.1

2. Park Impact Fees Section 4.1.2 Fee in effect at time of payment if paid after February 5, 2018, estimated as of the Effective Date at $11,587,968

3. Public Art Contribution Section 4.1.3 Not less than $100,000

4. Citywide Transportation Impact Fees (if adopted) Section 4.1.4 $1,800,000, subject to reimbursement as provided in Section 4.1.4.2

EXHIBIT F

TDM PROGRAM

1. TDM Management and Marketing Structure

a. Transportation Coordinator. A Transportation Coordinator will be assigned to the Hamptons with the authority to implement TDM strategies and oversee the management and marketing of TDM programs. The Transportation Coordinator will be responsible for developing information materials, managing transportation services offered as part of the TDM program (i.e. websites, transit passes etc.), monitoring results, and coordinating with City/VTA staff and on-site representatives as needed. The Transportation Coordinator will also be responsible for providing annual reports on implementation of the TDM strategies and programs in coordination with the annual review of the Development Agreement.

2. TDM Program Content

a. TDM Communications. Welcome Packets, Orientation Training and Information on transportation options and/or links to the appropriate website or app will be conveyed to all prospective tenants who are approved to rent an apartment and all prospective employees who receive an offer to work within the development.

b. Transit Passes. The Welcome Packet will include annual VTA Eco Passes for the residents of the Project at the rate of one annual VTA Eco Pass per unit and valid for the first year of residency.

c. Transportation Information Boards and Website. The development will have a location at which both residents and employees can obtain the above information on alternative transportation services. At a minimum, information posted at these sites will include a link to the website and contact information for the Transportation Coordinator and Representatives. Information may also include train and bus schedules, information on the 511 Rideshare program and transit pass programs.

d. Rideshare Facilitation. The TDM Coordinator or TDM Representative will assist residents or employees in identifying other residents or employees from throughout the development who may be able to carpool to the site together. The TDM Coordinator or TDM Representative will assist with carpool and vanpool formation by finding suitable partners with similar work schedules, origins, and destinations. The TDM Coordinator or TDM Representative will assist the resident or employee in registering for the ridematching services such as those offered by 511.org.

e. Development of Transportation Materials. The Transportation Coordinator will be responsible for developing materials that provide residents and employees with

information on how to get to and from the site using alternative modes. This may include:

i. Transit passes available through transit agencies

ii. Walking and biking routes within the area including estimated times

iii. Bike parking facilities available on-site

iv. Links to the schedules including train and bus schedules

3. TDM Design Features and Amenities

a. Site Features and Bike Hub Design. The Northern portion of the on-grade public bike paseo provides a welcoming entrance for both pedestrians and bicyclists. The bike hub provides a destination, it is a flexible space where people can meet, bike to other destinations, and the surrounding space is ample enough for other programmatic aspects such as a farmers market for the local community. Bicyclists will have several opportunities to connect to both Wolfe Road and Pruneride Ave from the project. The paseo will be open during the day to the public which meanders throughout the buildings and amenity spaces allowing both bikers and pedestrians to enjoy lush landscape, water features, and a fireplace seating area. On site pathways will be provided on site for bicyclists to circulate the perimeter of the project for leisure or workout uses.

b. Bicycle and Pedestrian Network. A well-designed network of streets, paths and crossings is key to improving pedestrian accessibility, which has been designed into the Hamptons project. Access to Wolfe Rd will be via two new proposed bike paths. Access to Pruneridge Ave will be primarily via the bike paseo on the Northern portion of the project. Creating a safe, comfortable, and convenient walking environment within a quarter- (5-minute walk) to half-mile (10-minute walk) of transit stations and stops is critical to supporting transit use.

c. Bicycle Facilities. The bike hub space will serve several purposes. Besides providing ample class 1 bike storage, the bike hub will allow both residents and guests to service their bicycle as needed, socialize, and enjoy a cup of coffee. The bike hub will be designed to have air compressors, water, and other commonly used bicycle accessories. Over 377 additional bike storage spaces will be provided for residents in the garage.

d. Bikesharing. Bike share systems provide a network of public bicycles from self-service bike share stations located in different places. Similar to carsharing, members can check out a bicycle, ride to their destination and return the bicycle to any bike share pod in the system. Bike share systems can provide real time information on the status of available bikes and empty docks through the web, kiosk and mobile application. A bikeshare program will be looked into for the Hamptons.

e. Multimodal Signage and Amenities. Multimodal way-finding and signage for residents, visitors and employees will be provided at major entry points to the site to provide information on the location of short-term and long-term bicycle parking and connections to transit stops. Internal way-finding will be provided to direct residents, visitors and guests to transit, and bicycle parking and car-share vehicle locations.

f. Carpool and vanpool spaces. A certain number of parking spaces for carpool or vanpool vehicles will be provided and can encourage ridesharing. Parking spaces will be clearly marked and located in highly visible areas within the visitor parking area, near convenient access points such as the entrance to buildings.

g. Parking Management. The project proponent will ensure that on-site parking programs within the complement area-wide parking strategies that are managed by the City such as time limits, residential permit parking, or metered parking. This cooperation aims to reduce potential parking spillovers that could result from residents or visitors of the residents.

h. Unbundled Parking. Parking costs are generally subsumed into the rental price of housing. Although the cost of parking is often hidden in this way, parking is never free; instead the cost to construct and maintain the "free" parking is hidden in the lease pricing. Hamptons will provide unbundled parking which will be a strong incentive for residents to reduce the number of vehicles they operate.

4. TDM Program Compliance.

a. Implementation, Monitoring and Enforcement. Ongoing monitoring is needed to ensure compliance with the TDM Program, in conjunction with the project design features and proximity to transit. As result of periodic review of the TDM Program, this TDM Program may be modified, with the prior approval of the City Planning Director, from time to time to include alternate equally or more effective measures. If a TMA is formed and the Project is part of the TMA, the City Planning Director shall, annually, review the TDM Program to minimize duplicative efforts that are provided by the TMA.

5. Parking Provided.

a. Parking Ratio. As supported by the Project's parking study a parking ratio of 1.8 parking stalls per (1) residential unit is proposed for this project. On average, the Irvine Company's current Northern California portfolio of apartment homes have a 1.8 parking ratio, which has proven to be more than adequate and often times is a higher ratio than the municipality requires. The Hamptons has a high ratio of 1 BR and studio units (68%) of the total mix which justifies the lower than 2:1 parking ratio. The recent re-design of the bike hub and paseo that incentivizes pedestrian and bicycle use combined with the vast amount of bike parking and storage provided is another compelling reason a 1.8 parking ratio is requested.

Tenants of two bedroom units must pay for more than one parking space to order to incentivize tenants to own and operate one vehicle.

EXHIBIT G

ANNUAL REVIEW FORM

This Annual Review Form is submitted to the City of Cupertino ("**City**") by IAC at Cupertino LLC ("**Developer**") pursuant to the requirements of California Government Code section 65865.1 and Chapter 18.245 of the City's Municipal Code regarding Developer's good faith compliance with its obligations under the Development Agreement between the City and Developer having an Effective Date of _____ ("**Development Agreement**"). All Article and Section references are to the Development Agreement. Any capitalized terms not otherwise defined herein shall have the meanings assigned to them in the Development Agreement.

Annual Review Period: _____ to _____.

Generally summarize the status of Developer's efforts and progress in processing, constructing and selling or leasing residential units allocated under the Development Agreement.

Generally summarize specific strategies to be followed in the coming year intended to facilitate the processing of permits and or Project construction.

Specify whether Developer's compliance with any of the following agreements have been satisfied during this annual review period:

- Affordable Housing Relocation Agreement (and Relocation Plan) under Section 3.13.1.
- Affordable Housing Agreement under Section 13.3.2.

Specify whether applicable Existing Impact Fees, processing fees, connection fees and/or other fees due and payable under Article 4 have been paid during this annual review period, including but not limited to the following:

- Housing Mitigation Fees under Section 4.1.1.
- Park Impact Fees under Section 4.1.1.
- Public Art Contribution under Section 4.1.3.
- Transportation Impact Fees under Section 4.1.4.

Describe whether Developer's compliance with any of the following Public Benefits under Article 5 have been satisfied during this annual review period:

- Civic Facilities Payment pursuant to Section 5.1.1.1.
- SCVWD Agreement pursuant to Section 5.1.1.2.

- Wolfe Road Interchange Project Payment pursuant to Section 5.1.1.3.
- School Fees Agreement pursuant to Section 5.1.2.
- TDM Program and Vallco TMA Payment pursuant to Section 5.1.3.
- Business License pursuant to Section 5.2.
- Sales Tax Point of Sale Designation under Section 5.3.
- Gateway Sign under Section 5.4.

Describe whether other applicable Development Agreement obligations were completed during this annual review period.

Describe any extension of the Initial Term of the Development Agreement as a result of either Section 2.2.1 or Permitted Delay pursuant to Section 13.4.

Specify whether Developer has assigned the Development Agreement or otherwise conveyed the Property during this annual review period.

The undersigned representative confirms that Developer is:

_____ In good faith compliance with its obligations under the Development Agreement for this annual review period.

_____ Not in good faith compliance with its obligations under the Development Agreement for this annual review period, in response to which Developer is taking the actions set forth in the attachment hereto.

IN WITNESS WHEREOF, Developer has executed this Annual Review Form as of this ____ day of _____, 20__.

DEVELOPER:
IAC AT CUPERTINO LLC, a Delaware limited liability company

By: _____
Name: _____
Title: _____

EXHIBIT H

FORM OF ASSIGNMENT AND ASSUMPTION AGREEMENT

RECORDING REQUESTED BY
AND WHEN RECORDED MAIL TO:

_____

_____

_____

Attention: _____

Exempt from Recording Fee per Government Code Section 27383

Space Above This Line for Recorder's Use Only

ASSIGNMENT OF RIGHTS AND OBLIGATIONS UNDER DEVELOPMENT AGREEMENT FOR THE HAMPTONS

This Assignment of Rights and Obligations Under Development Agreement (this "**Assignment**") is entered into this _____ day of _____, 20__ ("**Effective Date**"), by and between _____, a _____ ("**Assignor**") and _____, a _____ ("**Assignee**"). Assignor and Assignee are collectively referred to herein as the "**Parties.**"

RECITALS

A. Assignor and the City of Cupertino, a California municipal corporation ("**City**") have entered into that certain Development Agreement dated as of _____, 2016 ("**DA**") which was recorded in the Official Records of Santa Clara County on _____, 2016 as Instrument No. _____.

B. Assignor [has requested approval from the City of the assignment to Assignee described herein pursuant to Section 10.1 of the DA] [has the right to make the assignment to Assignee under Section 10.1 of the DA.]

C. [City has consented to the assignment described herein pursuant to Section 10.1 of the DA.] [Assignor has provided the City with documentation establishing that the assignment is appropriate pursuant to Article 10 of the DA because _____.]

AGREEMENTS

NOW, THEREFORE, in exchange for the mutual covenants set forth herein and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereby agree as follows:

1. Assignment and Assumption of Interest. Assignor hereby transfers, assigns and conveys to Assignee, all of Assignor's right, title and interest in and to, and all obligations, duties, responsibilities, conditions and restrictions under, the DA (the "**Rights and Obligations**"). Assignee, for itself and its successors and assigns, hereby accepts the foregoing assignment, assumes all such Rights and Obligations, and expressly agrees for the benefit of City, to pay, perform and discharge all obligations of Assignor under the DA and to comply with all covenants and conditions of Assignor arising from or under the DA.

2. Governing Law; Venue. This Assignment shall be interpreted and enforced in accordance with the laws of the State of California without regard to principles of conflicts of laws. Any action to enforce or interpret this Assignment shall be filed and litigated exclusively in the Superior Court of Santa Clara County, California or in the Federal District Court for the Northern District of California.

3. Entire Agreement/Amendment. This Assignment constitutes the entire agreement among the Parties with respect to the subject matter hereof, and supersedes all prior written and oral agreements with respect to the matters covered by this Assignment. This Assignment may not be amended except by an instrument in writing signed by each of the Parties and consented to in writing by City.

4. Further Assurances. Each Party shall execute and deliver such other certificates, agreements and documents and take such other actions as may be reasonably required to consummate or implement the transactions contemplated by this Assignment and the DA.

5. Benefit and Liability. Subject to the restrictions on transfer set forth in the DA, this Assignment and all of the terms, covenants, and conditions hereof shall extend to the benefit of and be binding upon the respective successors and permitted assigns of the Parties.

6. Rights of City. All rights of City under the DA and all obligations to City under the DA which were enforceable by City against Assignor prior to the Effective Date of this Assignment shall be fully enforceable by City against Assignee from and after the Effective Date of this Assignment.

7. Rights of Assignee. All rights of Assignor and obligations to Assignor under the DA which were enforceable by Assignor against City prior to the Effective Date of this Assignment shall be fully enforceable by Assignee against City from and after the Effective Date of this Assignment.

8. Release. As of the Effective Date, Assignor hereby relinquishes all rights under the DA, and all obligations of Assignor under the DA shall be terminated as to, and shall have no

more force or effect with respect to, Assignor, and Assignor is hereby released from any and all obligations under the DA.

9. Attorneys' Fees. In the event of any litigation pertaining to this Assignment, the losing party shall pay the prevailing party's litigation costs and expenses, including without limitation reasonable attorneys' fees.

10. City Consent; City is a Third-Party Beneficiary. City's countersignature below is for the limited purposes of indicating consent to the assignment and assumption and release set forth in this Assignment (if necessary under the DA) pursuant to Sections 10.1 and 10.2 of the DA, and for clarifying that there is privity of contract between City and Assignee with respect to the DA. The City is an intended third-party beneficiary of this Assignment, and has the right, but not the obligation, to enforce the provisions hereof.

11. Recordation. Assignor shall cause this Assignment to be recorded in the Official Records of Santa Clara County, and shall promptly provide conformed copies of the recorded Assignment to City and Assignee.

12. Address for Notices. Assignee's address for notices, demands and communications under the DA is as follows:

Office of the General Counsel
550 Newport Center Drive
Newport Beach, CA 92660

13. Captions; Interpretation. The section headings used herein are solely for convenience and shall not be used to interpret this Assignment. The Parties acknowledge that this Assignment is the product of negotiation and compromise on the part of both Parties, and the Parties agree, that since both have participated in the negotiation and drafting of this Assignment, this Assignment shall not be construed as if prepared by one of the Parties, but rather according to its fair meaning as a whole, as if both Parties had prepared it.

14. Severability. If any term, provision, condition or covenant of this Assignment or its application to any party or circumstances shall be held by a court of competent jurisdiction, to any extent, invalid or unenforceable, the remainder of this Assignment, or the application of the term, provision, condition or covenant to persons or circumstances other than those as to whom or which it is held invalid or unenforceable, shall not be affected, and shall be valid and enforceable to the fullest extent permitted by law unless the rights and obligations of the Parties have been materially altered or abridged thereby.

15. Counterparts. This Assignment may be executed in counterparts, each of which shall, irrespective of the date of its execution and delivery, be deemed an original, and the counterparts together shall constitute one and the same instrument.

IN WITNESS WHEREOF Assignor and Assignee have executed this Assignment as of the date first set forth above.

ASSIGNOR:

_____, a
_____

By: **FORM – DO NOT SIGN**
Name: _____
Its: _____

ASSIGNEE:

_____, a
_____

By: **FORM – DO NOT SIGN**
Name: _____
Its: _____

[NOTE: The presence of the signature blocks below in this form shall not be deemed to require the consent of the City to any assignment that does not otherwise require the consent of City under the DA.]

City of Cupertino, a California municipal corporation, hereby consents to the assignment and assumption described in the foregoing Assignment and Assumption Agreement.

CITY:

CITY OF CUPERTINO, a
California municipal corporation

By: **FORM – DO NOT SIGN**
_____, City Manager

ATTEST:

_____, City Clerk

APPROVED AS TO FORM:

_____, City Attorney

ACKNOWLEDGMENTS

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)
) ss
County of _____)

On _____, before me,_____,
(Name of Notary)

notary public, 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.

_____
(Notary Signature)

* * * * * * * * * * * * * * * * *

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)
) ss
County of _____)

On _____, before me,_____,
(Name of Notary)

notary public, personally appeared _____
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_____
(Notary Signature)