CITY OF CUPERTINO
10300 Torre Avenue
Cupertino, California 95014

DRAFT RESOLUTION

A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF CUPERTINO RECOMMENDING APPROVAL OF A DEVELOPMENT AGREEMENT WITH VALLCO PROPERTY OWNER, LLC

Based on the entirety of the record, the Planning Commission recommends that the City Council adopt an ordinance approving the proposed Development Agreement, in the form of the Draft Ordinance attached hereto as Exhibit DA, with the findings incorporated therein.

PASSED AND ADOPTED this 4th day of September 2018, at a Special Meeting of the Planning Commission of the City of Cupertino by the following roll call vote:

AYES: COMMISSIONERS:
NOES: COMMISSIONERS:
ABSTAIN: COMMISSIONERS:
ABSENT: COMMISSIONERS:

ATTEST:

Aarti Shrivastava
Assistant City Manager

APPROVED:

Geoff Paulsen, Chair
Planning Commission

EXHIBIT – DA

ORDINANCE NO. 18-

ORDINANCE OF THE CITY COUNCIL OF THE CITY OF CUPERTINO APPROVING A DEVELOPMENT AGREEMENT BY AND BETWEEN THE CITY OF CUPERTINO AND VALLCO PROPERTY OWNER, LLC FOR THE DEVELOPMENT OF [TBD]

SECTION I: PROJECT DESCRIPTION

Application No: Z-2018-01
Applicant: City of Cupertino
Location: 10101 to 10333 N Wolfe Rd
APN#s: 316-20-080, 316-20-081, 316-20-103, 316-20-107, 316-20-101, 316-20-105, 316-20-106, 316-20-104, 316-20-088, 316-20-092, 316-20-094, 316-20-099, 316-20-100, 316-20-095

SECTION II: RECITALS

WHEREAS, Vallco Property Owner, LLC ("Vallco") has a legal and equitable interest in certain real property consisting of approximately 50.82 acres located within the City and generally bordered by Perimeter Road on the north, Perimeter Road on the east, Vallco Parkway and Stevens Creek Boulevard on the south, and Perimeter Road on the west, as more particularly described in Exhibit DA-1, the Development Agreement ("Property"); and

WHEREAS, Government Code Sections 65864 through 68569.5 provide the statutory authority for development agreements between municipalities and parties with a fee or equitable interest in real property; and

WHEREAS, Chapter 19.144 of Cupertino Municipal Code ("CMC,") establishes additional procedures for review and approval of proposed development agreements by the City of Cupertino ("City"); and

WHEREAS, in October 2017, Vallco requested that the City initiate the process for preparation and adoption of a specific plan for the Vallco Special Area; and

WHEREAS, the Vallco Special Area Specific Plan has been developed pursuant to City Council direction to initiate a project to prepare a specific plan for the Vallco Special Area, including any required changes to the adopted goals and objectives for the Special Area, in order to implement the Housing Element of the Cupertino General Plan and to plan for anticipated future development activity; and

WHEREAS, the Vallco Specific Plan sets forth two tiers of development capacity as follows: (1) Tier 1 sets forth a basic program of development of the Specific Plan area (750,000 square feet of office, 1,779 residential units, and a minimum of 600,000 square

feet of retail) without provision of above-standard community benefits; and (2) Tier 2 allows for a greater amount of office and residential development, as described in the Vallco Specific Plan, provided the Developer enters into a Development Agreement with the City which provides for certain above-standard community benefits (collectively, the "Project"); and

WHEREAS, Vallco has proposed to provide certain community benefits and to develop the Tier 2 program in accordance with the Specific Plan; and

WHEREAS, the City and Vallco have negotiated the terms of a Development Agreement to vest the Tier 2 program in consideration of the community benefits and provide limited vesting of the Tier 1 program; and

WHEREAS, the terms of the Development Agreement include the following community benefits to be provided by Vallco, which are described in more detail in the proposed Development Agreement:

- Performing Arts Center – Vallco would either, at City's option: (i) build and lease to City a 60,000 square foot "warm shell" space suitable for a performing arts center (PAC), or (ii) pay the City a $22,800,000 in lieu payment.

- City Hall – Vallco would either (i) demolish the existing City Hall building and then build and deliver to City a 40,000 square foot "warm shell" new City Hall including underground parking, substantially consistent with the City's 2015 civic center master plan, or (ii) pay the City a $30,000,000 in lieu payment.

- School District Benefits –

    - FUHSD - Vallco would commit to either (i) build and lease to FUHSD a 25,000 square foot "warm shell" space, or (ii) pay FUHSD a $9,500,000 in lieu payment, with terms to be set forth in a separate agreement to be entered into between Developer and FUHSD.

    - CUSD – Vallco would make a payment to CUSD in the amount of $9,500,000 pursuant to a separate agreement.

- Affordable Housing – Vallco would agree that 20% of the residential units would be provided as affordable housing at the following percentages: 15% at very low and low income levels and 5% at moderate income level.

- Transportation Benefits –

    - Vallco would implement a TDM Program.

- Vallco would pay $11 million to City to fund work in connection with the Wolfe Road/I-280 and the Junipero Serra Bike/Pedestrian Trail. This would decrease to $5.5 million if there is a challenge to the Project.

- Vallco would fund up to $1 Million for a 1-year pilot shuttle program and, if successful $750,000 thereafter for 9 years, which would decrease if there is a challenge to the Project.

- Vallco would provide a mobility/bike hub within the project.

- Co-working/Incubator Space – Vallco would make good faith efforts to provide 40,000 square feet of co working or incubator space.

WHEREAS, the Development Agreement will be consistent with the City's General Plan land use map, proposed uses and surrounding uses as amended and the applicable zoning designations and the Vallco Special Area Specific Plan as adopted; and

WHEREAS, approval of the Development Agreement will provide Vallco with assurances that its development of the Property in connection with the Project can proceed without disruption caused by a change in City planning and development policies and requirements, which assurance will thereby reduce the actual or perceived risk of planning, financing and proceeding with construction and use of the development and promote the achievement of the private and public objectives of the development; and

WHEREAS, the Development Agreement is envisioned by and consistent with the Vallco Special Area Specific Plan, all as fully described and analyzed in the Final Environmental Impact Report for the Vallco Special Area Specific Plan Environmental Impact Report (State Clearinghouse No. 2018022021), which consists of the May 2018 Draft Environmental Impact Report ("Draft EIR"), the July 2018 Environmental Impact Report Amendment ("EIR Amendment"), the August 2018 Final EIR volume, and the August 2018 Supplemental Text Revisions to the Vallco Special Area Specific Plan Final Environmental Impact Report (together, the "Final EIR"); and

WHEREAS, following necessary public notices given as required by the procedural ordinances of the City of Cupertino and the Government Code, the Planning Commission held a public hearing on September 4, 2018 to consider the Development Agreement; and

WHEREAS, the Final EIR was presented to the Environmental Review Committee ("ERC") for review and recommendation on August 31, 2018, and after considering the Final EIR, and Staff's presentation, the ERC recommended that the City Council certify the EIR; and

WHEREAS, based on substantial evidence in the administrative record, on September 4, 2018 the Planning Commission recommended that the City Council certify that the Final EIR has been completed in compliance with the California Environmental Quality Act, Public Resources Code Section 21000 *et seq.*, and reflects the independent judgment and analysis of the City, adopt the Findings and Statement of Overriding Considerations, and adopt and incorporate into the project all of the mitigation measures that are identified in the Final EIR, and implement all of the mitigation measures that are within the responsibility and jurisdiction of the City in substantially similar form to the Resolution presented (Resolution No. XXXX); and

WHEREAS, on September 4, 2018, the Planning Commission recommended on a X-X vote that the City Council adopt an ordinance approving the Development Agreement, in substantially similar form to the Resolution presented (Resolution no. _____); and

WHEREAS, on September 18, 2018, upon due notice, the City Council held a public hearing to consider the Development Agreement; and

WHEREAS, the City Council of the City of Cupertino is the decision-making body for this Ordinance; and

WHEREAS, after consideration of evidence contained in the entire administrative record, at the public hearing on September 18, 2018, the City Council adopted Resolution No. [####] certifying the Final EIR, adopting the Findings and a Statement of Overriding Considerations, adopting the Mitigation Measures, and adopting a Mitigation Monitoring and Reporting Program; and

WHEREAS, prior to taking action on this Ordinance, the City Council has exercised its independent judgment in carefully considering the information in the Final EIR and finds that the scope of this Ordinance falls within the certified Final EIR, in that the aspects of the Development Agreement proposed in this Ordinance that have the potential for resulting in either a direct physical change in the environment or a reasonably foreseeable indirect physical change in the environment have been examined in the Final EIR; therefore, no recirculation of the Final EIR is required; and

WHEREAS, after consideration of evidence contained in the entire administrative record, after the public hearing on September 18, 2018, the City Council adopted Resolution No. [####] certifying the Final EIR, adopting Findings and a Statement of Overriding Considerations, adopting Mitigation Measures, and adopting a Mitigation Monitoring and Reporting Program; and

WHEREAS, at a duly noticed public hearing on September 18, 2018, prior to consideration of the Development Agreement, the Council adopted Resolution No. XXX, approving a General Plan Amendment to Development Allocations, the General Plan

Land Use Map and development standards related to the Vallco Special Area, adopted Resolution No. XXX, approving the Vallco Special Area Specific Plan, and adopted an Ordinance Rezoning the parcels within the Vallco Special Area Specific Plan.

NOW, THEREFORE, BE IT ORDAINED AS FOLLOWS:

Section 1. The recitals set forth above are true and correct, and are hereby incorporated herein by this reference as if fully set forth in their entirety.

Section 2. The City Council, having considered the staff report to the City Council dated _____, 2018, evidence received at the public hearing duly noticed and held for the proposed Development Agreement, and all other facts, exhibits, testimony, information and other evidence submitted in this matter or in the record of this proceeding, finds as follows:

A. The proposed Development Agreement is consistent with the objectives, policies, general land uses and programs specified in the General Plan, as amended.

B. The proposed Development Agreement is compatible with the uses authorized in, and the regulations prescribed for, the land use district in which the Project is located.

C. The proposed Development Agreement is in conformity with and will promote public convenience, general welfare, and good land use practice.

D. The proposed Development Agreement will not be detrimental to the health, safety, or general welfare.

E. The proposed Development Agreement will not adversely affect the orderly development of property or the preservation of property values.

F. The proposed Development Agreement will promote and encourage the development of the Project by providing a greater degree of requisite certainty.

Section 3. The City Council hereby approves the Development Agreement in the form attached subject to such minor technical conforming changes as may be approved by the City Attorney. This approval is based on the City Council's consideration of and reliance on the Final EIR and in accordance with the plans, details and descriptions contained therein, and in the Resolution certifying the Final EIR.

Section 4. The City Council hereby authorizes the City Manager to execute the Devleopment Agreemnt on behalf of the City.

Section 5. The City Council directs the Director of Community Development to file a Notice of Determination with the Santa Clara County Recorder in accordance with CEQA guidelines.

Section 6. This Ordinance shall be effective thirty (30) days following its adoption.

INTRODUCED at a Regular Meeting of the City Council of the City of Cupertino the 18th day of September 2018, and ENACTED at a Regular Meeting of the City Council of the City of Cupertino the 2nd day of October, 2018, by the following vote:

Vote: Members of the City Council:
AYES:
NOES:
ABSTAIN:
ABSENT:
RECUSE:

ATTEST: APPROVED:

Grace Schmidt, City Clerk

Darcy Paul, Mayor, City of Cupertino

1034719.1

RECORDING REQUESTED BY
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

Space Above Reserved for Recorder's Use Only

DEVELOPMENT AGREEMENT

BY AND BETWEEN

CITY OF CUPERTINO, A
A CALIFORNIA MUNICIPAL CORPORATION

AND

VALLCO PROPERTY OWNER LLC,
A DELAWARE LIMITED LIABILITY COMPANY

EFFECTIVE DATE: _____2018

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DEVELOPMENT AGREEMENT

This Development Agreement ("**Agreement**"), dated as of _____, 2018 ("**Effective Date**"), is entered into pursuant to the Development Agreement Law, by and between the CITY OF CUPERTINO, a California municipal corporation ("**City**") and VALLCO PROPERTY OWNER 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**."

R E C I T A L S

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 sections 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 consisting of approximately 50.82 acres more particularly described and depicted in Exhibits A and B attached hereto and incorporated herein ("**Property**"). The Property is currently developed with the existing Vallco Shopping Mall ("**Vallco Mall**") owned by Developer.

D. On December 4, 2014, following extensive public meetings, hearings and community outreach, the City certified a General Plan Amendment, Housing Element Update, and Associated Rezoning Environmental Impact Report ("**General Plan EIR**") and adopted the Cupertino General Plan: Community Vision 2015-2040 ("**General Plan**"). The General Plan designated the Property as a Priority Housing Element Site and included a General Plan vision calling for the demolition of the Vallco Mall and the development of a new mixed-use Town Center consisting of up to 2 million square feet of office, a minimum of 600,000 square feet of retail, and a maximum residential density of 35 units per acre ("**Vallco Town Center Vision**"). The General Plan also envisioned the subsequent adoption of a Specific Plan for the Property.

E. On October 4, 2017, Developer requested the City to initiate a process to adopt a specific plan for the 70-acre area comprised of the Property and certain adjacent properties ("**Vallco Specific Plan**"), to move forward with the City's Vallco Town Center Vision. The

City subsequently commenced the Vallco Specific Plan process in early 2018. The purpose of the Vallco Specific Plan is to specify the allowed land uses, design standards and other requirements and guidelines for development in the Specific Plan area.

F. On September 29, 2017 Governor Brown signed Senate Bill 35 into law, which is aimed at addressing the State of California's housing shortage and affordability crisis ("**SB 35**"). SB 35 became effective as of January 1, 2018. On March 27, 2018 Developer submitted a mixed-use development application under SB 35 ("**SB 35 Application**") consisting of 2,402 residential units (after a 35% bonus allowed under the State Density Bonus Law), including fifty percent of the units affordable to low income households, together with 1,981,768 sq. ft. of office and 485,912 sq. ft. of retail uses ("**SB 35 Project**"). Developer separately requested that the City continue to process the City initiated Vallco Specific Plan concurrent with the SB 35 Application.

G. City continued to process the Vallco Specific Plan by holding numerous charrettes, scoping sessions and community outreach meetings as part of the "Envision Vallco: A Collaborative Design Process." The City additionally prepared a draft environmental impact report for the Vallco Specific Plan ("**Vallco DEIR**") and held hearings pursuant to the California Environmental Quality Act ("**CEQA**") (Public Resources Code section 21000 *et seq.*). On May 25, 2018, the City circulated the Vallco DEIR for public review and comment for a period through July 9, 2018.

H. On June 22, 2018, the City issued a letter to Developer confirming that the SB 35 Project is eligible for streamlined ministerial review under SB 35. The deadline for approval of the SB 35 Project is not later than 180 days after submittal of the application on March 27, 2018.

I. Based on community input and City Council direction to provide a project alternative with greater residential use and community amenities, the City sought information, analysis and studies about another Specific Plan alternative that would increase the residential housing on the Property ("**Housing Rich Alternative**"). To address these considerations the City circulated the Vallco DEIR Amendment analyzing under CEQA the Housing Rich Alternative ("**EIR Amendment**"). The EIR Amendment was circulated for an additional 45 day period commencing July 6, 2018 and ending on August 20, 2018.

J. City published the Vallco Final Environmental Impact Report consisting of the Vallco DEIR, EIR Amendment, the comments submitted on both the Vallco DEIR and the EIR Amendment, and the City's Responses to Comments on the Vallco DEIR and EIR Amendment on _____, 2018 ("**Vallco FEIR**").

K. On August 24, 2018, the City released a draft of the Vallco Specific Plan for public review. The Specific Plan sets forth two tiers of development capacity. Tier 1 sets forth a basic program of development of the Specific Plan area (750,000 square feet of office, 35 residential units per acre, and a minimum of 600,000 square feet of retail) without provision of above-standard community benefits. Tier 2 allows for a greater amount of office and residential development, as described in the Vallco Specific Plan, provided the Developer enters into a Development Agreement with the City which provides for certain above-standard community benefits. This Development Agreement satisfies the requirements to qualify for Tier 2, and also

provides limited vesting for Tier 1. The Vallco Specific Plan provides the zoning criteria for the Property and the balance of the Vallco Specific Plan area, which require certain amendments to the General Plan.

L. On September __, 2018, in advance of the overall 180-day streamlined approval process deadline set forth in SB 35, the City issued a letter approving the SB 35 Project.

M. The Planning Commission on _____2018, recommended the following action by adoption of Resolutions Nos. _____ to the City Council: certification of the Vallco FEIR, approval of a General Plan amendment, approval of the Vallco Specific Plan, and approval of this Development Agreement.

N. Prior to or concurrently with approval of this Agreement, the City has taken or will take the following actions (collectively, the "**Specific Plan Approvals**"):

1. Certification of the Vallco FEIR by Resolution No. _____, adopted by the City Council on _____, 2018;

2. Approval of General Plan amendments by Resolution No. _____, adopted by the City Council on _____, 2018;

3. Approval of the Vallco Specific Plan by _____ No. _____, adopted by the City Council on _____, 2018; and

4. Approval of rezoning by Ordinance No. _____, adopted by the City Council on _____, 2018.

O. In accordance with the Specific Plan Approvals, Developer has proposed to provide community benefits and develop the Tier 2 program on the Property as follows (the "**Project**"):

1. Up to 2,668 residential units, including 20% affordable units and 80 market-rate senior housing units, as more particularly described in the Housing Plan;

2. Up to 1,750,000 square feet of office uses, at least 250,000 square feet of which is limited to Office Amenity Space, as described in the Specific Plan Approvals;

3. At least 485,000 square feet of retail uses, as described in the Vallco Specific Plan, including up to 85,000 sf of civic and education uses, as more particularly described in Article 5 (Community Benefits);

4. A hotel, as such use is defined in the Specific Plan, with up to 191 rooms, and ancillary uses and amenities as described in the Vallco Specific Plan;

5. Parking and loading as described in the Vallco Specific Plan;

6. Publicly and privately accessible parks, open space, plazas and patios, as described in the Vallco Specific Plan, including at least 6 acres of publicly accessible At Grade

open space, the locations, sizes and amenities of which will be specified in the MSDP and shall be consistent with the criteria set forth in the Vallco Specific Plan; and

7. Within the existing air space easement, or modified easement subject to City approval, and subject to the criteria in the Vallco Specific Plan, a pedestrian bridge over Wolfe Road, which may be open space and include retail and restaurant uses, provided such uses are consistent with public access and comply with the design requirements set forth in the Specific Plan.

P. Under this Development Agreement, Developer will provide substantial public benefits for the Tier 2 Project as more specifically described in Article 5, including:

1. BMR Units. Project will include 20% BMR Units;

2. New City Hall. Re-construction of a core and warm-shell for a new City Hall, to be located on the site of the existing City Hall, or payment of an in-lieu fee of Thirty Million Dollars ($30,000,000);

3. Performing Arts Center. Construction of a core and warm-shell for a new 60,000 sq. ft. performing arts center, to be located on a site in the vicinity of the proposed Town Square, or payment to City of an in-lieu fee of Twenty Two Million Eight Hundred Thousand Dollars ($22,800,000);

4. FUHSD. Construction of a 25,000 sq. ft. core and warm-shell space, for use as an adult school and high school innovation center, to be leased for 34 years to FUHSD at no cost, or payment to FUHSD of an in-lieu fee of Nine Million Five Hundred Thousand Dollars ($9,500,000);

5. CUSD. Payment of Nine Million Five Hundred Thousand Dollars ($9,500,000);

6. Co-Working Incubator-Space. Good faith efforts to provide Forty Thousand (40,000) square feet of co-working or incubator space in the Project;

7. Funding for TDM. Implementation of a Project TDM Program with a goal of 34% non-single occupancy vehicles for office uses;

8. Mobility/Bike Hub. A mobility hub of at least 1,000 sq. ft., which may include a bicycle facilities and services hub with bike storage, sales, rentals and repair facilities; a transit stop and /or an ancillary use café;

9. Pilot Community Shuttle. $1,000,000 initial funding and operating a community shuttle from Vallco to local schools and other transportation hubs and, if successful, an ongoing $750,000 per year contribution for up to 9 additional years (subject to reduction per Section 9.3.4); and

10. Transportation Infrastructure Contributions, Bike/Pedestrian Trail. Contribution to City of Eleven Million Dollars ($11,000,000) ((subject to reduction per Section

9.3.4)) for study, design and construction of two critical transportation infrastructure projects (a) the I-280/Wolfe Road interchange; and (b) potential future bicycle and pedestrian trail along I-280, immediately north of the Project, commonly known as the Junipera Serra Trail.

Q. Under this Development Agreement, Developer will provide substantial public benefits for the Tier 1 Project. In furtherance of the General Plan Land Use Goals [LU-1, LU-2, LU-3, LU-4, LU-5, LU-6, LU-7, LU-8, LU-9, and LU-19], and the Vallco Specific Plan Goals [as defined in Chapter 1, Purpose and Intent], the Tier 1 development program would result in the following community-wide social benefits:

- Housing: 1,779 residential units inclusive of 15% Below Market Rate units, per Specific Plan,
- Open Space, per Specific Plan, including:
    - Multi-use pathway on the western edge, per the Specific Plan
    - Public park and plazas, six acres of which must be provided at At Grade.
- Construct and dedicate to the City three new segments of the public right of way frontage road on its Property immediately adjacent to North Wolfe.

R. 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.

S. City specifically finds, as required by Municipal Code section 19.144.110, and as reflected in Ordinance No. ___, that approving this Agreement for the Project, and for limited purposes a Tier 1 alternative, 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 promote development which is not 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.

T. 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.

U. 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. 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.

V. City has approved this Agreement by Ordinance No. ____, adopted by the City Council on _____, 2018 ("**Enacting Ordinance**").

A G R E E M E N T

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.

"***Adult School and Innovation Center***" is defined in Section 5.3.1.

"***Affiliated Party***" is defined in Section 10.5.

"***Affordable Housing Agreement***" is defined in the Housing Plan.

"***Agreement***" or "***Development Agreement***" means this Development Agreement between City and Developer, including all Exhibits hereto.

"***Annual Shuttle Contribution***" is defined in Section 5.4.3.

"***Applicable City Regulations***" is defined in Section 3.5.

"***Applicable Law***" means the Applicable City Regulations and all State and Federal laws and regulations applicable to the Property and the Project as such State and Federal laws are enacted, adopted and amended from time to time, as more particularly described in Section 3.9 (Changes in the Law).

"***ASR***" is defined in Section 7.1

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

"***Assignment***" is defined in Section 10.2.

"At Grade" is defined in Section 4.1.2.

"***Baseline Cost***" is defined in Section 5.2.7.

"***BMR Units***" is defined in the Housing Plan.

"***Building Permit***" shall mean a building permit issued by the City for the vertical construction of any 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.

"CC&Rs" is defined in Section 7.6.3.

"***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.

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

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

"***City Hall Approval***" is defined in Section 5.2.5.

"***City Hall Cost Cap***" is defined in Section 5.2.3.

"***City Hall Deviations***" is defined in Section 5.2.3.

"City Hall Master Plan" is defined in Section 5.2.2.

"***City Hall Payment***" is defined in Section 5.2.1

"***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.

"***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.

"***Consent***" is defined in Section 7.5.

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

"***CPI-U"*** is defined in Section 4.1.

"***CUSD***" is defined in Section 5.3.2.

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

"***Design Deviations***" is defined in Section 5.2.9.

"***Deviation Cost Allowance***" is defined in Section 5.2.9.

"***Developer***" means Vallco Property Owner LLC, a Delaware limited liability company and its permitted successor and assigns.

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

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

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

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

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

"EIR Amendment" is defined in Recital I.

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

"***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.

"***Excluded Items***" is defined in Exhibit G.

"***Existing City Hall***" is defined in Section 5.2.1.

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

"***Final***" means the date on which (1) all applicable appeal periods for the filing of any administrative challenging the issuance or effectiveness of a Project Approval shall have expired and no such appeal shall have been filed; (2) in the event of any administrative appeal or Litigation Challenge challenging the Project Approval, that the administrative appeal or Litigation Challenge is settled or there is a final determination or judgment upholding the Project Approval, and the administrative appeal or Litigation Challenge is no longer subject to appeal; and (3) in the event of a referendum challenging a Vested Approval, either City Council denies the petition for referendum or the City Council certifies the results of the election under the Elections Code upholding the Vested Approval and rejecting any challenge under any

referendum petition and all referendum related litigation challenges have been rejected.

"***FUHSD***" is defined in Section 5.3.1.

"General Plan EIR" is defined in Recital D.

"General Plan" is defined in Recital D.

"Housing Rich Alternative" is defined in Recital I.

"***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.

"***Impact Fee Lock Period***" is defined in Section 4.1.

"***Increased Construction Cost***" is defined in Section 5.2.7.

"***Initial Term***" is defined in Section 2.2.

"***Liquid Assets***" is defined in Section 10.2.

"***Litigation Challenge***" is defined in Section 9.3.1.

"***Major Agreement Amendment***" is defined in Section 8.3.2.

"***Major Project Amendment***" is defined in Section 8.2.2.

"***Master Tentative Map***" means that initial tentative subdivision map or vesting tentative subdivision map covering the entirety of the Property.

"***Material Condemnation***" is defined in Section 13.1.1.

"***Mobility Hub***" is defined in Section 5.4.2.

"***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.

"***MSDP***" means the Master Site Development Permit for the entirety of the Project and Property to be processed by Developer as a Subsequent Approval as provided herein.

"***Municipal Code***" means and refers to the City of Cupertino's Municipal Code, as

amended from time to time.

*"**New City Hall**"* is defined in Section 5.2.1.

"***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.

"***Office Amenity Space***" is defined in the Specific Plan, and includes, in addition to the uses specified therein, child care centers and interior hallways that exceed 7.5 feet in width.

"***Other Agency Fees***" means fees and charges imposed by other governmental agencies which in some cases are collected by City on behalf of such other agencies.

"***Other Agency Subsequent Approvals***" means approvals, entitlement and permits required for Development of the Project to be obtained from entities other than the City.

"***PAC***" is defined in Section 5.1.

"***PAC In Lieu Payment***" is defined in Section 5.1.

"***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***" is defined in Section 4.2.

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

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

"***Project Milestones***" is defined in Section 2.2.1.

"***Project Neutral Work***" is defined in Section 2.2.6.

"***Project Specific Work***" is defined as work that is specific to either the SB 35 Project, a Tier 1 development project, or the Project under this Agreement, contemplated to be work beyond the Project Neutral Work.

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

"***Severe Economic Recession***" means a quarterly decline in the monetary value of all finished goods and services produced in the United States, as measured by initial quarterly estimates of United States Gross Domestic Project ("**GDP**") published by the United States Department of Commerce Bureau of Economic Analysis (and not subsequent monthly revisions), lasting three (3) or more consecutive calendar quarters. Any quarter of flat or positive GDP growth shall end the period of such Severe Economic Recession.

"***Specific Plan Approvals***" is defined in Recital N.

"***SB 35***" is defined in Recital F.

"***SB 35 Application***" is defined in Recital F.

"***SB 35 City Hall Payment***" is defined in Section 2.2.4.

"***SB 35 Project***" is defined in Recital F.

"***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.

*"**Tier 1"*** means the development program for the Property described in Table 3.2 of the Specific Plan.

"***Tier 1 Term***" is defined in Section 3.2.

"***Tier 1 Vested Approvals***" means the Specific Plan Approvals relating only to Tier 1.

"***Tier 2***" means the development program for the Property described in Table 3.3 of the Specific Plan.

*"**TIF**"* is defined in Section 4.1.1.

"***Transportation Contribution***" is defined in Section 5.4.4.

"***Transportation Infrastructure Projects***" is defined in Section 5.4.4.

*"**Updated Cost**" is defined in Section 5.2.7.*

*"**Vallco DEIR**"* is defined in Recital G.

"***Vallco FEIR***" is defined in Recital J.

"***Vallco Mall***" is defined in Recital C.

"***Vallco Specific Plan***" is defined in Recital E.

*"**Vallco Town Center Vision**"* is defined in Recital D.

"***Vested Approvals***" means and includes this Agreement and the Specific Plan Approvals, except for those provisions in the Specific Plan regarding the Tier 1 program, which are excluded from the definition of Vested Approvals.

"***Warm Shell***" is defined in Section 5.1.2.

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 the Enacting Ordinance is adopted, or (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 permitted 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 eleventh (11th) anniversary of the Effective Date, unless extended or earlier terminated as provided herein.

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; and (c) Developer has completed the Project Milestones. The term "**Project Milestones**" means: (i) delivery of Warm Shell New City Hall, or payment of City Hall Payment, as described in Section 5.2 of this Agreement; and (ii) issuance of temporary certificates of occupancy for the core and shell of all buildings surrounding the Town Square, as generally described in the Vallco Specific Plan and to be more particularly specified in the MSDP, other than buildings and associated utilities and infrastructure the development or construction of which would interfere with existing contractual lease rights of tenants in possession as of the Effective Date.

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.

2.2.3 Tolling of Term. The Initial Term shall be extended for the time period between the date of adoption of the Specific Plan Approvals and the second reading of the adoption of the Enacting Ordinance and until and the date the Vested Approvals are Final;

provided, however, the maximum time period by which the Initial Term shall be extended under this Section shall not exceed five (5) years.

2.2.4 Termination for Commencement of SB 35 Project. If Developer commences construction or installation of Project Specific Work, that is not Project Neutral Work, for the SB 35 Project, then Developer shall pay City within 30 days following City's demand therefor an amount equal to 50% of the reasonable out-of-pocket costs and expenses incurred by City in connection the design and planning for the New City Hall, not to exceed Three Million Dollars ($3,000,000) (the "**SB 35 City Hall Payment**"), and this Agreement shall automatically terminate and the Parties shall have no further obligation to one another thereunder except for those obligations which by their terms survive expiration or termination hereof. Developer's obligation to make the SB 35 City Hall Payment shall survive termination of this Agreement. Upon either Party's written request following such termination, the other party shall execute and acknowledge a recordable notice of termination or other similar instrument memorializing termination of this Agreement.

2.2.5 SB 35 Project Termination. If Developer commences construction or installation of Project Specific Work not including any Project Neutral Work, for the Project described in this Agreement and the Vested Approvals or for a Tier 1 development project, then the SB 35 Project Approvals will thereupon be deemed to be terminated and of no further force and effect and Developer shall take any and all steps as may be deemed necessary by City to memorialize termination of the SB 35 Project approvals.

2.2.6 Project Neutral Work. Prior to obtaining a permit or other authorization for work that Developer believes is Project Neutral Work, Developer shall identify to City with its application submittal whether it considers the proposed work to be Project Neutral Work, and the reasons therefor. If City disagrees, City shall provide Developer with written notice thereof and an explanation of the reasons it considers the work to be Project Specific Work prior to its issuance of the applicable permit or authorization for such work. If Developer disagrees, Developer may provide a written response explaining why the work is Project Neutral Work. The Parties will meet and confer in good faith and attempt to resolve any disagreement as to whether work is Project Neutral Work or Project Specific Work. If Developer commits to the Project, a Tier 1 development project or the SB 35 Project, by commencing performance of Project Specific Work, in accordance with Section 2.2.4 or 2.2.5, City shall give notice thereof to Developer in accordance with this Agreement, including a written explanation for why the work is not Project Neutral Work, provided that City shall not designate as Project Specific Work any work that City, prior to issuance of the permit or authorization for such work, had previously identified as Project Neutral Work. Regardless of the foregoing and except as otherwise provided herein, the Parties acknowledge and agree that the following shall be considered Project Neutral Work: demolition, rough grading, make-ready utility work, offsite work, excavation and shoring the scope of which has been mutually agreed upon by the Parties, and such other work as the Parties may mutually agree (collectively, "**Project Neutral Work**").

2.2.7 Tier 1 Project Termination. If Developer commences construction or installation of Project Specific Work, that is not Project Neutral Work, for the Project described in this Agreement in a manner which is inconsistent with a Tier 1 development project, then the Developer's Tier 1 Vested Approvals will thereupon be deemed to be terminated and of no

further force and effect and Developer agrees to take any and all steps as may be deemed necessary by City to memorialize termination of the Tier 1 Vested Approvals under this Agreement. If, however, Developer elects to move forward with any of the Article 5 Community Benefits applicable to the Project before Developer has proceeded with construction of Project Specific Work, which would be inconsistent with a Tier 1 project, Developer shall have the right to subsequently elect to move forward with a Tier 1 project, provided it diligently proceeds to complete or satisfy the particular community benefit it had commenced.

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 conformance with the Vested Approvals, the Subsequent Approvals, Applicable Law and this Agreement, as amended from time to time pursuant to 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 Limited Vested Rights for Tier 1 Project. Developer shall have a limited vested right to develop a Tier 1 development project only in accordance with the Tier 1 Vested Approvals for a period not to exceed Five (5) years from the Effective Date ("**Tier 1 Term**"). The applicable Tier 1 vested rights shall not extend to the Impact Fee Lock Period described in Section 4.1 or to other rights or obligations set forth in this Agreement, except as expressly provided. However, the limited vested rights protections for the Tier 1 Vested Approvals shall extend to all the basic Article 3 rights and obligations set forth in this Agreement.

3.3 Life of Approvals. Pursuant to Government Code section 66452.6(a) and this Agreement, the life of Subsequent Approvals for the Project 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 Subsequent 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, and in the case of a Tier 1 development project no greater than the Tier 1 Term.

3.4 Permitted Uses. The permitted uses of the Property; the density and intensity of use of the Property, including the number and type of residential units, and square footage or amounts of office, Office Amenity Space, retail, open space, allocation of hotel rooms, and other uses; the maximum height and size of proposed buildings; provisions for reservation or dedication of land for public purposes, the general location of public improvements; the general location of public utilities; and other terms and conditions of development applicable to the Project, are generally set forth in the Vested Approvals and, as and when they are issued (but not in limitation of any right to develop as set forth in the Vested Approvals), the Subsequent Approvals. To the extent the Project requires "development allocation" pursuant to General Plan Policy LU-1.2, Developer shall have a vested right to all development allocation required for the Project.

3.5 Water Supplies. Any tentative map prepared for the Project will comply with the provisions of Government Code Section 66473.7.

3.6 Applicable City Regulations. The laws, rules, regulations, official policies, standards and specifications of City applicable to the development, use and operation of the Property and the Project shall be (collectively, "**Applicable City Regulations**"):

a) Those rules, regulations, official policies, standards and specifications of the City set forth in the Vested Approvals, the Subsequent 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, maximum heights and sizes, design, set-backs, lot coverage and open space, parking, requirements for on- and off-site infrastructure and public improvements, fees, taxes and Exactions, in each case only to the extent in full force and effect on the Effective Date;

c) Except as addressed in the Vested Approvals, 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, that such New City Laws are uniformly applied on a City-wide basis to all substantially similar types of development projects and properties and such procedures are not inconsistent with procedures set forth in this Agreement;

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, the Vested Approvals or the Subsequent Approvals; provided, that 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.

3.7 Timing of Development. Except as described in the Phasing Plan, Exhibit C, and the Housing Plan, Exhibit D, there is no requirement under this Agreement that Developer initiate or complete development of the Project, or any portion thereof, or that development be initiated or completed within any period of time or in any particular order, except that Developer shall meet its obligation to provide the public benefits described in Article 5 within the times provided therein, subject to City meeting its performance obligations and to events of Permitted Delay. Development of the Project is subject to numerous factors that are not within the control

of the Developer, such as the availability of financing, interest rates, access to capital and other factors. However, and not in limitation of any of the foregoing, since the California Supreme Court held in *Pardee Construction Co. v. City of Camarillo*, 37 Cal.3d 465 (1984), 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, it is the desire of the Parties hereto to avoid that result. Therefore, notwithstanding the adoption of an initiative after the Effective Date by City's electorate to the contrary, the Parties acknowledge that, except as otherwise provided for in the Vested Approvals, Developer shall have the vested right (but not the obligation) to develop the Project in such order and at such rate and at such times as Developer deems appropriate in the exercise of its sole and subjective business judgment.

3.8 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, the Project or the New City Hall. Furthermore, Developer shall carry out the Project and, if applicable, the New City Hall 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.*

3.9 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, including development moratorium or additional Project conditions on Subsequent Approvals) any New City Law that is in conflict with this Agreement, the Vested Approvals or, once approved, the Subsequent 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, density or intensity of development of the Property; (b) except as provided in Section 7.3.3 below, apply to the Property any change in off-site infrastructure or utility requirements or limit or control the availability of or 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 and nothing herein shall be deemed a commitment to reserve potable water or sanitary sewer capacity which the Parties acknowledge City does not control); (c) limit square footages of permitted uses or the number of permitted residential units (based upon the presumed general Project average unit size of 1,250 gross square feet assumed in the Specific Plan), or modify parking requirements or access in a manner that is inconsistent with the Project Approvals; (d) increase minimum setbacks above, or decrease maximum heights below, the levels specified in the Vested Approvals; (e) limit or control the rate, timing, phasing or sequencing of the development or construction of all or any part of the Project other than as set forth herein; (f) apply to the Project any New City Law or Exaction otherwise allowed by this Agreement that is not uniformly applied on a City-wide basis to all substantially similar types of development projects and project sites; (g) take any action that would require the issuance of Subsequent Approvals by the City other than those required by Applicable Law or the Vested Approvals; (h) impose against the Project any dedication or Exaction not specifically authorized by this Agreement, the Project Approvals or Applicable Law; (i) limit or impede the processing or

procuring of applications and approvals of Subsequent Approvals; (j) impose restrictions or conditions in connection with Subsequent Approvals other than reasonable conditions appropriate to implementing a development project of the scope and scale of the Project and in all instances consistent with the objectives, goals and policies of the Specific Plan.

3.10 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. 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.

3.11 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 and Project Approvals, 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. To the maximum extent permitted by law, City shall cooperate with Developer, at Developer's expense, to prevent any New City Law from invalidating or prevailing over all or any part of this Agreement, and City shall cooperate with Developer and shall undertake such actions as may be necessary to ensure this Agreement remains in full force and effect. City shall not support, adopt or enact any New City Law, or take any other action which would violate the express provisions or spirit and intent of this Agreement, the Vested Approvals or the Subsequent 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.

3.12 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. 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.

3.13 Public Infrastructure. City shall use good faith, diligent efforts to work with Developer to ensure that all public infrastructure required in connection with the Project is expeditiously reviewed and considered for acceptance by City on a phased basis as discrete components of the public infrastructure is completed. Developer's obligation to construct the public improvements shall be set forth in one or more public improvement agreements to be entered into by the Parties on or before approval of final subdivision maps for the Project.

ARTICLE 4
FEES

4.1 Impact Fees. Except as otherwise expressly provided herein, for eight (8) years from the Effective Date, subject to no more than a cumulative two-year extension for Permitted Delays ("**Impact Fee Lock Period**"), City shall have the right to impose and Developer shall pay only those Impact Fees, as adopted as of the Effective Date, as and when due under those existing adopted Impact Fees. During the Impact Fee Lock Period, the City may increase the existing adopted Impact Fees by the amount of any built in escalators, or in the absence of a built in escalator, by the annual increase in the cumulative Consumer Price Index for All Urban Consumers ("**CPI-U**"), as defined in Cupertino's CMC Section 5.04.460 (and as reflected in the most recent report of consumer prices for the San Francisco/Bay Area Standard Metropolitan Statistical Area as published by the U.S. Department of Labor, Bureau of Labor Statistics) or if such index is no longer available by a comparable index as reasonably selected by City. Except as otherwise provided in this Agreement, during the Impact Fee Lock Period no other increases to Impact Fees in existence on the Effective Date and no new City Impact Fees imposed after the Effective Date shall apply to the Project. Absent agreement of the Parties, Impact Fees will be paid when specified under this Agreement or, in the absence of any specified time frame, when due under the City Municipal Code. Developer will have the right, at any time during the Impact Fees Lock Period to pre-pay any future Impact Fees at the then applicable rate. Following expiration of the Impact Fee Lock Period, Developer shall pay all applicable Impact Fees, including Impact Fees adopted by City after the Effective Date, at the rates in effect when due.

4.1.1 Transportation Impact Fee. City shall give credit to Developer for (i) the reduction of existing non-residential uses and (ii) any transportation improvements Developer funds and constructs that are capital projects identified by the Transportation Impact Fee Program ("**TIF**"). Credit given under clause (ii) above shall be based on the engineer's cost estimate used as a basis for establishing the TIF. If Developer still owes a TIF after accounting for the credits, Developer will pay the applicable TIF, upon issuance of each building permit. City agrees that no TIF will be charged for Office Amenity Space, or for BMR Units or for the PAC or Adult School and Innovation Center (to the extent City and/or FUHSD elect to accept delivery of the PAC or Adult School and Innovation Center spaces for the designated civic uses).

4.1.2 Parkland Fees. Developer will satisfy park and open space requirements and no park fees will be required, provided the Project includes a minimum of 11.5 acres of

privately maintained open space and parks, which meet the design standards, guidelines and requirements set forth in the Vested Approvals and this Agreement. At least 6 acres will be "**At Grade**" (described in the Vallco Specific Plan as generally at the level of adjacent sidewalk [+/- 12 inches]) publicly accessible park and open space. The minimum 6 acre At Grade park requirement shall be satisfied by providing publicly accessible, privately maintained At Grade park/plaza space in lieu of dedicated City owned and maintained spaces. Developer will be given Park Land Impact Fee credit for parks/plaza open space, as follows:

(i) At Grade publicly accessible park and open space: 100% credit

(ii) Publicly accessible park and open space not At Grade: 100% credit

(iii) Private non-publicly accessible Open Space which meets the requirements of the Open Space types in the Specific Plan: 50% credit (i.e. 1 square foot credited for every 2 square feet provided, without limitation)

Sidewalks, cycle tracks, multi-use paths and other trails or pathways within traditional parks and open space shall be given credit if designed to be closed temporarily for events and gatherings, but only if such sidewalks and pathways are part of the park or open space and meet all Specific Plan requirements.

4.1.3 Affordable Housing Fee. Developer shall pay the City's Affordable Housing Fee at the rate in effect on the Effective Date, subject to CPI increases allowed under Section 4.1, and subject to the following credits:

(i) Non-Residential Use Credit. Developer will receive a credit against any affordable housing fees otherwise owed for non-residential uses removed and replaced with new non-residential (i.e., retail, hotel and office) uses. All credits and fees for non-residential uses shall be calculated at the office rate.

(ii) Moderate Unit Credit. Because the Project includes 15% very low and low income BMR Units, no Affordable Housing Impact Fee is due with respect to the residential component of the Project. Developer will also receive a credit towards Affordable Housing Impact Fees imposed in connection with the non-residential components of the Project in the total amount of Five Million dollar ($5,000,000) for the 133 moderate BMR Units which exceed the base 15% inclusionary requirement.

4.1.4 Impact Fee Exemptions for BMR Units, Office Amenity Space and Civic Facilities. The City shall not apply any Impact Fees to any of the PAC, Office Amenity Space, Adult School and Innovation Center (if and to the extent City and/or FUHSD elect to accept delivery of such spaces for the designated Civic uses) or the BMR Units within the Project

4.1.5 No Rebates. Developer shall not be eligible to receive, and City shall have no obligation to pay funds to Developer, if the credits associated with facilities and improvements constructed or installed by Developer exceed the total amount of the applicable Impact Fees due for the Project.

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 cost recovery fees, including fees for processing Subsequent Approvals, and further including any required supplemental or other further environmental review, plan checking and inspection and monitoring ("**Processing Fees**"), at the rates which are in effect on a City-wide basis at the time those permits, approvals, entitlements, review or inspections are applied for or requested.

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.

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 not apply to the BMR Units, PAC or Adult School and Innovation Center (if and to the extent City and/or FUHSD elect to accept delivery of such spaces for the designated civic uses). If Construction Tax is applicable to New City Hall, City will be responsible to pay the 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 and applicable City-wide with respect to similarly situated properties or uses. In calculating City imposed Connection Fees, if any, City will give credit for applicable removed facilities.

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 Performing Arts Center.

5.1.1 Feasibility Study. Commencing within ninety (90) days after the Effective Date of this Agreement, City will commence a feasibility study for an approximately 60,000 square foot performing arts center, including 600 seat main auditorium, 200 seat secondary

auditorium, lobby and concession areas, restrooms etc., located in the vicinity of the Town Square ("**PAC**").

5.1.2 Core and Warm Shell. Based on the feasibility study City may elect either (i) to receive a payment from Developer in the total amount of Twenty Two Million Eight Hundred Thousand Dollars ($22,800,000) ("**PAC In Lieu Payment**"), or (ii) for Developer to construct and deliver to City a Warm Shell (defined below) PAC space which City shall be responsible for completing and maintaining. If City elects for Developer to build the PAC, Developer's obligation is for a maximum of a 60,000 square foot Warm Shell space. The space would be intended to optimize ability to accommodate a main theater of approximately 600 seats, a second stage of no more than 200 seats, lobby to host pre-theater events, ticketing space and food preparation and staging area, and appropriate number of finished restrooms in light of the size of the facility, among other things. The "**Warm Shell**" space scope will include (i) an enclosed box with roof, exterior walls/finishes and floor completed and the exterior envelope to have Project standard glazing, roofing and exterior exiting doors as required by code; (ii) stub out of all required utilities at an agreed upon location within the structure, (iii) its own HVAC units available at plenum for tenant improvement to connect for their distribution; and (iv) a fire sprinkler stand pipe for the tenant work distribution. The specific requirements for the Warm Shell scope will be detailed in the three alternative design options described in Section 5.1.3. Following delivery of the Warm Shell space City shall be responsible for completing all front and back of house tenant improvements, including theatre seating, and lobby and concession area fixturization. In addition to the Warm Shell work, Developer shall provide City, at no charge to City, 150 parking stalls within Retail and Entertainment/Mixed Use District (as defined in the Specific Plan) and within reasonable proximity to the PAC, which will be subject to project-wide shared parking strategies, and reasonable relocation from time to time depending on leasing or operational requirements.

5.1.3 MSDP/Design. The MSDP shall include two scenarios with respect to the PAC, one that includes a PAC generally located in the Retail District/Phase 1 area, and one that does not include a PAC. With the submittal of the MSDP, Developer will also provide up to three (3) alternative design options, including conceptual program lay-outs, for City consideration concurrently with, but separate from, the review of the MSDP. Within six (6) months of Developer submittal of the MSDP application, the City shall elect whether to include the PAC at the location proposed by Developer in the MSDP, or to approve the MSDP without the PAC.

5.1.4 Cash Election. If City approves the MSDP without the inclusion of a PAC, then Developer shall pay to City the PAC In Lieu Payment prior to issuance of the certificate of occupancy for the last office building in the Office/Mixed-Use District which is not Amenity Office Space, as shown on the MSDP.

5.1.5 Construction of PAC. If City approves the MSDP with the PAC, it shall also, at that time, elect one of the design alternatives provided by Developer. Developer shall design and construct the PAC to Warm Shell level of completion together with the associated parking, in the location shown on the approved MSDP, consistent in all material respects with the design selected by the City, provided that Developer shall have no obligation to commence design and construction of the PAC until the Vested Approvals and the approvals for the MSDP

and Master Tentative Map are Final. Developer shall provide a one (1) year warranty for the Warm Shell PAC space; warranties and guarantees for other systems and components of the PAC space, including HVAC, will be provided per industry standard.

5.1.6 Delivery. Developer shall deliver to City a completed Warm Shell, PAC and associated parking as described above**,** provide City with a complete set of as-built plans and drawings, and the warranties and guarantees referenced in Section 5.1.5 above, prior to issuance of a certificate of occupancy for the last building in the Project located west of Wolfe Road. City and Developer shall collaborate on the plans, specifications and drawings for the PAC. City will be solely responsible for all costs, fees and expenses, including permitting, to design and construct the interior tenant improvements for the PAC, and all other associated amenities, facilities and improvements (other than the Warm Shell improvements and PAC parking the costs of which shall be paid by Developer), and thereafter to operate, and following expiration of the warranty period, to maintain and repair the PAC. Developer shall provide City with a 34 year lease for the PAC premises and parking at a rent of $1 per year on a NNN basis. The Lease term shall commence as of the date Developer delivers a complete (other than minor punch list items) Warm Shell PAC space to City. City, as PAC tenant, will participate in the Project's master property owners' association and pay a proportionate fair share cost contribution for typical common area maintenance in the Retail and Entertainment/Mixed Use District. If the PAC is constructed but ultimately the City fails to accept and operate it, the City PAC lease shall terminate and the PAC may be used as entertainment space, with any of the uses allowed in the Retail Mixed Use District component, including co-working or event space, subject to any further CEQA review.

5.1.7 PAC Agreements. Developer shall prepare a term sheet for the improvement and lease agreements referenced below generally at the same time as its MSDP application, and prior to construction and issuance of PAC building permits, or at such later time as City and Developer may mutually agree each in its discretion, City and Developer shall prepare and execute forms of improvement and lease agreements setting forth in greater detail their respective obligations with respect to design, development, delivery and leasing of the PAC. The PAC improvement agreement shall address among other issues, requirements for collaboration on design, labor and materials and performance bonds, completion guarantee, process for submittal and approval of change orders, and warranty requirements. If the Parties are unable to achieve the schedule dates due to disagreements, the Parties shall meet and confer in good faith to resolve such disagreements and, if necessary, enter into mediation pursuant to Section 12.8 below.

5.2 City Hall.

5.2.1 City Election for Developer Construction. City may, in its discretion, elect either: (a) for Developer to construct, at Developer's cost, the core and Warm Shell for a new City Hall building, including 118 underground parking stalls and associated site work, all as more particularly described in Exhibit G ("**New City Hall**"), that would replace the existing City Hall ("**Existing City Hall**") at the same site as the Existing City Hall; or (ii) receive in lieu thereof the total sum of Thirty Million Dollars ($30,000,000.00) ("**City Hall Payment**"). If City elects to receive the City Hall Payment, Developer shall pay the full amount of such City Hall

Payment prior to issuance of the certificate of occupancy for the first office building in the Office / Mixed-Use District (as defined in the Specific Plan).

5.2.2 Design Criteria and Design Process. If City elects to have Developer construct the New City Hall, City will be solely responsible for designing, preparing construction documents and obtaining all necessary discretionary approvals and building permits for the New City Hall. The New City Hall, including underground parking and certain site work, will be designed consistent with conceptual plans contained in the Cupertino Civic Center Master Plan approved by the City Council on July 7, 2015, as modified by the criteria described in Exhibit G (collectively, the "**New City Hall Criteria**"). Except as otherwise agreed by Developer in its sole absolute discretion, the New City Hall (exclusive of the underground parking) will not exceed 40,000 square feet. City will consult and coordinate with Developer during each phase of design and construction document preparation, for the purpose of ensuring that the New City Hall project remains consistent with the New City Hall Criteria. The Parties also agree that the target budget (not including Design Deviations) for a New City Hall consistent with the New City Hall Criteria, assuming commencement of construction within 24 months, is Thirty One Million Dollars ($31,000,000) and City will consider in good faith (but shall have no obligation to accept) reasonable proposed design or value engineering changes that Developer proposes to keep construction costs of the New City Hall within that target budget, provided that such proposals are consistent with the New City Hall Criteria. Developer may elect to check pricing of the City's design at: (1) concept completion, (2) 50% schematic design, (3) 100% schematic design, (4) 50% design drawings, (5) 100% design drawings, and (6) 50% construction drawings, and (7) 100% construction drawings, or such other design stages as the Parties may mutually agree. Developer acknowledges that pursuant to section 5.2.4 the City has 21 months to reach City Hall Approval and will provide any requests for design or value engineering proposals expeditiously and in a manner that will not delay City's design process schedule or impede City's ability to timely reach City Hall Approval. To expedite the design and review process and ensure that the City can meet its timing obligations in Section 5.2.4, the Parties shall establish an overall timeline and process for Developer's participation.

5.2.3 CEQA. The environmental impacts of replacing the Existing City Hall with the proposed New City Hall were evaluated in the May 2015 Cupertino Civic Center Master Plan Initial Study, incorporated herein by reference. City adopted a Mitigated Negative Declaration for the Cupertino Civic Center Master Plan project and approved the plan on July 7, 2015, by City Council Resolution No. 15-060. To the extent any supplemental CEQA analysis is required in connection with City's review and further approval of the New City Hall, City shall be solely responsible for such supplemental CEQA review and compliance and City reserves full and complete discretion with respect thereto, including the authority to impose and implement such further mitigation measures, if any, as may be required to mitigate the impacts of the proposed New City Hall or decide not to proceed with the New City Hall.

5.2.4 City's Design and Approval of New City Hall. City will commence design work, and initiate any public review process City may require or desire, within 30 days following the Effective Date. Thereafter, City will diligently and as expeditiously as practicable proceed with any discretionary and ministerial approvals for the New City Hall, including any required architectural approvals, preparation of construction documents and permitting, including, but not limited to issuance of, as applicable, demolition, tree removal, make-ready

utilities, excavation and building permits, and all applicable third party applications, approvals, permits and authorizations ("**City Hall Approval**"), and shall complete such City Hall Approval within 21 months of the Effective Date, subject to extension as provided herein or as may otherwise be agreed by the Parties, each in its sole discretion. By entering into this Agreement City is making no commitment to achieve the City Hall Approval and the Parties acknowledge that at any point City may opt for the City Hall Payment in lieu of the New City Hall.

5.2.5 Vacation of Existing City Hall. In order to allow for Developer's timely construction of the New City Hall, City shall vacate the Existing City Hall and deliver possession of the Existing City Hall site to Developer for construction within 24 months of the Effective Date, subject to extension as provided herein or as may otherwise be agreed by the Parties, each in its sole discretion. In order to plan for and coordinate the vacation of the Existing City Hall, the Parties shall meet and confer on a regular basis on the status of City's relocation plans.

5.2.6 Developer Election to Construct or Pay. Developer will have no obligation to construct the New City Hall unless (i) the City has met all of its obligations and schedule timelines (as such timelines may be extended) in accordance with Section 5.2.4 and 5.2.5, and (ii) the Vested Approvals and the MSDP and the Master Tentative Map approvals are each Final, or as may otherwise be agreed by Developer in its sole discretion. .

5.2.7 Extension of Timelines under Certain Limited Circumstances.

a) Extensions for Delayed MSDP and Master Tentative Map Submittal. If, for reasons other than a Permitted Delay, Developer submits the MSDP and Master Tentative Map applications more than 12 months and 18 months, respectively, after the Effective Date, then the timelines in Sections 5.2.4 and 5.2.5 shall each be extended day for day for each day after month 12 and 18, respectively, that such applications are submitted.

b) Extension of Timeline Due to Litigation Challenge, Referendum or Initiative. If as a result of a Litigation Challenge, referendum or initiative any of the Vested Approvals, the MSDP approval or the Master Tentative Map approval are not Final by the date that is 21 months after the Effective Date, the timeline to vacate the Existing City Hall and for Developer to commence construction shall each be extended until such time that all of such approvals become Final, subject to an outside date that is 48 months after the Effective Date, at which point Developer may, in its sole discretion, elect to make the City Hall Payment. Although Developer will maintain the obligation to construct City Hall if there is a Litigation Challenge, referendum or initiative pending, City shall be responsible for any increased costs resulting from the delay in commencement of construction past 24 months after the Effective Date ("**Increased Construction Cost**"). Increased Construction Costs shall be determined as follows. If a Litigation Challenge, referendum or initiative is pending 21 months after the Effective Date, Developer shall seek at least three bids and the lowest qualified bid shall establish the baseline cost for the New City Hall ("**Baseline Cost**"). At the time the Litigation Challenge, referendum or initiative is favorably resolved, Developer shall seek at least three bids priced based on the expected date construction will commence and the lowest qualified bid shall establish the updated cost for the New City Hall ("**Updated Cost**"). The Increased Construction Cost shall consist of the difference between the Baseline Cost and the Updated Cost. If (i) there is a Litigation Challenge, referendum or initiative challenging the Vested Approvals, and (ii)

Developer elects to delay submittal of its MSDP and/or Master Tentative Map applications as a result of the Litigation Challenge, referendum or initiative, and (iii) the Litigation Challenge, initiative or referendum is favorably resolved prior to the date that is 48 months after the Effective Date , then the Parties will meet and confer in good faith to agree on either (i) Developer making the City Hall Payment, or (ii) if City desires for Developer to construct New City Hall, a timely and expeditious process and timeline for Developer to submit and City to process the MSDP and Master Tentative Map applications and City and Developer to establish the Increased Construction Cost which City will be responsible to pay. If a pending Litigation Challenge, referendum or initiative remains outstanding 48 months after the Effective Date, Developer shall have no obligation to construct the New City Hall and may elect, at its sole discretion, to make the City Hall Payment.

c) No Extension of Timeline Due to Permitted Delay that is not a Litigation Challenge. For the avoidance of doubt, if, as a result of a Permitted Delay that is not a Litigation Challenge (and not simply for Developer's convenience which is addressed by subsection 5.2.7a) above), Developer submits the MSDP and Master Tentative Map applications more than 12 months and 18 months, respectively, after the Effective Date, then City's timeline obligations in Sections 5.2.4 and 5.2.5 will not be extended unless otherwise agreed by Developer in its sole discretion.

5.2.8 Construction Timeline. If Developer proceeds with construction of the New City Hall under this Section 5.2, Developer shall complete core and shell construction and deliver a Warm Shell New City Hall to City within thirty six (36) months after the date City has obtained City Hall Approval and delivered the New City Hall site to Developer consistent with Sections 5.2.4 and 5.2.5. Developer shall have no obligation to construct or install any tenant improvements, off-site improvements, or other improvements that are not specified in the New City Hall Criteria. Developer shall provide a one (1) year warranty for the Warm Shell work; warranties and guaranties for other building components and systems, including roof and HVAC, will be provided per industry standard.

5.2.9 Additional Costs. If the City's construction plans, specifications and drawings for the New City Hall deviate from the New City Hall Criteria and such deviations increase the cost to construct the New City Hall ("**Design Deviations**"), Developer shall pay the cost of such Design Deviations not to exceed Four Million Dollars ($4,000,000) ("**Deviation Cost Allowance**"). Any Design Deviations that increase New City Hall costs above the Deviation Cost Allowance shall be the responsibility of the City. The Design Deviations do not include any of the Excluded Items as defined in Exhibit G. If City desires Developer to construct one or more of the Excluded Items, Developer may agree to do so in its sole discretion and City shall bear the cost of any such work. If after meeting and conferring, the Parties are unable to agree upon whether the New City Hall design is consistent with the New City Hall Criteria, the Parties will pursue mediation as provided in Section 12.8 below. In addition to paying for Design Deviations, the Deviation Cost Allowance may also be used to pay for the Increased Construction Cost.

5.2.10 City Election of City Hall Payment. At any time prior to Developer's contracting with a general contractor or commencement of construction of the New City Hall, City may provide notice to Developer that it will instead accept the City Hall Payment in lieu of,

and release Developer from, any obligation to construct the New City Hall. Developer shall give City reasonable notice prior to entering into a contract with a general contractor.

5.2.11 Construction Delay. Developer's construction contract with its general contractor will provide for liquidated damages in the amount of $2,500 per day, payable to the City, if for reasons other than Permitted Delay substantial completion of construction is delayed beyond the date that is thirty six (36) months after the date City has obtained the City Hall Approval and delivered the New City Hall site to Developer, provided such liquidated damages will not be assessed to the extent the delays are the result of City requested change orders, unreasonable delays by City in providing responses to requests for information or approvals, or a default by City under the New City Hall agreement to be entered into by the Parties as provided in Section 5.2.12 below. General Contractor delays in completion of the New City Hall will not be a default under this Agreement; provided however Developer's failure to commence construction of the New City Hall within the times provided or, following commencement thereof, Developer's abandonment of the New City Hall shall, following notice and expiration of applicable cure periods, constitute a default by Developer hereunder.

5.2.12 New City Hall Agreement. Concurrent with the processing of the MSDP and Master Tentative Map applications, or at such later time as City and Developer may mutually agree each in its discretion, City and Developer shall prepare a mutually acceptable form of improvement agreement setting forth in greater detail their respective obligations with respect to design, development and delivery of the New City Hall. The New City Hall agreement shall address among other issues, the requirement to either use union labor or, if required by Applicable Law, to comply with Prevailing Wage Laws, requirements for labor and materials and performance bonds, completion guarantee, process for submittal and approval of change orders, and warranty requirements. If the construction procurement needs to go through the public contracting process under the Public Contract Code due to state mandate then the Developer shall have no obligation to construct the New City Hall and may instead make the New City Hall Payment.

5.3 Benefits to School Districts.

5.3.1 FUHSD. Developer will enter into a separate agreement with the Fremont Union High School District (**"FUHSD**") setting forth the following terms, or terms acceptable to FUHSD: (a) if elected by FUHSD, Developer shall lease to FUHSD, for a term of thirty four (34) years, at a rent of $1 per year on a NNN basis, a twenty five thousand (25,000) square foot Warm Shell space for adult school and high school innovation center use ("**Adult School and Innovation Center**"), together with parking stalls, which will be subject to project-wide shared parking strategies of the Vallco Specific Plan and subject to reasonable relocation by Developer from time to time depending on leasing or operational requirements; (b) Developer shall provide warrantees and guarantees per the industry standard; (c) all tenant improvements will the responsibility of the FUHSD; (d) Developer will consult in good faith with FUHSD to identify a mutually acceptable location for the FUHSD premises and parking, provided the final decision as to location of the leased premises will be at Developer's reasonable discretion and shall be identified in Developer's MSDP; (e) Developer will obtain a Warm Shell occupancy permit and deliver the space to FUHSD on the earlier of (i) the issuance of the certificate of occupancy for the last residential building, or (ii) its construction per the Project's natural progression (i.e., at

the time of certificate of occupancy for the building in which the leased space is agreed to be located); (f) FUHSD, as tenant, will participate in the Project master association and fair share cost contribution for typical common area maintenance in the Project component in which the Adult School and Innovation Center is located; and (g) provide for FUHSD to elect at its sole discretion, in lieu of the leased space, to receive a one-time payment of Nine Million Five Hundred Thousand Dollars ($9,500,000), including the terms on which Developer shall make the payment; provided, however, in no event shall the payment be made later than issuance of the last residential building certificate of occupancy. If Developer and FUHSD are unable to reach agreement on the construction of the Adult School and Innovation Center after good faith efforts, Developer shall have the option of making the payment described above.

5.3.2 Payment to CUSD. Developer will enter into a separate agreement with the Cupertino Unified School District ("**CUSD**") setting forth the following terms, or terms acceptable to CUSD: Developer will make a one-time payment in the total amount of Nine Million Five Hundred Thousand Dollars ($9,500,000) to the CUSD as directed by CUSD but in any event by no later than issuance of the last residential building certificate of occupancy.

5.3.3 Co-Working/Incubator Space. Developer will use good faith efforts to provide approximately forty thousand (40,000) square feet in co-working (e.g., NeueHouse, Bespoke, HanaHaus, WeWork, Nextspace, Regus, etc.) or incubator space, in one or more locations, as determined by Developer. Such space, at Developer's election, may be counted against the minimum retail use requirement under the Vallco Specific Plan, provided that the credit shall not exceed 40,000 sq. ft. of the total retail use requirement.

5.4 Transportation and Transportation Demand Management (TDM) Program.

5.4.1 TDM. Developer shall fund and fully implement the TDM Program as required by the Vallco FEIR MMRP incorporated herein by this reference. The further particulars of the TDM program and its ongoing implementation shall be set forth in a recordable TDM Agreement the form of which shall be prepared and mutually agreed upon by the Parties no later than issuance of the first certificate of occupancy for any building. The TDM Agreement shall be recorded against each parcel no later than issuance of the first building permit for vertical construction within that parcel. The term of the TDM Agreement shall continue as required in the Vested Approvals.

5.4.2 Mobility/Bike Hub. Developer shall include in the Project a mobility hub , which may include a transit stop, community shuttle stop, a help station, bike hub and/or café ("**Mobility Hub**"). Developer and City shall cooperate to establish a location, design and program for the Mobility Hub that is reasonably acceptable to the Parties. The size and capacity of Mobility Hub will vary depending on anticipated demand and location context, but shall be at least 1,000 sq. ft. Uses may include a concierge station, bike hub staffed for bicycle-related services including secured bike storage, peak-hour staff availability, folding bike or scooter rentals, same-day repairs, bike and associated equipment sales and bike-related classes and/or a bike share pod operated by Bay Area Bike Share, and bike racks in the public space, reserved loading area for drop off/pick up of car shares or autonomous vehicles, and a café as part of a retail program to serve a cyclist meeting . The Mobility Hub shall be located generally near planned transit as approved in the MSDP. Designated car share parking spaces included as part

of the Mobility Hub, if any, may be reduced from the retail parking supply at Developer's election as allowed in the Specific Plan.

5.4.3 Community Shuttle. Developer will operate and fund up to a total cost of One Million Dollars ($1,000,000) a one year pilot program for a community shuttle with the goal of connecting the two Cupertino high schools and Vallco, as well as an express to Mountain View Caltrain; the final route shall be based on feasibility and cost to be jointly determined by Developer and City. ("**Pilot Community Shuttle**"). The Pilot Community Shuttle shall commence prior to issuance of the certificate of occupancy on the final office building within the Project. If the Pilot Community Shuttle is successful and the City elects to establish and operate an on-going shuttle program ("**Permanent Community Shuttle**"), Developer and its successors shall make an annual contribution to the City toward the establishment and annual cost of operating the Permanent Community Shuttle, in an amount not to exceed Seven Hundred Fifty Thousand Dollars ($750,000) ("**Annual Shuttle Contribution**"). If the City establishes the Permanent Community Shuttle, Developer shall pay the Annual Shuttle Contribution for a period of nine (9) years, unless the City earlier ceases operation of the Permanent Community Shuttle, at which point Developer shall have no further obligation to pay the Annual Shuttle Contribution. Developer has right to prepay the balance of any remaining Annual Shuttle Contribution at any time. The obligations for the Community Shuttle may be suspended due to an event of Permitted Delay. Developer's obligations under this Section 5.4.3 shall survive the expiration or earlier termination of this Agreement.

5.4.4 Transportation Infrastructure Contribution. Developer shall contribute Eleven Million Dollars ($11,000,000) (subject to reduction as provided in Section 9.3.4) ("**Transportation Contribution**") to the City to be used for the study, design and construction of two critical transportation infrastructure projects in the City (i) improvements to the I-280/Wolfe Road interchange and (ii) the potential future bicycle and pedestrian trail along I-280 immediately to the north of the Project, and commonly known as the Junipero Serra Trail (collectively, the "**Transportation Infrastructure Projects**"). Payments shall be made when the Vested Approvals, MSDP and Master Tentative Map are Final.

5.5 Housing Plan. Developer will comply with the Housing Plan, attached hereto as Exhibit D, with respect to Affordable Housing and Market Rate Units. The City recognizes that the construction of 534 BMR Units (based on full-build out) goes beyond the requirements of the City's below market rate housing ordinance and significantly contributes towards reducing the City's housing shortage and the City achieving its Regional Housing Needs Allocation obligations.

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 substantial compliance with this Agreement during the previous calendar year, including a completed Annual Review Form in the form provided in Exhibit E and such other information as may reasonably be requested by the City Manager. If the City Manager 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 City Manager is not satisfied that Developer is performing in accordance with the terms and conditions of this Agreement, the City Manager 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 City Manager'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 in good faith 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 substantially complied in good faith 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 Section 6.1.2, the Developer is found to be in good faith 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 at its sole cost and expense, without cost or expense to City.

ARTICLE 7
COOPERATION AND IMPLEMENTATION

7.1 Subsequent Approvals. No legislative ordinances or other legislative approvals are required for development of the Project. Certain other subsequent land use approvals, entitlements, and permits other than the Vested Approvals, will be necessary or desirable for implementation of the Project ("**Subsequent Approvals**"). The Subsequent Approvals include, without limitation, the following: a Master Site Development Permit for the entirety of the Property and Project ("**MSDP**"), other development permits as set forth in the Specific Plan, a Master Tentative Map for the entirety of the Project and Property, Architectural and Site Review (**"ASR"**), demolition and grading permits, make-ready utility permits, excavation permits, building permits, sewer and water connection permits, certificates of occupancy, additional subdivision tentative and final maps and/or parcel maps, and improvement plans and public improvement agreements, and may include lot line adjustments or lot mergers, encroachment permits, tree removal permits, easements, air rights and other related agreements, and any amendments to, or repealing of, any of the foregoing. 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 Vested Approvals, including the terms and conditions of this Agreement, and Subsequent Approvals as obtained from time to time.

7.2 Scope of Review of Subsequent Approvals. City, in approving the Vested Approvals and vesting the Project through this Agreement, is limiting its future discretion with respect to the Project and Subsequent Approvals, to determining whether the application for a Subsequent Approval is consistent with and meets the criteria set forth in the Vested Approvals, and where applicable, other Project Approvals previously granted.

Subject to the foregoing, City reserves discretion to impose appropriate Exactions in connection with issuance of Subsequent Approvals, as necessary to bring the Subsequent Approval into compliance with Applicable Law and Vested Approvals, and provided that in exercising its discretion in connection with consideration of Subsequent Approvals, City agrees that City shall not revisit the policy decisions reflected by the Vested Approvals, and other Project Approvals, and the vested rights provided under this Agreement, or impose any Exactions that would conflict with Applicable Law or the Project Approvals unless expressly permitted herein or in the Project Approvals. City has made a fundamental and final policy decision by approving the Vested Approvals that the Tier 2 development program described in the Vallco Specific Plan, as supported by the public and community benefits reflected in this Agreement, is in the best interests of the public health, safety and general welfare, and City shall not use its discretionary authority in considering any application for a Subsequent Approval to change the legislative or policy decisions reflected by the Vested Approvals, including, without

limitation, to reduce the density, permitted uses, number of residential units, square footage of office development or other Tier 2 development program elements, or otherwise to change or prevent the construction, operation, or maintenance of the Project as contemplated by the Vested Approvals.

Subject to the foregoing, Exactions imposed on Subsequent Approvals may include dedications of land for public uses and requirements that Developer construct or cause the construction of ancillary public rights-of-way and internal streets, utilities, and public facilities, including all applicable in-tract subdivision improvements. At such time as any Subsequent Approval applicable to the Property is approved by City, then such Subsequent Approval shall become subject to all the terms and conditions of this Agreement applicable to Project Approvals and shall be automatically vested and treated as a "Project Approval" under this Agreement.

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 substantially complete applications. Developer shall submit an application for the MSDP with respect to the entirety of the Property and Project in accordance with the requirements of the Specific Plan and pay all applicable Processing Fees and any and other fees and deposits therefor within twelve (12) months of the Effective Date and shall submit an application for the Master Tentative Map and pay all applicable Processing Fees and any and other fees and deposits therefor within eighteen (18) months of the Effective Date. The MSDP application shall contain, among other information, information necessary to address the elements identified in Section 7.3 of the Specific Plan. The times for submittal of the MSDP and Master Tentative Map applications will be extended an additional six (6) months if Developer has made substantial progress towards completing, and is in good faith discussions with the City regarding, the applications, including having designed the Project in a manner that complies with the Vested Approvals. Failure to strictly adhere to the timelines in this Section 7.3.1 shall not be a terminable default under this Agreement; provided, however, a failure by Developer to make a good faith effort to prepare and submit applications may, following notice and expiration of applicable cure periods, constitute a Default hereunder. After approval of a MSDP and Master Tentative Map for the Project or portion of the Property, Developer will submit applications for Subsequent Approvals such as for an ASR, landscaping details, use permits (where required), tree removal, encroachments, and all other required Subsequent Approvals. Developer may process an ASR for a portion or all of the Property concurrently with its MSDP and Master Tentative Map applications. In order to meet the MSDP and Master Tentative Map schedules and timely process all Subsequent Approvals, Developer shall use 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 to diligently and expeditiously work to obtain any and all Subsequent Approvals. Developer may seek and obtain Subsequent Approvals for and construct and install Project Neutral Work independent of and either before or after obtaining a MSDP and Master Tentative Map.

7.3.2 Timely Processing by City. Upon submission by Developer of applicable applications, Processing Fees and any and all other fees and deposits for any pending Subsequent Approval, City shall, to the full extent allowed by Applicable Law, promptly, diligently and expeditiously, 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 request and 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; (b) if legally required, providing notice and holding public hearings; and (c) acting on any such pending Subsequent Approval application. Upon submittal of an MDSP or ASR application, City and Developer shall meet and confer and agree on an expeditious schedule, giving priority to Project applications. The Parties will agree upon a processing schedule within 30 days of submittal of an MDSP, Master Tentative Map, or ASR application, and both Parties shall use good faith efforts to meet all schedule deadlines. Schedule modification shall be mutually agreed to, which shall not be unreasonably withheld, conditioned or delayed. Absent the need for additional CEQA review, consistent with Section 7.3.3, City has committed to taking such actions as are reasonably necessary to process the MSDP and Master Tentative Map within 180 days of receipt of a complete application and an ASR within 120 days of a complete application. The MSDP shall be considered by the City Council as set forth in the Specific Plan. To the greatest extent permitted by the Vested Approvals or Applicable Law, Subsequent Approvals after approval of the MDSP will be processed administratively by City staff. Developer's obligation to pay for the processing of Subsequent Approvals, including staff time, materials and third-party consultants, shall be based on the City's actual out-of-pocket costs, plus a 15% markup of consultant costs, per existing policy, to cover City's costs of managing such third-party consultants and administering their contracts. In processing Subsequent Approvals, City shall consider existing tenants that wish to remain on site for the duration of their existing leases

7.3.3 CEQA. In connection with its consideration and approval of the Vallco Specific Plan, and the other Vested Approvals for the Project, the City prepared and certified the Vallco FEIR, which evaluated the environmental effects of the Vested Approvals for the Project, and has imposed mitigation measures to reduce the significant environmental effects therefrom. The Parties acknowledge that certain Subsequent Approvals may legally require additional analysis under CEQA. Nothing contained in this Agreement is intended to prevent or limit the City from complying with CEQA. In acting on Subsequent Approvals, City will rely on the Vallco FEIR to the fullest extent permissible by CEQA as determined by City in its reasonable discretion. In the event supplemental or additional review is required for a Subsequent Project Approval, City shall limit such supplemental or additional review to the scope of analysis mandated by CEQA and shall not impose new mitigation measures except as legally required, all as determined by the City as the lead agency under CEQA in its reasonable discretion.

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.

7.5 Consents. Whenever a determination, approval, consent or satisfaction ("**Consent**") is required of a Party pursuant to this Agreement, such Consent shall not be

unreasonably withheld or delayed. If a Party does not Consent, the reasons therefor shall be stated in reasonable detail in writing. Consent by a Party to or of any act or request by the other Party shall not be deemed to waive or render unnecessary Consent to or of similar or subsequent acts or requests

7.6 Subdivision.

7.6.1 Generally. The Project will be subdivided into various Project parcels, including common area parcels, building parcels, common facility parcels, including vertical subdivisions of certain components and other building components that would be described on subdivision maps and/or subsequent future condominium plans. Within the timeframes set out in Section 7.3.1, Developer shall submit an application for a Master Tentative Map for the entirety of the Property and Project. At its election, Developer may submit multiple additional tentative maps or final maps for each phase or other portions of the Property.

7.6.2 Condominiums. Developer may elect to establish some of these separate building or block parcels as mixed use condominium components, as follows:

a) Developer shall have the right to establish residential buildings or, alternatively, residential components within buildings as condominium projects, provided that individual condominium units make up no more than 50% of all residential units.

b) Developer shall have discretion as to whether and when to market and sell any such individual market rate residential units and when or whether to make application to obtain a public report from the California Department of Real Estate for the future sales of any such units.

7.6.3 Common Areas. Common areas, which may also be established as separate common area parcels or as common easement parcels, such as commonly used parking garages, including the proposed underground garage, and other shared commonly used amenities and facilities, such as At Grade or above grade open space, plazas, sidewalks and walkways, surface parking, signage, common landscaping, such as parkways and medians, common security, common area trash collection, driveways, storm water facilities and other common use amenities or easement areas, including areas adjacent to building parcels, will be established on subdivision maps and easement documents. These common areas or common easement areas will be owned, operated, maintained, repaired and replaced by a master property owners' association and/or by separate owners or renters association(s) as established under the provisions of a master declaration of covenants, conditions and restrictions for the Project ("**CC&Rs**"). The CC&Rs will provide a centralized and cohesive system of restrictions and standards for management, operation and use of the Project as a mixed use center under the control of the master center association in conformance with this Agreement and the Project Approvals and for the maintenance, repair and replacement of common areas and common facilities. Provisions of CC&Rs addressing maintenance, repair and replacement of publicly accessible common areas, including parks, plazas, and open space, including remedies for failure to comply with such provisions and City's third party beneficiary enforcement rights and remedies thereunder, shall be subject to the City Attorney's review and approval not to be unreasonably withheld.

7.6.4 Permitted Subdivision. Subdivision is permitted throughout the Property and Project to (i) accommodate development phasing, including for building parcels or blocks, and associated landscaping, open space, common facilities, streets and parking; (ii) accommodate financing; (iii) promote a mix of rental and ownership residential options; and (iv) facilitate the development of subsidized affordable housing and senior housing, including in the Office/Mixed-Use District. Up to one parcel per block and west of Wolfe Road one parcel per building (regardless of land use) is permitted, provided that the following land uses may be further divided into separate parcels in Developer's sole discretion as follows:

a) Retail: One parcel per building west of Wolfe Road or block east of Wolfe Road, provided that up to five of such retail parcels can be further subdivided to create additional retail ownership units, and provided further that the Property includes a maximum number of retail parcels equal to or less than the number of retail blocks or buildings, as applicable, plus five.

b) Residential:

(i) Senior Housing: Senior Housing that meets the definition in Civil Code sections 51.2 and 51.3 may be divided into a single parcel, notwithstanding other residential uses on the street block.

(ii) Subsidized Affordable Housing: Subsidized affordable housing may be divided into a single parcel, notwithstanding other residential uses on the street block.

(iii) Individual Condominium Units: Parcelization to create individual market and moderate rate residential condominium units, including potentially Senior Housing units, subject to the limitations of Section 7.6.2(a) above.

c) Hotel: Each individual hotel may be a separate parcel.

d) Civic/Cultural: PAC, Adult School and Innovation Center, or other civic uses may be separate parcels.

e) Common Areas: Common areas set forth below may be on a separate parcel:

(i) Streets

(ii) Open space

(iii) Common area landscaping associated with individual buildings or uses; and

(iv) Parking lots and/or garage facilities, above-, at-, or below-grade.

7.7 Existing, Continuing Uses and Interim Uses. The Parties acknowledge that the existing uses on the Property as of the Effective Date are lawfully authorized uses and may continue until modified in accordance with Applicable Law or replaced by the Project, provided

that any modification thereof shall not be considered a component of the Project and shall not extend the term of existing leases or other rights of occupancy. Developer may install interim or temporary uses on the Property, consistent with the Vested Approvals.

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 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, 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 EIR, the amendment or modification shall be determined to be an "**Administrative Project Amendment**" and shall not require an amendment to this Agreement. Upon the City Manager's written approval, an Administrative Project Amendment shall be automatically incorporated into the applicable Project Approvals and this Agreement. Without limiting the foregoing, and by way of example, after City approval of the MSDP and Master Tentative Map and other applicable Subsequent Approvals, Developer requests for adjustments to lot lines or other minor changes to subdivision maps or improvement plans, 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 may be treated as Administrative Project Amendments.

8.2.2 Major Project Amendments. Any amendment to the 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**". A Major Project Amendment, shall be processed in the same manner and require the same approvals as the original Project Approval, including, where so required, 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; (b) permitted uses of the Property; (c) provisions for the reservation or dedication of land; (d) conditions, terms restrictions or requirements for Subsequent Approvals; (e) increases in the density or intensity of the use of the Property or the maximum height or size of proposed buildings; (f) monetary contributions by Developer; or (g) the provision of the public benefits described in Article 5, 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, may 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 Applicable Law. The City Manager or his or her designee shall have the authority, in his or her sole discretion, 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.

8.3.3 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.

8.4 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.

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 Claims, including Claims for any bodily injury, death, or property damage, resulting directly or indirectly from the development or construction of the Project and, if applicable, the New City Hall by or on behalf Developer, compliance with the terms of this Agreement, including the construction and/or provision of public or community benefits, 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 active negligence or willful misconduct of any City Party. This Section 9.2 includes any and all present and future Claims arising out of or in any way connected with Developer's or its contractors' obligations to comply with any applicable 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. Developer's obligations under this Section 9.2 shall survive the expiration or earlier termination of this Agreement.

9.3 Defense and Cooperation in the Event of a Litigation Challenge.

9.3.1 Cooperation. 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, with the costs of such representation, including Developer's administrative, legal and court costs, paid by Developer; (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 costs of such representation, including City's administrative, legal, and court costs and City Attorney oversight expenses, paid

by City; and (c) 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 Developer's and 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 Developer and City in accordance with Applicable Law, and City reserves its full legislative discretion with respect to any such City approval. If Developer opts not to contest or defend such Litigation Challenge, City shall have no obligation to do so. Developer's obligations under this Section 9.3.1 shall survive the expiration or earlier termination of this Agreement.

9.3.2 Processing Subsequent Approvals. Unless prevented by law or court order, City shall continue to process applications for Subsequent Approvals during the pendency of any Litigation Challenge and until the Project Approval which is the subject of such Litigation Challenge is Final in accordance with this Agreement.

9.3.3 Public Benefit Funds. During the pendency of any Litigation Challenge or referendum or initiative, and until the Project Approval which is the subject of such Litigation Challenge or referendum or initiative is Final, Developer may request that City not expend or commit to third parties any portion of the public benefits funds described in Article 5. Upon receipt of such request City shall sequester the portions of such public benefit funds, if any, not previously committed, expended, or transferred to third party until such time as the Project Approval which is the subject of such Litigation Challenge or referendum or initiative becomes Final.

9.3.4 Effect of Litigation Challenge on Developer Obligations. If a Litigation Challenge or referendum or initiative is brought with respect to the validity of the Vested Approvals, then the dollar amount of the Transportation Infrastructure Contribution will be reduced by fifty percent (50%) and the maximum time period for the Annual Shuttle Contribution will be reduced to 4 years.

ARTICLE 10
ASSIGNMENT, TRANSFER AND NOTICE

10.1 General. Because of the necessity to coordinate development of the entirety of the Property pursuant to the Project Approvals and plans for the Project, particularly with respect to the provision of public benefits as provided in Article 5, 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 Article 10 as reasonable and as a material inducement to City to enter into this Agreement.

10.2 Notice of Assignment. 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 and request City's consent to such Assignment, as provided herein. Each such notice of proposed Assignment shall be accompanied by evidence of the financial information set forth below, if applicable, and a proposed form of Assignee's assumption of Developer's obligations hereunder in the form of Exhibit F, which would be recorded in the Official Records of Santa Clara County concurrent with the transfer. 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.

10.3 Assignment Processing.

(i) Prior to City approval of the MSDP and Master Tentative Map, Developer shall not transfer, or assign all or any portion of its rights, interests or obligations of this Agreement, other than to an Affiliated Party, without the prior written approval of City, which may be granted or denied in City's sole and absolute discretion.

(ii) Except for a permitted Assignment to an Affiliated Party, prior to substantial completion of the New City Hall Warm Shell, or Developer's payment of the City Hall Payment to City in accordance with Section 5.2 of this Agreement, (i) Developer shall not transfer or assign all or any portion of its rights, interests or obligations under the Agreement with respect to the New City Hall, and (ii) except as otherwise provided in this subparagraph below, Developer shall not transfer or assign its rights, interests or obligations under this Agreement with respect to more than 50% of the gross acreage of the Property, without the prior written approval of City, which may be granted or denied in City's sole and absolute discretion. Notwithstanding the foregoing, if Developer desires to transfer more than 50% of the gross acreage of the Property, Developer may deliver to City the sum of Thirty Five Million Dollars ($35,000,000) which City shall place in a construction escrow that will be subject to joint escrow instructions reasonably acceptable to the Parties providing, among other things, for (a) City's right to withdraw an amount equal to the City Hall Payment at any time prior to Developer's entry into a construction contract with a general contractor for construction of the New City Hall, and (b) once Developer enters into such construction contract, the terms under which Developer will be entitled to draw down funds in the escrow to pay labor and materials costs of constructing the New City Hall. Upon full funding of the escrow and execution of mutually acceptable joint escrow instructions, Developer shall be permitted to proceed with transfer of more than 50% of the Property, subject to compliance with the terms of subparagraph (iii) below.

(iii) After City approval of the MSDP and Master Tentative Map, and subject to the limitations in Subsection 10.3(ii) above, Developer shall have the right to transfer or assign its rights and obligations under this Agreement 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 so long as the proposed Assignee, to the reasonable satisfaction of the City Manager has

experience acting as the developer of projects with similar size and complexity to the portion of the Project being transferred and the Assignee has the financial resources necessary to meet its obligations under the proposed Assignment. If the City Manager does not provide consent, he or she shall state the reasons for the decision, and the corrections to be made to obtain such consent.

(iv) If an Assignee is taking ownership of a single building pad or single building condominium component only and no obligations to construct any off-parcel public improvements or publicly accessible improvements other than building pad frontage improvements are being assigned, then no City consent to the Assignment shall be required.

10.4 Expedited Financial Capability Review. It shall be presumptively determined that a proposed Assignee has the requisite financial resources under Section 10.3(iii) above, if the proposed Assignee has Liquid Assets in an amount that is not less than one hundred twenty five percent (125%) of the reasonably estimated cost to meet its obligations under the proposed Assignment. For purposes of the foregoing "**Liquid Assets**" shall mean any of the following, but only to the extent owned individually, free of security interests, liens, pledges, charges or any other encumbrance: (a) cash; (b) certificates of deposit (with a maturity of two years or less) issued by, or savings account with, any bank or other financial institution reasonably acceptable to City Manager; (c) marketable securities listed on a national or international exchange, marked to market; or (d) unfunded but contractually committed capital requirements of direct or indirect investors in proposed Assignee.

10.5 Affiliated Party. Notwithstanding any other limitations in this Article 10, Developer may, upon provision of Notice and execution of an agreement documenting such Assignment in accordance with Section 10.2, at any time, assign its rights and obligations under this Agreement with respect to all or any portion of the Property 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**").

10.6 Partial Assignment. Subject to the limitations set forth in this Article 10, in the event of a transfer of a portion of the Property, Developer shall have the right to assign its rights, duties and obligations under this Agreement that are applicable to the transferred portion, and retain all rights, duties and obligations applicable to the retained portions of the Property. Upon Developer's request, City, at Developer's expense, shall cooperate with Developer and any proposed Assignee to allocate rights, duties and obligations under this Agreement and the Project Approvals between the assigned portion of the Property and the retained Property. 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.

10.7 Release of Transferring Developer. 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 it is a permitted Assignment or City has consented to the Assignment as provided above. If the required City consent is given or if no such consent is required, then Developer shall be released from any further liability or obligation under this Agreement related to the transferred Property as specified in the Assignment and Assumption Agreement, and the Assignee shall be deemed to be the Developer under this Agreement with all rights and obligations related thereto, with respect to such transferred Property, and City shall provide Developer a written instrument to such effect in a form and substance reasonably satisfactory to Developer. Notwithstanding anything to the contrary contained in this Agreement, if a Assignee Defaults under this Agreement, such Default shall not constitute a Default by Developer (or any other Assignee) with respect to any other portion of the Property hereunder and shall not entitle City to terminate or modify this Agreement with respect to such other portion of the Property.

10.8 Assignment to Financial Institutions or Mortgagee. Notwithstanding any other provision 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 neither such Assignment nor the financing shall require consent from City. 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.

10.9 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.

10.10 Rights of Developer. The provisions in this Article 10 shall not be deemed to prohibit or otherwise restrict Developer from (i) granting easements or licenses or modifying existing easements to facilitate development of the Property consistent with the Project Approvals, (ii) encumbering the Property or any portion hereof or of the improvements thereon by a Mortgage securing financing with respect to the Property or Project, (iii) granting a leasehold interest in portions of the Property, (iv) entering into a joint venture agreement or similar partnership agreement to fulfill its obligations under this Agreement, (v) transferring all or a portion of the Property pursuant to a foreclosure, conveyance in lieu of foreclosure, or other remedial action in connection with a Mortgage, or to any transferee from a Mortgagee or owner of the Property upon foreclosure or after a conveyance in lieu of foreclosure, or (vi) transferring title to individual market-rate residential condominium units and obtaining evidence of termination of this Agreement with respect to any such transferred units, or (vii) transferring any completed components of public plazas, parking and other project common areas, as well as certain limited obligations that are appropriate to a master property owners' association, such as on-going TDM and community shuttle.

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.

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 and the other Project Approvals, 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, or its transferee.

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 deliver to such Mortgagee, concurrently with service thereon to Developer, any Notice of Default given to Developer. Failure to so deliver such Notice of Default will invalidate such Notice as to the Mortgagee. 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 Article 11 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 Article 11 constitute an obligation of City to such Mortgagee, except as to rights under Sections 10.8 and 11.1 and the notice requirements of Section 11.3.

11.5 Mortgagee Requested Amendments. City agrees that it will expeditiously process any request by Developer to amend this Agreement, at the expense of Developer, to meet the requirements of any lender or Mortgagee for the Project. The Parties further agree that any amendment to the Mortgagee Protection provisions of this Agreement required to conform to current industry practice, as determined by City, would qualify as an Administrative Agreement 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 Section 2.2.3 (Tolling of Term), a Permitted Delay in Section 13.4 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 at the earliest practicable date, shall be deemed to be a cure, provided that if the cure is not so diligently prosecuted to completion, then no additional cure period shall be required to 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 No Cross-Default. Notwithstanding anything to the contrary in this Agreement, if Developer has completed an Assignment, so that its interest in the Property has been divided between the Developer and one or more Assignees, then any determination that a party is in Default or any termination of this Agreement or portion thereof pursuant to Article 12 of this Agreement shall be effective only to the Party to whom the determination is made and the portions of the Property in which such Party has an interest.

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 an award of specific performance for the purpose of causing Developer to satisfy such condition.

12.5 Legal Actions.

12.5.1 Institution of Legal or Equitable Actions. In addition to any other rights or remedies, a Party may institute legal or equitable action for mandamus, specific performance or other injunctive or declaratory relief 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 and terms 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 the City Hall Payment, the PAC In Lieu Payment, or the SB 35 City Hall Payment, 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. In the event the Parties are unable to resolve the issue and reach an agreement within thirty (30) days, either party may initiate non-binding mediation of the dispute by submitting a request to the other Party. The Parties will select a mutually acceptable mediator with knowledge and experience in project development and construction issues of the type at issue, within fourteen (14) days, or if unable to agree on a mediator within said period, either party may submit the matter to mediation at JAMS or other mediation service mutually acceptable to the Parties in accordance with its then applicable rules and policies, with each party being responsible for its own fees, costs and expenses of any mediation, including 50% of the mediator's fees, costs and expenses The Parties will take all practicable steps to complete any mediation within ninety (90) days. 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 which by their terms survive expiration or termination hereof, including those obligations set forth in Sections 2.2.4, 5.4.3, 9.2 and 9.3.1

ARTICLE 13
GENERAL PROVISIONS

13.1 Condemnation.

13.1.1 Material 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.

13.1.2 Infrastructure Condemnation. If Developer is required by the Project Approvals to acquire from a third party an interest in property necessary for construction of Project related infrastructure and is unable to do so despite commercially reasonable, good faith efforts, City may attempt to negotiate a purchase with the property owner, or may use its power of eminent domain, in which case Developer will pay all costs, expenses and fees, including attorney fees incurred by City in an eminent domain action.

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, lessees, and all other persons or entities acquiring the Property, or any interest therein, whether by operation of law or in any manner whatsoever, and shall inure to the benefit of the Parties and their respective successors and assigns, as provided in Government Code section 65868.5, and shall be enforceable as equitable servitudes and constitute covenants running with the land pursuant to applicable laws.

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:	Vallco Property Owner, LLC c/o Sand Hill Property Company 965 Page Mill Road Palo Alto, CA 94304 Telephone: (650) 344-5000 Attention: Reed Moulds
with a copy to:	Coblentz Patch Duffy & Bass One Montgomery Street, Suite 3000 San Francisco, CA 94104 Telephone: (415)391-4800 Attention: Miles Imwalle

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 caused by (a) calamities, including without limitation earthquakes, floods, and fire; (b) civil commotion; (c) riots or terrorist acts; (d) lockouts, strikes or other forms of labor disputes; (e) shortages of labor, equipment, facilities, materials or supplies; (f) failure of transportation or freight embargoes; (g) vandalism; (h) condemnation or requisition; (i) Litigation Challenge, referendum or initiative; (j) orders of governmental, civil, military or naval authority, including any development, water or sewer moratorium; (k) the failure of any governmental agency, public utility or communication provider to issue a permit, authorization consent or approval required for development, construction use or operation of the Project or portion thereof within typical, standard or customary timeframes; (l) Severe Economic Recession; or (k) unusually severe weather, but only to the extent that such weather or its effects (including, without limitation, dry out time) result in delays that cumulatively exceed twenty (20) days for any winter season. An extension of time for any such cause other than a Severe Economic Recession shall be for the period of the Permitted Delay and shall commence to run from the time of the commencement of the cause, if Notice by the Party claiming such extension is sent to the other Party within thirty (30) days of the commencement of the cause. If Notice is sent after such thirty (30) day period, then the extension shall commence to run no sooner than thirty (30) days prior to the giving of such Notice. Severe Economic Recession shall commence upon Developer's notification the City of the Severe Economic Recession (together with appropriate backup evidence). The cumulative time period for any Permitted Delays by any Party shall not exceed five years.

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 deprived of an essential benefit thereunder shall have the option to terminate this Agreement from and after such determination 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 Permitted Delays or mutual consent in writing of the Parties in accordance with the provisions of this Agreement.

13.12 Other Necessary Acts. Each Party shall in good faith do all things as may reasonably be necessary or appropriate to carry out this Agreement, and the Vested Approvals and Subsequent Approvals, and to execute with acknowledgement or affidavit if required and deliver to the other, file or submit all such further information, instruments and documents as may be reasonably necessary to carry out the purposes and objective of the Vested 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 to Developer or any Mortgagee (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 or terminated or the subject of termination; (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 or portion thereof and Developer's payment of all or applicable portion of the Impact Fees under Article 4 and Developer's completion of the requirements, obligations and payments under Article 5, 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 (or if for a portion of the Project, as to the applicable portion) obligations under this Agreement or such termination, in form and content reasonably satisfactory to the Parties, shall be provided by City to be executed by the Parties and 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: Phasing Plan

Exhibit D: Housing Plan

Exhibit E: Annual Review Form

Exhibit F: Form of Assignment and Assumption Agreement

Exhibit G: New City Hall Criteria

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: _____
Amy Chan, Interim City Manager
[Signature must be notarized]

ATTEST:

By: _____
Grace Schmidt, City Clerk

APPROVED AS TO FORM:

By: _____
Rocio Fierro, Acting City Attorney

DEVELOPER:

VALLCO PROPERTY OWNER, LLC, a Delaware limited liability company

By: _____
Name: _____
Its: _____

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 _____)

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)

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

[See Next Page]

EXHIBIT A

LEGAL DESCRIPTION

THE LAND REFERRED TO HEREIN BELOW IS SITUATED IN THE CITY OF CUPERTINO, IN THE COUNTY OF SANTA CLARA, STATE OF CALIFORNIA, AND IS DESCRIBED AS FOLLOWS:

Parcel One:

Beginning at the intersection of the most Easterly line of Tract No. 2860, as shown on that certain Map recorded in Book 138 of Maps Pages 22 and 23, Santa Clara County Records, with the general Northwesterly line of that certain parcel of land described as Parcel One in that certain Deed recorded in Book 7898 of Official Records, Page 248, Santa Clara County Records, said line being common to the general Southwesterly right of way of the lands of the State of California; thence along said common general line S. 43 deg 49' 16" E., (S. 43 deg. 48' E. per said Deed) 267.06 feet; thence S. 11 deg. 33' 10" E., 245.25 feet; thence along a tangent curve to the left, having a radius of 400.02 feet (400.00 feet per said Deed), through a central angle of 31 deg 44' 37", an arc length of 221.62 feet (221.61 feet per said Deed) thence S. 43 deg. 17' 47" E. 260.69 feet (S. 43 deg. 16' 31" E. 260.67 feet per said Deed); thence along a non-tangent curve (tangent curve per said Deed) having a radius of 147.01 feet (147.00 feet per said Deed, concave to the Southwest), whose center bears S. 46 deg. 40' 52" W. through a central angle of 26 deg. 09' 48", an arc length of 67.13 feet; thence along a non-tangent curve (tangent curve per said Deed) to the right, having a radius of 147.01 feet (147.00 feet per said Deed), concave to the Southwest, whose center bears S. 77 deg. 52' 52" W. through a central angle of 5 deg. 02' 12" an arc length of 12.92 feet; thence S. 12 deg. 04' 03" E., 13.54 feet; thence S. 1 deg. 22' 02" W. 41.84 feet, thence along a non-tangent curve to the right, having a radius of 1368.73 feet, whose center bears S. 01 deg. 45' 46" W., through a central angle of 05 deg. 21' 30" an arc length of 128.01 feet; thence S. 82 deg. 52' 44" W. 76.01 feet; thence N. 01 deg. 08' 33" W. 53.51 feet, thence S. 88 deg. 51' 27" W. 303.11 feet; thence N. 00 deg. 04' 30" W. 407.03 feet; thence N. 83 deg. 47' 30" W. 42.44 feet; thence N. 00 deg. 17' 20" W. 463.59 feet to the point of Beginning.

And being designated as Adjusted Parcel 1-C(2) of the plat marked Exhibit A attached to that certain Lot Line Adjustment recorded November 18, 2005 as Instrument No. 18684096 of Official Records.

Parcel Two:

The reciprocal and non-exclusive easements, rights, privileges of use, ingress and egress, parking and for utility and other purposes created and granted as an appurtenance to said land, described in that certain Construction, Operation and Reciprocal Easement Agreement between Vallco Fashion Park Venture, Sears, Roebuck and Co. and Federated Department Stores, Inc., dated as of the 19th day of February 1975, Recorded the 7th day of March, 1975 in Book B309, Page 1, Official Records, Santa Clara County, as amended by (1) First Amendment to Construction, Operation and Reciprocal Easement Agreement Dated as of the 1st day of August, 1975 Recorded August 29, 1975 in Book B591 at Page 434 of said Official Records; (2) Second Amendment to and Restatement of Construction, Operation and Reciprocal Easement Agreement between Vallco Fashion Park Venture, Federated Department Stores, Inc., Sears Roebuck and Co., Inc., and J. C. Penney Properties, Inc., dated as to the 1st day of December, 1975 Recorded September 14, 1976 Book C280 Official Records, Page 296 in said Official Records as Amended by Third Amendment to Reciprocal Easement Agreement dated September 14, 1976, recorded June 24, 1977 as Instrument No. 5698586; (3) the unrecorded agreement dated as of the 19th day of February 1975, between Vallco Fashion Park Venture and Sears, Roebuck and Co., the unrecorded Agreement of the same date between Vallco Fashion Park Venture and Federated Department Stores, Inc. and the unrecorded Agreement dated as of March 1, 1976 between Vallco Fashion Park Venture and J. C. Penney Properties, Inc. and (4) the undated Agreement and Consent and Approval executed by Vallco Park, LTD., Vallco Fashion Park Venture, Federated Department Stores, Inc. and Sears, Roebuck and Co. recorded in aforesaid Official Records in Book B309, Page 241 as amended by a First Amendment and Consent and Approval dated August 1, 1975, by and among the same parties Recorded in the aforesaid Official Records in Book B591, Page 434 as further amended by another Agreement and Consent and Approval dated as of December 1, 1975, by and among Vallco Center, Inc., Vallco Park Ltd., Federated Department Stores, Inc., Sears, Roebuck and Co. and J.C. Penney Properties, Inc., recorded September 14, 1976 Book C280 Official Records, Page 484, as amended by Agreement and Consent and Approval dated September 14, 1976, recorded June 24, 1977 in Book C946 Page 001, and by an Agreement and Consent and Approval dated November 7, 1980, by and among Vallco

EXHIBIT A
(Continued)

Center, Inc., a California corporation, and Vallco Park, Ltd., a California limited partnership, recorded November 7, 1980 in Book F717 at Page 174, and as amended by (5) Fourth Amendment to Construction, Operation and Reciprocal Easement Agreement between Vallco Fashion Park Venture, Federated Department Stores, Inc., Sears, Roebuck and Co. and J. C. Penney Properties, Inc. dated May 1, 1979, recorded October 15, 1980 in Book F656 Official Records, Page 203, and as amended by (6) Fifth Amendment to Construction, Operation and Reciprocal Easement Agreement between Vallco Fashion Park Venture, Federated Department Stores, Inc., Sears, Roebuck and Co., and J. C. Penney Properties, Inc., dated February 15, 1984 and recorded February 16, 1984 in Book I310 of Official Records, Page 001, (7) as further amended by Sixth Amendment to Construction, Operation and Reciprocal Easement Agreement between Vallco International Shopping Center, LLC, a California limited liability company; Macy's Development Stores, Inc., an Ohio corporation; Sears, Roebuck and Company, a New York corporation and J.C. Penney Properties, Inc., a Delaware corporation, dated July 14, 2006 and recorded August 25, 2006 as Instrument No. 19079269 of Official Records, (said Construction, Operation and Reciprocal Easement Agreement, as amended, said Agreements as Amended and said Original Agreement and Consent and Approval, as amended are hereinafter referred to collectively as "Construction, Operation and Reciprocal Easement Agreement", in, on, over, upon and under certain adjoining real property therein, more particularly described, together with all of the rights, powers and privileges and benefits under said Construction, Operation and Reciprocal Easement Agreement, accruing to Vallco Fashion Park Venture, Vallco Park, Ltd., and Vallco Center, Inc., their successors, legal representatives and assigns.

Excepting therefrom said rights, powers, privileges and benefits which are not real property or interest in real property.

Parcel Three:

The perpetual and exclusive easement to construct, to maintain in place, and to maintain, repair, replace, reconstruct and use a vehicular tunnel and appurtenances not in excess of seventy (70) feet in width to be constructed within the area more particularly described as follows:

Beginning at the monument at the intersection of the centerline of Wolfe Road and Vallco Parkway, as shown on that certain Parcel Map, recorded in Book 325 at page 12, Santa Clara County Records; thence along the westerly prolongation of the centerline of Vallco Parkway as shown on said Parcel map, S 88°54'46" W, 94.00 feet; thence leaving said prolongation along a line parallel to and 94.00 feet westerly of said centerline of Wolfe Road, N 1°05'14" W, 924.22 feet to the True Point of Beginning; thence continuing along said parallel line N 1°05'14" W, 95.26 feet; thence along a tangent curve to the right whose radius is 100.00 feet, through a central angle of 20°56'09", an arc length of 36.54 feet to a point of reverse curvature; thence along a tangent curve to the left, whose radius is 100.00 feet, through a central angle of 18°28'53", an arc length of 32.26 feet; thence tangent to said curve N 1°22'02" E, 71.50 feet to a point on the right-of-way line of the lands of the State of California; thence leaving said right-of-way line N 88°54'46" E, 171.63 feet to a second point on said right-of-way line; thence southerly along said right-of-way line S 15°06'31" W, 63.83 feet; thence leaving said right-of-way line southerly along a line parallel to and 76 feet easterly of the centerline of Wolfe Road as shown on said Parcel Map, S 1°05'14" E, 172.58 feet; thence at right angles S 88°54'46" W, 170.00 feet to the True Point of Beginning.

APN: **316-20-088**

EXHIBIT A
LEGAL DESCRIPTION

THE LAND REFERRED TO HEREIN BELOW IS SITUATED IN THE CITY OF CUPERTINO, IN THE COUNTY OF SANTA CLARA, STATE OF CALIFORNIA, AND IS DESCRIBED AS FOLLOWS:

Tract One:

Parcel 1-A(2):

That certain real property lying within Adjusted Parcel I-A per that certain Lot Line Adjustment for Vallco International Shopping Center, LLC, recorded November 18, 2005 in Document No. 18684096 of Official Records, Santa Clara County Records, being more particularly described as follows:

Commencing at the found Standard City Monument shown at the Northerly terminus of the course of the monumentation line of Wolfe Road described as "North 1° 05' 14" West, 989.48 feet" per that certain Parcel Map recorded in Book 325 of Maps at Page 12, Santa Clara County Records; Thence North 0° 04' 37" East a distance of 125.18 feet; Thence leaving said monument line at right angles thereto North 89° 55' 23" West a distance of 82.14 feet to the Northeast corner of Adjusted Parcel 1-C(1), as described in said Lot Line Adjustment; Thence along the North boundary of said Parcel 1-C(1) along a curve to the right, having a radial bearing of North 01° 45' 45" East, a radius of 1368.73 feet, an arc length of 128.01 feet and a delta angle of 5° 21' 31"; Thence continuing along the North boundary of said Adjusted Parcel 1-C(1) the following courses and distances: North 82° 52' 44" West, 76.01 feet; North 01° 08' 33" West, 44.47 feet; Thence along the North boundary of said Adjusted Parcel 1-C(1), North 88° 54' 46" West a distance of 23.42 feet; Thence along a West boundary of said Adjusted Parcel 1-C(1), South 01° 05' 14" East a distance of 353.92 feet to the Point of Beginning; Thence from said True Point of Beginning along the West boundary of said Adjusted Parcel 1-C(1), South 01° 05' 14" East a distance of 24.08 feet; Thence continuing along the Westerly boundary of said Adjusted Parcel 1-C(1) the following courses and distances: North 88° 54' 46" East, 16.22 feet; South 46° 05' 14" East, 106.07 feet; South 01° 05' 14" East, 215.11 feet; South 88° 54' 46" West, 29.29 feet; South 43° 54' 46" West, 150.58 feet; South 01° 05' 14" East, 29.43 feet; South 88° 54' 46" West, 115.55 feet; North 01° 05' 14" West, 23.23 feet; South 88° 54' 46" West, 86.48 feet; South 28° 54' 46" West, 95.50 feet; South 01° 05' 14" East, 83.48 feet; Thence continuing along the boundary of said Adjusted Parcel 1-C(1), South 88° 54' 46" West a distance of 299.55 feet to the East boundary line of Tract No. 2086, recorded on September 30, 159 in Book 112 of Maps, Pages 40 and 41; Thence along the East boundary of said Tract No. 2086, North 00° 42' 30" West a distance of 157.45 feet to the Southerly Right-of-Way line of Amherst Drive shown on said Tract No. 2086; Thence along the South line of said Tract No. 2086, North 89° 13' 29" east a distance of 299.01 feet to the Southeast corner of said Amherst Drive, said South line also being the Southerly Right-of-Way line of said Amherst Drive; Thence along the East line of said Tract No. 2086, North 00° 04' 30" West a distance of 437.31 feet; Thence North 88° 54' 46" East, a distance of 286.10 feet to the Point of Beginning.

And being designated as Parcel 1-A(2) of the plat marked Exhibit "A" attached to that certain Lot Line Adjustment recorded April 02, 2008 as Instrument No. 19798059 of Official Records.

Parcel 1-C1(2):

That certain real property lying within Adjusted Parcel 1-C(1) and Adjusted Parcel 1-A per that certain Lot Line Adjustment for Vallco International Shopping Center, LLC, recorded November 18, 2005 in Document No. 18684096 of Official Records, Santa Clara County Records, being more particularly described as follows:

Commencing at the found Standard City Monument shown at the Northerly terminus of the course of the monumentation line of Wolfe Road described as "North 1° 05' 14" West, 989.48 feet" per that certain parcel Map recorded in Book 325 of Maps at Page 12, Santa Clara County Records; Thence North 0° 04' 37" East a distance of 125.18 feet; Thence leaving said monument line at right angles thereto North 89° 55' 23" West a distance of 82.14 feet to the Northeast corner of Adjusted Parcel 1-C(1) as described in said Lot Line Adjustment, said point also being the Point of Beginning; Thence from said True Point of Beginning along the North boundary of said Parcel 1-C(1) along a curve to the right, having a radial bearing of North 01° 45' 45" east, a radius of 1368.73 feet,

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(Continued)

an interior angle of 5° 21' 31", and a curve length of 128.01 feet; Thence continuing along the North boundary of said Adjusted Parcel 1-C(1) the following courses and distances: North 82° 52' 44" West, 76.01 feet; North 01° 08' 33" West, 53.51 feet; Thence along the North boundary of Adjusted Parcel 1-A described in said Lot Line Adjustment, South 88° 51' 27" West a distance of 303.10 feet to the East boundary of Tract No. 2086 recorded on September 30, 1959 in Book 112 of Maps, Pages 40 and 41; Thence along the East boundary of said Tract No. 2086, South 00° 04' 30" East a distance of 362.72 feet; Thence North 88° 54' 46" East a distance of 286.10 feet to the West boundary of said Adjusted Parcel 1-C(1); Thence continuing along the West boundary of said Adjusted Parcel 1-C(1), South 01° 05' 14" East a distance of 24.08 feet; Thence continuing along the West boundary of said Adjusted Parcel 1-C(1) the following courses and distances: North 88° 54' 46" East, 16.22 feet; South 46° 05' 14" East 106.07 feet; South 01° 05' 14" East, 215.11 feet; South 88° 54' 46" West, 29.29 feet; South 43° 54' 46" West, 150.58 feet; South 01°05'14" East 29.43 feet; South 88° 54' 46" West, 115.55 feet; North 01° 05' 14" West, 23.23 feet; South 88° 54' 46" West, 86.48 feet; South 28° 54' 46" West, 95.50 feet; South 01° 05' 14" East, 83.48 feet; Thence continuing along the boundary of said Adjusted Parcel 1-C(1), South 88° 54' 46" West a distance of 299.55 to the East boundary line of said Tract No. 2086; Thence along the East boundary of said Tract No. 2086, South 00° 42' 30" East a distance of 236.99 feet to the most Northwesterly corner of that certain parcel described in Book 8073 Official Records at Page 372, Santa Clara County Records; Thence along the Northerly line of said parcel, North 88° 54' 46" East a distance of 807.12 feet to the Westerly Right-of-Way of Wolfe Road as shown on that certain Parcel Map recorded in Book 325 of Maps at Page 12, Santa Clara County Records; Thence along the Westerly Right-of-Way of Wolfe Road, North 01° 05' 14" West a distance of 1019.49 feet; Thence continuing along the Westerly Right-of-Way of Wolfe Road, along a tangent curve to the right, having a radius of 100.00 feet, an interior angle of 20° 56' 09" and an arc length of 36.54 feet to a point of reverse curvature; Thence continuing along the Westerly Right-of-Way of Wolfe Road, along a reverse curve, having a radius of 100.00 feet, an interior angle of 18° 28' 53" and an arc length of 32.26 feet; Thence continuing along the Westerly Right-of-Way of Wolfe Road, North 01° 22' 02" East a distance of 29.66 feet to the Point of Beginning.

Excepting from said Existing Adjusted Parcel 1-C(1) described above, a portion of said land as was conveyed to the City of Cupertino by deed recorded October 15, 1976 as Instrument No. 5441905 in Book C348 Official Records, Page 714.

And being designated as Parcel 1-C1(2) of the plat marked Exhibit "A" attached to that certain Lot Line Adjustment recorded April 02, 2008 as Instrument No. 19798059 of Official Records.

Parcel II-B:

A perpetual and exclusive easement, for the construction, maintenance in place and maintenance, repair, replacement, re-construction and use of underground footings for buildings, structures and improvements to be located in Parcel V-A hereinafter described and other land over, in, under, along and across the following described real property:

All that air space bounded by planes projected vertically at the parcel limits, below the horizontal plane at elevation 173.00 feet, according to the datum of the City of Cupertino; (City of Cupertino Official Bench Mark BM-1 Elev. 179.40);

Beginning at the intersection of the monument Line of Vallco Parkway as shown on that certain Parcel Map recorded in Book 325 of Maps, Page 12, Santa Clara County Records, with the monument line of Wolfe Road as shown on said Map; thence along said monument line of Wolfe Road, N. 1 deg 05' 14" W., 426.56 feet; thence N. 88 deg 54' 46" E., 103.43 feet to the True Point of Beginning; thence N. 1 deg 05' 14" W., 140.00 feet; thence N. 88 deg 54' 46" E., 10.00 feet; thence S. 1 deg 05' 14" E. 140.00 feet; thence S. 88 deg 54' 46" W., 10.00 feet to the True Point of Beginning.

Parcel V-A:

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(Continued)

A perpetual and exclusive easement granted by the City of Cupertino, California by Agreement dated October 8, 1974, recorded October 17, 1974 in Official Records, Santa Clara County, Book B 135 at Page 370, as amended by Supplement to Agreement between the City of Cupertino, California and Vallco Park, Ltd., dated as of August 5, 1975, recorded on August 20, 1975 in the aforesaid Official Records in Book B571 Page 724, to construct, maintain in place, maintain, repair, replacement re-construct and to use buildings, structures and improvements over the following described Parcel of Land.

All that certain real property situated in the City of Cupertino, County of Santa Clara, State of California, being a 140 foot wide strip, bounded by planes projected vertically at the Parcel limits, above the horizontal plane at elevation 195.50 feet, according to the datum of the City of Cupertino; (City of Cupertino Official Bench Mark BM-1 = Elev. 179.40) the centerline of which is described as follows:

Beginning at the monument at the centerline of Wolfe Road and Vallco Parkway, as shown on that certain Parcel Map, recorded in Book 325 of Maps, Page 12, Santa Clara County Records; thence Northerly along the centerline of Wolfe Road as shown on said Parcel Map N. 1 deg 05' 14" W., 496.56 feet; thence at right angles S. 88 deg 54' 46" W., 94.00 feet to the True Point of Beginning; thence N. 88 deg 54' 46" E., 170.00 feet; The Easterly terminus being the Easterly Right-of-Way line of Wolfe Road and the Westerly terminus being the Westerly Right-of-Way line of Wolfe Road.

Parcel V-B:

The perpetual and exclusive easement for the construction, maintenance in place, and maintenance, repair, replacement, reconstruction and use of columns, supports, footings and foundations for buildings, structures and improvements to be located in Parcel V-A above described, granted by The City of Cupertino, California, by Agreement dated October 8, 1974, recorded on October 17, 1974 in Official Records, Santa Clara County, Book B135 at page 370, as amended by Supplement to Agreement between the City of Cupertino, California and Vallco Park, Ltd., dated as of August 5, 1975, recorded on August 20, 1975 in the aforesaid Official Records in Book B571 at Page 724, over, in, under, along and across the following described real property.

Beginning at the intersection of the monument line of Vallco Parkway as shown on that certain Parcel Map, recorded in Book 325 of Maps, Page 12, Santa Clara County Records, with the monument line of Wolfe Road as shown on said Map; thence leaving said monument line of Vallco Parkway along the Northerly projection of said monument line of Wolfe Road, N. 1 deg 05' 14" W., 426.56 feet to the True Point of Beginning; thence S. 88 deg 54' 46" W., 14.50 feet; thence N. 1 deg 05' 14" W., 140.00 feet; thence N. 88 deg 54' 46" E. 32.00 feet; thence S. 1 deg 05' 14" E., 140.00 feet; thence S. 88 deg 54' 46" W., 17.50 feet to the True Point of Beginning.

Parcel V-C:

The perpetual and exclusive easement for the construction, maintenance in place, and maintenance, repair, replacement, re-construction and use of columns, supports, footings and foundations for buildings, structures and improvements to be located in Parcel V-A above described, granted by the City of Cupertino, California by Agreement dated October 8, 1974, recorded on October 17, 1974 in Official Records, Santa Clara County, Book B135 at Page 370, as amended by Supplement to Agreement between the City of Cupertino, California and Vallco Park, Ltd., dated as of August 5, 1975, recorded on August 20, 1975 in Book B571 at Page 724, Official Records, and as amended by Second Amendment to Agreement, dated March 1, 1976 and recorded September 14, 1976 in Book C280 at Page 236, Official Records, and as amended by Third Amendment to Agreement, dated October 7, 1991 and recorded July 24, 1992 in Book M297 at Page 1860, Official Records, over, in, under along and across the following described real property:

All that space bounded by planes projected vertically at the Parcel limits, below the horizontal plane at elevation 173.00 feet, according to the datum of the City of Cupertino; (City of Cupertino Official Bench Mark BM-1 = Elev. 179.40);

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(Continued)

Beginning at the intersection of the monument line of Vallco Parkway as shown on that certain Parcel Map, recorded in Book 325 of Maps at Page 12, Santa Clara County Records, with the monument line of Wolfe Road as shown on said Map; thence leaving said monument line of Vallco Parkway along the Northeasterly projection of said monument line of Wolfe Road, N. 1 deg 05' 14" W., 426.56 feet; thence S. 88 deg 54' 46" W., 84.00 feet to the True Point of Beginning; thence continuing S. 88 deg 54' 46" W., 10.00 feet to the Westerly line of Wolfe Road; thence along said line N. 1 deg 05' 14" W., 140.00 feet; thence leaving said Westerly line, N. 88 deg 54' 46" E., 10.00 feet; thence S. 1 deg 05' 14" E., 140.00 feet to the True Point of Beginning.

Parcel V-D:

A perpetual and exclusive easement to construct, repair, replace, reconstruct and use a vehicular tunnel and appurtenances thereto not in excess of 70 feet in width to be constructed, granted by the City of Cupertino, California by Agreement dated October 8, 1974, recorded on October 17, 1974 in Official Records, Santa Clara County, Book B135 at Page 370, as Amended by Supplement to Agreement between the City of Cupertino, California, and Vallco Park, Ltd., dated as of August 6, 1975, recorded on August 20, 1975 in the aforesaid Official Records in Book B571 at Page 724, within the area described as follows:

Beginning at the monument at the intersection of the centerline of Wolfe Road and Vallco Parkway, as shown on that certain Parcel Map, recorded in Book 325 at Page 12, Santa Clara County Records; thence along the Westerly prolongation of the centerline of Vallco Parkway as shown on said Parcel Map, S. 88 deg 54' 46" W. 94.00 feet; thence leaving said prolongation along a line parallel to and 94.00 feet Westerly of said centerline of Wolfe Road, N. 1 deg 05' 14" W., 924.22 feet to the True Point of Beginning; thence continuing along said parallel line N. 1 deg 05' 14" W., 95.26 feet; thence along a tangent curve to the right whose radius of 100.00 feet; through a central angle of 20 deg 56' 09", an arc length of 36.54 feet to a point of reverse curvature; thence along a tangent curve to the left, whose radius is 100.00 feet, through a central angle of 18 deg 28' 53" an arc length of 32.26 feet; thence tangent to said curve; N. 1 deg 22' 02" E., 71.50 feet to a point on the Right-of-Way line of the lands of the State of California; thence leaving said Right-of-Way line N. 88 deg 54' 46" E. 171.63 feet to a second point on said Right-of-Way line; thence Southerly along said Right-of-Way line S. 15 deg 06' 31" W., 63.83 feet; thence leaving said Right-of-Way line Southerly along a line parallel to and 76 feet Easterly of the centerline of Wolfe Road as shown on said Parcel Map, S. 1 deg 05' 14" E., 172.58 feet; thence at right angles S. 88 deg 54' 46" W., 170.00 feet to the True Point of Beginning.

Excepting therefrom that portion of Parcel V-D as was conveyed to the City of Cupertino by Deed recorded October 15, 1976 in Book C348, Official Records, Page 714.

Also excepting therefrom that portion of Parcel V-D as was conveyed to the City of Cupertino by Deed recorded October 15, 1976 in Book C348, Official Records, Page 723.

Parcel XI:

The reciprocal and non-exclusive easements, rights, privileges of use, ingress and egress, parking and for utility and other purposes created and granted as an appurtenance to said land, described in that certain Construction, Operation and Reciprocal Easement Agreement between Vallco Fashion Park Venture, Sears, Roebuck and Co. and Federated Department Stores, Inc., dated as of the 19th day of February 1975, Recorded the 7th day of March, 1975 in Book B309, Page 1, Official Records, Santa Clara County, as amended by (1) First Amendment to Construction, Operation and Reciprocal Easement Agreement Dated as of the 1st day of August, 1975 Recorded August 29, 1975 in Book B591 at Page 434 of said Official Records; (2) Second Amendment to a Restatement of Construction, Operation and Reciprocal Easement Agreement between Vallco Fashion Park Venture, Federated Department Stores, Inc., Sears Roebuck and Co., Inc., and J. C. Penney Properties, Inc., dated as to the 1st day of December, 1975 Recorded September 14, 1976 Book C280 Official Records, Page 296 in said Official Records as Amended by Third Amendment to Reciprocal Easement Agreement Dated September 14, 1976, Recorded June 24, 1977 File No. 5698586; (3) the unrecorded agreement dated as of the 19th day of February 1975, between Vallco Fashion Park Venture and Sears, Roebuck and Co., the unrecorded Agreement of the same date

EXHIBIT A
(Continued)

between Vallco Fashion Park Venture and Federated Department Stores, Inc. and the unrecorded Agreement dated as of March 1, 1976 between Vallco Fashion Park Venture and J. C. Penney Properties, Inc. and (4) the undated Agreement and Consent and Approval executed by Vallco Park, LTD., Vallco Fashion Park Venture, Federated Department Stores, Inc. and Sears, Roebuck and Co. Recorded in aforesaid Official Records in Book B309, Page 241 as amended by a First Amendment and Consent and Approval Dated August 1, 1975, by and among the same parties Recorded in the aforesaid Official Records in Book B591, Page 445 as further amended by another Agreement and Consent and Approval Dated as of December 1, 1975, by and among Vallco Center, Inc., Vallco Park Ltd., Federated Department Stores, Inc., Sears, Roebuck and Co. and J.C. Penney Properties, Inc., Recorded September 14, 1976 Book C280 Official Records, Page 484, as amended by Agreement and Consent and Approval Dated September 14, 1976 Recorded June 24, 1977 in Book C946 Page 001 and as amended by (5) Fourth Amendment to Construction, Operation and Reciprocal Easement Agreement between Vallco Fashion Park Venture, Federated Department Stores, Inc., Sears, Roebuck and Co. and J. C. Penney Properties, Inc. Dated May 1, 1979, Recorded October 15, 1980 in Book F656 Official Records, Page 203, and as amended by (6) Fifth Amendment to Construction, Operation and Reciprocal Easement Agreement between Vallco Fashion Park Venture, Federated Department Stores, Inc., Sears, Roebuck and Co., and J. C. Penney Properties, Inc., Dated February 15, 1984 and Recorded February 16, 1984 in Book I310 of Official Records, Page 001, (7) as further amended by Sixth Amendment to Construction, Operation and Reciprocal Easement Agreement between Vallco International Shopping Center, LLC, a California limited liability company; Macy's Development Stores, Inc., an Ohio corporation; Sears, Roebuck and Company, a New York corporation and J.C. Penney Properties, Inc., a Delaware corporation, dated July 14, 2006 and recorded August 25, 2006 as Instrument No. 19079269 of Official Records, (said Construction, Operation and Reciprocal Easement Agreement, as amended, said Agreements as Amended and said Original Agreement and Consent and Approval, as amended are hereinafter referred to collectively as "Construction, Operation and Reciprocal Easement Agreement", in, on, over, upon and under certain adjoining real property therein, more particularly described, together with all of the rights, powers and privileges and benefits under said Construction, Operation and Reciprocal Easement Agreement, accruing to Vallco Fashion Park Venture, Vallco Park, Ltd., and Vallco Center, Inc., their successors, legal representatives and assigns.

Excepting therefrom said rights, powers, privileges and benefits which are not real property or interest in real property.

Also Excepting therefrom that portion Released by Release and Termination, Recorded January 9, 2017, Instrument No. 23552485, of Official Records.

Parcel XVI:

An easement to construct, maintain, use and operate an automobile parking structure for automobile and other vehicle parking, and rights of access, ingress and egress for automobiles and other vehicles and for pedestrians and for utilities, landscaping and incidental uses, as reserved by Vallco Fashion Park Venture, a California partnership in the "Amendment to Ground Sublease" recorded March 1, 1985 as Instrument No. 8340269, in Book J283 at Page 149, on the following described land:

All that certain parcel of land, being a portion of Parcel IA of the sublease between Vallco Fashion Park Venture and Federated Department Stores, Inc., Recorded March 7, 1975 in Book B308 at Page 565 through 571, Santa Clara County Records, State of California and more particularly described as follows:

Beginning at the Southeast corner of Tract 2086 as shown on that certain Map Recorded in Book 112 of Maps, at Pages 40 and 41, Santa Clara County Records; (1) thence Northwesterly along the Easterly line of said Tract North 0 deg. 43' West 742.60 feet to a point, said point being the southwest corner of the aforementioned Parcel IA; (2) thence Northeasterly leaving said Easterly line of said Tract, along the Southerly boundary of the aforementioned Parcel IA North 88 deg. 54' 46" East 69.00 feet to the True Point of Beginning; (3) thence continuing along said Southerly line of Parcel IA South 88 deg. 54' 46" East 230.55 feet; (4) thence North 1 deg. 05' 14" West 83.48 feet; (5) thence North 28 deg. 54' 46" East 12.77 feet; (6) thence Southwesterly, leaving the

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(Continued)

boundary line of the aforementioned Parcel IA, South 88 deg. 54' 46" West 263.31 feet; (7) thence South 0 deg. 42' 30" East 94.54 feet to the Point of Beginning.

Said easement shall terminate upon the termination of the Federated Department Stores lease and/or upon the demolition and removal of the parking structure as therein provided.

Parcel XVIII:

Being a portion of Parcel 1 of that certain parcel Map recorded 325 of Maps at Page 12, Santa Clara County Records being described as follows:

Beginning at the intersection of the monument line of Vallco Parkway as shown on said Parcel Map with the monument line of Wolfe Road. Said point being the Westerly terminus of the course shown as "North 88° 54' 46" East, 854.00 feet" on said Parcel Map, said course being the basis of the bearings described hereon;
Thence along the monument line of said Wolfe Road North 01° 05' 23" West, 989.48 feet; Thence leaving said centerline, at right angles therefrom North 88° 54' 37" East, 76.00 feet to a point on the Westerly line of Parcel VI of lands granted to Vallco International Shopping Center LLC per that certain Grant Deed recorded in Document No. 18331566 of Official Records, Santa Clara County Records, said point being the True Point of Beginning; Thence along the Westerly line of Parcel VI, along a line lying 76.00 feet Easterly of and parallel with said monument line of Wolfe Road, North 01° 05' 23" West, 107.17 feet to an angle point in said Westerly line; Thence continuing along said westerly line North 15° 06' 31" East, 41.30 feet; Thence leaving said Westerly line, Easterly along a non-tangent curve to the left, having a radius of 528.00 feet, through a central angle of 02° 15' 02" for an arc distance of 20.74 feet, the radius point of which bears North 01° 49' 13" West; Thence North 86° 05' 45" East, 119.28 feet; Thence North 88° 54' 46" East, 55.94 feet to a point on the general Easterly line of said Parcel VI per said Grant Deed; Thence along said general Easterly line of Parcel VI South 01° 05' 14" East, 407.40 feet; Thence continuing along said general Easterly line South 46° 05' 14" East, 75.68 feet; Thence continuing along said general Easterly line North 88° 54' 46" East, 48.02 feet; Thence continuing along said general Easterly line South 01° 05' 14" East, 347.65 feet; Thence continuing along said general Easterly line South 88° 54' 46" West, 65.00 feet; Thence continuing along said general Easterly line South 01° 05' 14" East, 46.19 feet to the Easterly terminus of the most southerly line of said Parcel VI; Thence along said Southernmost line South 88° 54' 46" West, 243.82 feet to a point lying 76.00 feet Easterly of and perpendicular to said monument line of Wolfe Road, said point being the Southwesterly corner of said Parcel VI; Thence along a line lying 76.00 feet Easterly of and parallel with said monument line, along the Westerly lines of said Parcel VI and Parcel II-A of said Grant Deed to Vallco International Shopping Center LLC North 01° 05' 23" West, 701.39 feet to the True Point of Beginning.

And being designated as Parcel One of the plat marked Exhibit "A" attached to that certain Lot Line Adjustment recorded on August 22, 2006 as Instrument No. 19069106 of Official Records, and further identified as Lands of Vallco International Shopping Center LLC New Parcel 1 in Exhibit "C" of said Lot Line Adjustment.

Tract Two:

Parcel One:

A portion of the Quito Rancho, and being a portion of the 39.39 acre tract of land described in the deed to Vallco Park LTD., recorded October 19, 1967 in Book 7898, Page 248 of Official Records, Santa Clara County Records, described as follows:

Commencing at the intersection of the Monument Line of Stevens Creek Boulevard, being 45 feet Southerly from the Northerly line thereof with the center line of Wolfe Road, 108 feet wide; thence N. 1° 5' 14" W., along said center line of Wolfe Road, 105.37 feet; thence S. 88° 54' 45" W., 54 feet to the Westerly line of Wolfe Road at the Northerly terminus of a curve having a radius of 60 feet, and the actual point of beginning; thence N. 1° 5' 14" W., along the Westerly line of Wolfe Road, 819.02 feet; thence S. 88° 54' 40" W., 847.26 feet to an Easterly line of

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(Continued)

Tract No. 2086, Map filed in Book 112 of Maps, Pages 40; thence S. 0° 42' 55" E., along said Easterly line and its Southerly prolongation 869.53 feet to the Northerly line of Stevens Creek Boulevard, being 45 feet Northerly of the Monument Line thereof; thence N. 89° 36' E., along said Northerly line, 792.24 feet; thence along the arc of a curve to the left having a radius of 60 feet; thence an angle of 90° 41' 14" an arc distance of 94.96 feet to the actual point of beginning.

Parcel Two:

The reciprocal and non-exclusive easements, rights, privileges of use, ingress and egress, parking and for utility and other purposes created and granted as an appurtenance to said land, described in that certain Construction, Operation and Reciprocal Easement Agreement between Vallco Fashion Park Venture, Sears, Roebuck and Co. and Federated Department Stores, Inc., dated as of the 19th day of February 1975, Recorded the 7th day of March, 1975 in Book B309, Page 1, Official Records, Santa Clara County, as amended by (1) First Amendment to Construction, Operation and Reciprocal Easement Agreement Dated as of the 1st day of August, 1975 Recorded August 29, 1975 in Book B591 at Page 434 of said Official Records; (2) Second Amendment to a Restatement of Construction, Operation and Reciprocal Easement Agreement between Vallco Fashion Park Venture, Federated Department Stores, Inc., Sears Roebuck and Co., Inc., and J. C. Penney Properties, Inc., dated as to the 1st day of December, 1975 Recorded September 14, 1976 Book C280 Official Records, Page 296 in said Official Records as Amended by Third Amendment to Reciprocal Easement Agreement Dated September 14, 1976, Recorded June 24, 1977 File No. 5698586; (3) the unrecorded agreement dated as of the 19th day of February 1975, between Vallco Fashion Park Venture and Sears, Roebuck and Co., the unrecorded Agreement of the same date between Vallco Fashion Park Venture and Federated Department Stores, Inc. and the unrecorded Agreement dated as of March 1, 1976 between Vallco Fashion Park Venture and J. C. Penney Properties, Inc. and (4) the undated Agreement and Consent and Approval executed by Vallco Park, LTD., Vallco Fashion Park Venture, Federated Department Stores, Inc. and Sears, Roebuck and Co. Recorded in aforesaid Official Records in Book B309, Page 241 as amended by a First Amendment and Consent and Approval Dated August 1, 1975, by and among the same parties Recorded in the aforesaid Official Records in Book B591, Page 445 as further amended by another Agreement and Consent and Approval Dated as of December 1, 1975, by and among Vallco Center, Inc., Vallco Park Ltd., Federated Department Stores, Inc., Sears, Roebuck and Co. and J.C. Penney Properties, Inc., Recorded September 14, 1976 Book C280 Official Records, Page 484, as amended by Agreement and Consent and Approval Dated September 14, 1976 Recorded June 24, 1977 in Book C946 Page 001 and as amended by (5) Fourth Amendment to Construction, Operation and Reciprocal Easement Agreement between Vallco Fashion Park Venture, Federated Department Stores, Inc., Sears, Roebuck and Co. and J. C. Penney Properties, Inc. Dated May 1, 1979, Recorded October 15, 1980 in Book F656 Official Records, Page 203, and as amended by (6) Fifth Amendment to Construction, Operation and Reciprocal Easement Agreement between Vallco Fashion Park Venture, Federated Department Stores, Inc., Sears, Roebuck and Co., and J. C. Penney Properties, Inc., Dated February 15, 1984 and Recorded February 16, 1984 in Book I310 of Official Records, Page 001, (7) as further amended by Sixth Amendment to Construction, Operation and Reciprocal Easement Agreement between Vallco International Shopping Center, LLC, a California limited liability company; Macy's Development Stores, Inc., an Ohio corporation; Sears, Roebuck and Company, a New York corporation and J.C. Penney Properties, Inc., a Delaware corporation, dated July 14, 2006 and recorded August 25, 2006 as Instrument No. 19079269 of Official Records, (said Construction, Operation and Reciprocal Easement Agreement, as amended, said Agreements as Amended and said Original Agreement and Consent and Approval, as amended are hereinafter referred to collectively as "Construction, Operation and Reciprocal Easement Agreement", in, on, over, upon and under certain adjoining real property therein, more particularly described, together with all of the rights, powers and privileges and benefits under said Construction, Operation and Reciprocal Easement Agreement, accruing to Vallco Fashion Park Venture, Vallco Park, Ltd., and Vallco Center, Inc., their successors, legal representatives and assigns.

Excepting therefrom said rights, powers, privileges and benefits which are not real property or interest in real property.

EXHIBIT A
(Continued)

Also Excepting therefrom that portion Released by Release and Termination Recorded January 9, 2017, Instrument No. 23552485, of Official Records.

Tract Three:

Parcel One:

All that real property situate in the City of Cupertino, State of California, being a portion of Parcel 1 of that certain Parcel Map recorded in Book 325 of Maps at Page 12, Santa Clara County Records, described as follows:

Beginning at a found 1" iron pipe monument marking the most Northerly corner of said Parcel 1, said point being the most Northerly corner of Parcel VI of lands granted to Vallco International Shopping Center LLC per that certain grant deed recorded in Document No. 18331566 of Official Records, Santa Clara Records;

Thence along the Northeasterly line of said Parcel 1 and said Parcel VI, South 60° 16' 27" East, 575.42 feet to the Northeasterly corner of said Parcel VI per said grant deed;

Thence continuing along said Northeasterly line of Parcel 1 per said Parcel Map, South 60° 16' 27" East, 123.46 feet to the Northeasterly corner of said Parcel 1;

Thence along the Easterly line of said Parcel 1, South 01° 05' 14" East, 1049.61 feet to a point lying 55.00 feet Northerly of and perpendicular to the monument line of Vallco Parkway as said monument line is shown on said Parcel Map;

Thence along a line lying 55.00 feet Northerly of and parallel with said monument line South 88° 54' 46" West, 46.72 feet to the True Point of Beginning;

Thence continuing along said line South 88° 54' 46" West, 631.28 feet;

Thence along a tangent curve to the right, having a radius of 20.00 feet, through a central angle of 89° 59' 51" for a distance of 31.42 feet to a point lying 76.00 feet Westerly of a perpendicular to the monument line of Wolfe Road, as said monument line is shown on said Parcel Map;

Thence along a line lying 76.00 feet Easterly of and parallel with said monument line North 01° 05' 23" West, 213.09 feet to the Southwesterly corner of said Parcel VI of said grant deed;

Thence along the most Southerly line of said Parcel VI North 88° 54' 46" East, 223.23 feet;

Thence leaving said Southernmost line South 01° 06' 14" East, 78.71 feet;

Thence North 88° 54' 46" East, 428.06 feet;

Thence South 01° 05' 14" East, 154.38 feet to the True Point of Beginning.

The basis of described bearings is the monumented centerline of said Vallco Parkway, having a bearing of North 88° 54' 46" East as shown on said Parcel Map.

And being designated as Parcel Two of the plat marked Exhibit "A" attached to that certain Lot Line Adjustment recorded on August 22, 2006 as Instrument No. 19069106 of Official Records, and further identified as Lands of JC Penney Properties Inc. New Parcel 2 in Exhibit "C" of said Lot Line Adjustment.

Parcel Two:

EXHIBIT A
(Continued)

All that certain real property situate in the City of Cupertino, State of California, being a portion of Parcel 1 of that certain Parcel Map recorded in Book 325 of Maps at Page 12, Santa Clara County Records, described as follows:

Beginning at the found 1" iron pipe monument marking the most Northerly corner of said Parcel 1, said point being the most Northerly corner of Parcel VI of lands granted to Vallco International Shopping Center LLC per that certain grant deed recorded in Document No. 18331566 of Official Records, Santa Clara County Records;

Thence along the Northeasterly line of said Parcel 1 per said Parcel Map, South 60° 16' 27" East, 123.46 feet to the Northeasterly corner of said Parcel 1;

Thence along the Easterly line of said Parcel 1, South 01° 05' 14" East, 1049.61 feet to a point lying 55.00 feet Northerly of and perpendicular to the monument line of Vallco Parkway as said monument line is shown on said Parcel Map;

Thence along a line lying 55.00 feet Northerly of and parallel with said monument line South 88° 54' 46" West, 46.72 feet;

Thence North 01° 05' 14" West, 154.38 feet;

Thence South 88° 54' 46" West, 428.06 feet;

Thence North 01° 05' 14" West, 78.71 feet to a point on the most Southerly line of said Parcel VI per said grant deed;

Thence along said Southernmost line North 88° 54' 46" East, 20.59 feet to its Easterly terminus;

Thence Northerly along the general Easterly line of said Parcel VI North 01° 05' 14" West, 46.19 feet;

Thence continuing along said general Easterly line North 88° 54' 46" East, 65.00 feet;

Thence continuing along said general Easterly line North 01° 05' 14" West, 347.65 feet;

Thence continuing along said general Easterly line South 88° 54' 46" West, 48.02 feet;

Thence continuing along said general Easterly line North 46° 05' 14" West, 75.68 feet;

Thence continuing along said general Easterly line North 01° 05' 14" West, 432.68 feet;

Thence continuing along said general Easterly line North 88° 54' 46" East, 384.58 feet to the True Point of Beginning.

The basis of described bearings is the monument line of said Vallco Parkway, having a bearing of North 88° 54' 46" East as shown on said Parcel Map.

And being designated as Parcel Three of the plat marked Exhibit "A" attached to that certain Lot Line Adjustment recorded on August 22, 2006 as Instrument No. 19069106 of Official Records, and further identified as Lands of JC Penney Properties Inc. New Parcel 3 in Exhibit "C" of said Lot Line Adjustment.

Parcel Three:

The reciprocal and non-exclusive easements, rights, privileges of use, ingress and egress, parking and for utility and other purposes created and granted as an appurtenance to said land, described in that certain Construction, Operation and Reciprocal Easement Agreement between Vallco Fashion Park Venture, Sears, Roebuck and Co.

EXHIBIT A
(Continued)

and Federated Department Stores, Inc., dated as of the 19th day of February 1975, Recorded the 7th day of March, 1975 in Book B309, Page 1, Official Records, Santa Clara County, as amended by (1) First Amendment to Construction, Operation and Reciprocal Easement Agreement Dated as of the 1st day of August, 1975 Recorded August 29, 1975 in Book B591 at Page 434 of said Official Records; (2) Second Amendment to a Restatement of Construction, Operation and Reciprocal Easement Agreement between Vallco Fashion Park Venture, Federated Department Stores, Inc., Sears Roebuck and Co., Inc., and J. C. Penney Properties, Inc., dated as to the 1st day of December, 1975 Recorded September 14, 1976 Book C280 Official Records, Page 296 in said Official Records as Amended by Third Amendment to Reciprocal Easement Agreement Dated September 14, 1976, Recorded June 24, 1977 File No. 5698586; (3) the unrecorded agreement dated as of the 19th day of February 1975, between Vallco Fashion Park Venture and Sears, Roebuck and Co., the unrecorded Agreement of the same date between Vallco Fashion Park Venture and Federated Department Stores, Inc. and the unrecorded Agreement dated as of March 1, 1976 between Vallco Fashion Park Venture and J. C. Penney Properties, Inc. and (4) the undated Agreement and Consent and Approval executed by Vallco Park, LTD., Vallco Fashion Park Venture, Federated Department Stores, Inc. and Sears, Roebuck and Co. Recorded in aforesaid Official Records in Book B309, Page 241 as amended by a First Amendment and Consent and Approval Dated August 1, 1975, by and among the same parties Recorded in the aforesaid Official Records in Book B591, Page 445 as further amended by another Agreement and Consent and Approval Dated as of December 1, 1975, by and among Vallco Center, Inc., Vallco Park Ltd., Federated Department Stores, Inc., Sears, Roebuck and Co. and J.C. Penney Properties, Inc., Recorded September 14, 1976 Book C280 Official Records, Page 484, as amended by Agreement and Consent and Approval Dated September 14, 1976 Recorded June 24, 1977 in Book C946 Page 001 and as amended by (5) Fourth Amendment to Construction, Operation and Reciprocal Easement Agreement between Vallco Fashion Park Venture, Federated Department Stores, Inc., Sears, Roebuck and Co. and J. C. Penney Properties, Inc. Dated May 1, 1979, Recorded October 15, 1980 in Book F656 Official Records, Page 203, and as amended by (6) Fifth Amendment to Construction, Operation and Reciprocal Easement Agreement between Vallco Fashion Park Venture, Federated Department Stores, Inc., Sears, Roebuck and Co., and J. C. Penney Properties, Inc., Dated February 15, 1984 and Recorded February 16, 1984 in Book I310 of Official Records, Page 001, (7) as further amended by Sixth Amendment to Construction, Operation and Reciprocal Easement Agreement between Vallco International Shopping Center, LLC, a California limited liability company; Macy's Development Stores, Inc., an Ohio corporation; Sears, Roebuck and Company, a New York corporation and J.C. Penney Properties, Inc., a Delaware corporation, dated July 14, 2006 and recorded August 25, 2006 as Instrument No. 19079269 of Official Records, (said Construction, Operation and Reciprocal Easement Agreement, as amended, said Agreements as Amended and said Original Agreement and Consent and Approval, as amended are hereinafter referred to collectively as "Construction, Operation and Reciprocal Easement Agreement", in, on, over, upon and under certain adjoining real property therein, more particularly described, together with all of the rights, powers and privileges and benefits under said Construction, Operation and Reciprocal Easement Agreement, accruing to Vallco Fashion Park Venture, Vallco Park, Ltd., and Vallco Center, Inc., their successors, legal representatives and assigns.

Excepting therefrom said rights, powers, privileges and benefits which are not real property or interest in real property.

Also Excepting Therefrom that portion Released by Release and Termination Recorded January 9, 2017, Instrument No. 23552485, of Official Records.

EXHIBIT B

SITE MAP

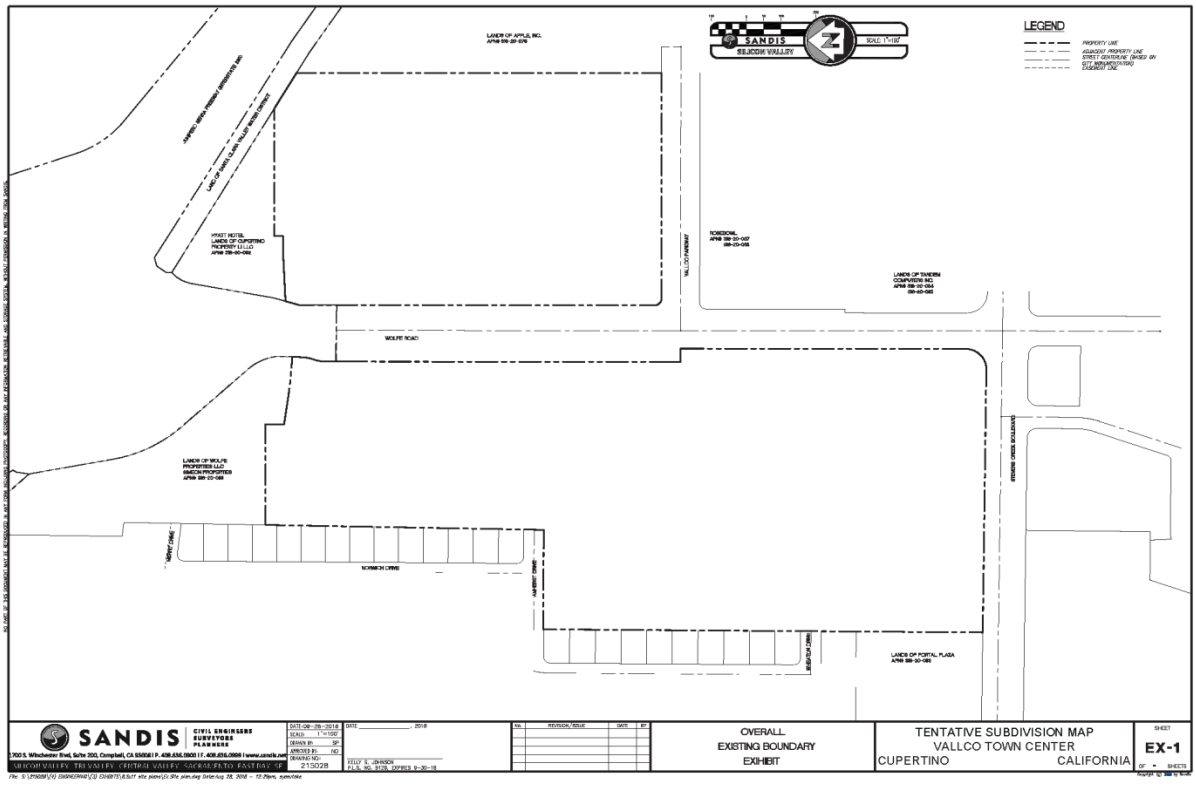

EXHIBIT C

PHASING PLAN

I. Phase 1. At a minimum, the first phase of the Project shall either be, at the election of the Developer, in its sole discretion, Phase 1A or 1B, as each is described below. Developer may proceed with both Phases 1A and 1B at the same time.

a. Phase 1A. Retail and Entertainment District, Excluding Sears (the "**Retail District/Phase 1**")

i. Retail District/Phase 1 shall not include the portion of the Property including the existing Sears department store building.

ii. The Town Square and multi-use pathway and related landscaping shall be completed within 12 months from issuance of the last certificate of occupancy for use of a building in the Retail District/Phase 1, provided that public access and use will be subject to public safety and construction logistics considerations.

iii. All other public open space, street and common area landscaping improvements in the Retail District/Phase 1 shall be completed within 12 months from issuance of the last certificate of occupancy for use of a building in the Retail District/Phase 1, provided that public access and use will be subject to public safety and construction logistics considerations.

iv. Unless part of a tax-credit project, certificates of occupancy for VLI/LI BMR units located in separate building in the Retail District/Phase 1 shall receive their certificates of occupancy prior to the last certificate of occupancy is issued for a market-rate unit building located in the Retail District/Phase 1.

v. Phase 1A shall in no way be contingent on any portion of Phase 1B.

b. Phase 1B. East side of Wolfe Road – the Northeast District

i. Before the final certificate of occupancy (which shall include tenant improvements) is issued for a building in the Northeast District, Developer will have accomplished one of the following: (i) commenced construction of the superstructure for the New City Hall work pursuant to this Agreement or (ii) made the City Hall Payment. Certificates of occupancy (whether for core and shell or tenant improvements) for the Northeast District shall not be delayed, regardless of the status of Phase 1A work.

ii. The East Plaza and all public open space, street and landscaping improvements in the Northeast District shall be completed within 1 year of the final certificate of occupancy is issued for use of the buildings in the Northeast District.

iii. Phase 1B shall in no way be contingent on any portion of Phase 1A.

II. Phase 2. Developer shall not be precluded from commencing Phase 2A and/or Phase 2B, as described below, with the first phase along with at a minimum, Phase 1A. Phase 2B may proceed before Phase 2A, and visa versa.

c. Phase 2. Downtown Neighborhood District

i. West side of Wolfe Road – the Downtown Neighborhood (the "**DN District**")

A. Before the first temporary certificate of occupancy (core and shell) is issued for a building in the DN District, Developer will complete the Town Square and obtain TCOs for core and shell for the retail mixed use buildings (including sign-off of building inspection for rough-in before interior finish work start for residential above) for buildings surrounding the Plaza (as allowed under the Retail District, Phase 1A) and associated parking for those buildings in Phase 1A, the DN District, except to the extent development is delayed because of (i) the continued operation of leases that existed as of the Effective Date, (ii) due to other life safety and other reasonable construction feasibility issues, and (iii) except for the PAC (which is on separate delivery schedule under this Agreement), provided that public access and use will be subject to public safety and construction logistics considerations.

B. Buildings along Wolfe Road, the Town Square and Wolfe Road frontage road improvements for the west side shall be completed prior to building along the interior of the Project in the DN District, provided that public access and use will be subject to public safety and construction logistics considerations.

C. All other public open space, street and common area landscaping improvements in the DN District shall be completed within 12 months of the issuance of the last certificate of occupancy for use of a building in the DN District, provided that public access and use will be subject to public safety and construction logistics considerations.

D. Unless part of a tax-credit project, certificates of occupancy for VLI/LI BMR units located in separate building in the DN District shall receive their certificates of occupancy prior to the last certificate of occupancy is issued for a market-rate unit building located in the DN District.

d. Phase 2B. Retail and Entertainment District, Including Sears (the "**Retail District/Phase 2**")

i. Retail District/Phase 2 shall include the portion of the property including the Sears department store.

ii. All public open space, street and common area landscaping improvements in the Retail District/Phase 2 shall be completed within 12 months of the issuance of the last certificate of occupancy for use of a building in the Retail District/Phase 2, provided that public access and use will be subject to public safety and construction logistics considerations.

iii. Unless part of a tax-credit project, certificates of occupancy for VLI/LI BMR units located in separate building in the Retail District/Phase 2 shall receive their

certificates of occupancy prior to the last certificate of occupancy is issued for a market-rate unit building located in the Retail District/Phase 2.

e. Parking

Parking shall be provided over the course of the Project and no less than commensurately with the occupancy of the buildings with which it is associated. If ever Developer requires additional temporary parking, it shall be allowed to provide temporary parking or other managed parking solutions elsewhere on the Property or in the Plan Area.

EXHIBIT D

HOUSING PLAN

1. Residential Development. A total of 2,668 Residential Units can be developed on the site, including the applicable density bonus, as described in the Vallco Specific Plan. There are no restrictions on rental or for sale rates for Market Rate Units. No more than 50% of the total number of Residential Units, excluding any units financed with Low Income Housing Tax Credits, may be parcelized as condominium units for individual sale.

2. BMR Units. A total of twenty percent (20%) of all Residential Units developed on the Property shall be affordable to Very Low Income Households, Low Income Household and Moderate Income Households (collectively, the "**BMR Units**"). Residential Units that are not BMR Units are permitted to be Market Rate Units. Based on the maximum development of 2,668 Residential Units permitted under this Agreement, 534 Residential Units would be BMR Units.

a. Very Low Income Units. Eleven percent of the base permitted density, or 196 Residential Units (7.34 percent of the total maximum permitted density with the applicable density bonus), would be Very Low Income Residential Units. Very Low Income means the rental rate is set such that it is affordable to a household with an income that is not more than 50% of area median income ("**AMI**"), adjusted for household size appropriate for the unit. All Very Low Income Units will be rental units. Rents for the Very Low Income Units shall be set at an affordable rent as defined in Section 50053 of the Health and Safety Code

b. Low Income Units. 7.66 percent of the Residential Units (when combined with the Very Low Income Units, 15% of the total Residential Units), or 205 Residential Units based on the maximum permitted density, would be Low Income Residential Units. Low Income means the rental rate is set such that it is affordable to a household with an income that is not more than the 80% AMI level, adjusted for household size appropriate for the unit, and may be set lower at the Developer's discretion to compete for Low Income Housing Tax Credit (LIHTC) financing. All Low Income Units will be rental units.

c. Moderate Income Units. Five percent of the Residential Units, or 133 Residential Units would be Moderate Income Residential Units. Moderate Income means the rental rate is set such that it is affordable to a household with an income that is at the 120% AMI level for rental units, adjusted for household size appropriate for the unit, and the sales price is affordable to a household with an income that is at the 150% AMI level for for-sale units.

i. Moderate Income Residential Units may be for lease or sale, as determined by Developer in Developer's discretion; provided that any for-sale Moderate Income Residential Units elected to be provided shall count towards the maximum number of condominium units permitted under Paragraph 1, above.

ii. Prior to issuance of a building permit for a residential building including moderate income BMR units, the BMR units will be designated per the BMR Manual. Deed restrictions will be completed for units in each building before certificates of occupancy for the building are issued.

d. BMR Units. All BMR Units shall be identified before building permits are issued for construction of the building in which the BMR Units are located and deed restrictions recorded prior to issuance of the certificate of occupancy of the building in which the BMR Units are located.

3. BMR Units - Term.

a. Very Low Income and Low Income Residential Units. Very Low Income and Low Income Residential Units must have a restrictive covenant with a term of 55 years and may be located as provided in Paragraph 4(a). Without limiting the affordability requirements in Paragraph 2, above, Developer shall retain flexibility to program BMR buildings with unit types and income levels consistent with then-current LIHTC requirements. Currently for 4% tax credits, household income limits may range up to 80% AMI, as long as the project's average targeting does not exceed 50% AMI. Currently for 9% tax credits, household income limits may range up to 80% AMI, as long as the project's average targeting does not exceed 50% AMI. Accordingly, Low Income Units up to 80% AMI shall be allowed as long as the average targeting complies with LIHTC requirements. The parties acknowledge and agree that averaging may change to conform with then-current LIHTC requirements, and that deeper affordability levels may be required for Developer's tax credit application to be successful.

b. Moderate Income Residential Units. Moderate Income Residential Units must have a restrictive covenant term of 99 years and be located as provided in Paragraph 4(b).

4. Distribution of BMR Units.

a. Very Low Income and Low Income Residential Units. Very Low Income and Low Income Residential Units can be consolidated in separate buildings and/or on separate legal parcels and lots from Market Rate Residential Units to the extent consistent with Section 7.6 of this Development Agreement.

b. Moderate Income Residential Units. Except for separate buildings that are made up entirely of BMR Units, approximately 5% of each residential building must consist of Moderate Income Residential Units and such Moderate Income Residential Units must be disbursed proportionally throughout each residential building.

5. Timing of Delivery of BMR Units.

a. Developer will endeavor to build separate BMR Unit residential buildings at approximately the same time and that BMR units must be developed roughly in proportion with the delivery of market rate units, provided that City recognizes that delivery of BMR units may be affected by and delayed due to market conditions, logistics, and financing considerations.

b. Developer shall use commercially reasonable efforts to obtain, by the earliest reasonable date as appropriate by Project phase, financing for the BMR Units, including, without limitation, timely filing applications for LIHTC financing with TCAC, beginning with the first round for which applications are due following the date on which the City approves Architectural and Site Approval permits for a BMR Building.

c. If efforts to obtain LIHTC financing are not successful in the first submission made with respect to the BMR Units, Developer shall continue to apply for two additional rounds or until successful, whichever occurs first.

d. If Developer is unable to secure LIHTC financing after three rounds of applications to TCAC, Developer shall provide the City with security in a form acceptable to the City in an amount to cover the otherwise applicable City Affordable Housing Fee, and Developer shall be responsible for securing feasible financing for the BMR Units to complete construction within a reasonable timeframe mutually agreed upon by the parties.

6. Management. Developer or its designee is required to prepare and maintain (subject to the City's review and consent) a marketing plan, lottery, and waitlist for the BMR Units that complies with the Housing Mitigation Manual and other applicable City Guidelines for leasing, sale, maintenance, record-keeping, and other factors related to administration of the BMR Units, whether in separate tax credit building or included in market rate buildings. The Developer or its designee is required to follow the City's monitoring and reporting process, including submitting annual reports related to income certification to the City; provided, however, that the City will accept reports submitted to TCAC to satisfy this requirement for BMR Units subject to LIHTC financing. The City may require Developer to pay an annual monitoring fee to cover the City's costs (including outside consultant, legal, and staff time) of ensuring compliance with the requirements of this Housing Plan for BMR Units. Applicants, tenants, and prospective purchasers (if applicable) would have the ability to appeal determinations of the Developer's program administrator to the City's hearing officer before determinations are final. In the event of an appeal, all parties will cooperate in the timely provision and review of material to facilitate a final decision before a unit is transferred to a prospective renter or purchaser or before Developer's program administrator provides a notice of termination, as applicable.

7. Unit size and comparability; parking; amenities.

a. Developer has discretion regarding comparability of finishes in all BMR Units, provided that construction, features and finishes are durable, of good quality, and consistent with contemporary standards for new housing.

b. In all Moderate Income Residential Units, the number of bedrooms per unit shall be generally proportional to the number of bedrooms in the Market Rate Units consistent with the City's BMR Manual, provided that the Developer may substitute 2-bedroom Moderate Income Residential Units for Market Rate Units with three or more bedrooms. The number of bedrooms per unit shall be "generally proportional" if the Moderate Income Residential Unit bedroom mix is within 10% of the Market Rate Unit bedroom mix. The bedroom mix for Very Low Income and Low Income Residential Units may be flexible to optimize the unit mix for a competitive LIHTC application.

c. Unit sizes of Moderate Income Residential Units may be flexible, provided that the bedroom requirements establishing in Paragraph 7(b) are satisfied. Unit sizes may be reduced for Very Low Income and Low Income Residential Units that are provided in separate buildings.

d. For all BMR Units, automobile parking spaces shall be provided consistent with the Specific Plan, with the Developer retaining flexibility to assign such spaces based on household requirements, and if parking for the Market-Rate Units is unbundled, then Developer may do the same for Moderate Income Residential Units. In Moderate Income Residential Units distributed throughout the Project, Developer shall allocate and assign bicycle storage, storage lockers, and other spaces reserved for use by individual units to the Moderate Income Residential Units on the same basis as for the Market Rate Units.

e. Tenants of all BMR Units shall generally have equal access to the Project's common areas as is given to the residents of the Market Rate Units, provided that (i) residents of one building are not required to be given access to amenities in other buildings where such amenities are limited for the use of residents of that building and (ii) residents of BMR units, as well as residents of certain types of Market Rate Units, will not have access to certain common area amenities offered exclusively to (a) residents of premium Market Rate Units or (b) residents of senior Residential Units, at the sole discretion of Developer.

8. Affordable Housing Agreement. Prior to issuance of the first building permit, Developer and City shall enter into and record an Affordable Housing Agreement, which shall address, among other things: BMR Unit delivery schedule and locations, a definition of what is included in rent, unit comparability, marketing guidelines, tenant selection and income certification processes, affordability covenants and enforcement provisions, occupancy requirements, income monitoring, provisions regarding termination of occupancy, forms of lease or key lease provisions, records and reporting, operation, management, use and maintenance of property, including with respect to landscaping and open space and participation in Project owners'/tenants' association and transportation program. The Affordable Housing Agreement shall have priority over the liens of any Mortgages, and Developer shall use good faith diligent efforts to cause any Mortgagees with Mortgages in place at the time the Affordable Housing Agreement is recorded to execute, acknowledge and deliver to City subordination agreements in a form reasonably acceptable to the City Attorney subordination the liens of such Mortgages to the Affordable Housing Agreement.

9. Senior Housing. The permitted Market-Rate Residential Units include at least 80 senior Residential Units, whether for rent or for sale at Developer's discretion, provided that any for-sale senior units elected to be provided shall count towards the maximum number of condominium units permitted under Paragraph 1, above. Age restrictions on Senior Housing shall be according to State law.

EXHIBIT E

ANNUAL REVIEW FORM

This Annual Review Form is submitted to the City of Cupertino ("**City**") by _____ ("**Developer**") pursuant to the requirements of California Government Code section 65865.1 and Chapter 19.144 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 permit applications and constructing and selling or leasing individual components of the Project 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:

- New City Hall Agreement (if applicable)
- PAC Agreement (if applicable)
- Affordable Housing Agreement

Specify whether applicable 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:

- TIF
- Affordable Housing

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

- New City Hall (or City Hall Payment if applicable)
- PAC (or PAC In Lieu Payment if applicable)
- School District obligations
- Transportation obligations

- Housing, including affordable housing, obligations

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:

_____, a _____

By: _____

Name: _____

Title: _____

EXHIBIT F

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

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**."

R E C I T A L S

A. Assignor and the City of Cupertino, a California municipal corporation ("**City**") have entered into that certain Development Agreement dated as of _____, 2018 ("**DA**") which was recorded in the Official Records of Santa Clara County on _____, 2018 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 _____.**]

A G R E E M E N T S

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. [*If partial transfer, parties to insert allocation of rights, duties and obligations under the DA between the transferred Property and the retained Property and acknowledgements regarding timing of development based on phasing and other DA requirements*]

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:

[**to be inserted**]

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

ACKNOWLEDGMENT

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

State of California)
) 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)

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

ACKNOWLEDGMENT

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

State of California)
) 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 G

NEW CITY HALL CRITERIA

The New City Hall shall be generally in conformance with the adopted 2015 Civic Center Master Plan and Negative Declaration as modified to include the following:

I. Scope included:

a. 40,000 sq. ft. two story Core & Shell (warm) New City Hall building. Included in the building cost is a premium for providing a critical facility within the building.

b. Approximately 118 stalls one level underground garage

c. Associated site work in the construction area to connect into existing site work area as follows

i. The new Parking Lot Asphalt to connect to the existing parking lot asphalt and will be similar standards of existing asphalt

ii. The New City Hall building will be connected via a pedestrian concrete sidewalk to the existing Library/Civic Plaza per the City sidewalk standards

iii. The other sides of the New City Hall building namely, the parking lot side, Torre and Rodriguez side will have connection (Steps)/ Sidewalks. These sidewalks will be per City per the City standards.

II. The following items from the attached modified Civic Center Master plan sketches (collectively, the "**Excluded Items**") are **NOT** included in the New City Hall scope:

1. Library expansion and the plaza improvements

2. Tenant Improvement scopes of work for the 2 story City Hall building

3. Green roof or solar panels – See III (11) below.

4. Additional below grade parking shown in the Master Plan

5. Additional parking on the library fields shown in the Master Plan

III. The included scope in I. above is based on the following design criteria:

1. Concrete one level parking garage with shotcrete walls included and furnished with Code minimum fire sprinklers system, fire alarm system and lighting.

2. The New City Hall building will be core and shell (warm shell box) where the box will consist of building envelope and roof.

3. Mechanical units will be provided on the roof and will be stubbed into the building for distribution under tenant improvement scope performed by City.

4. All utilities including fire stand pipe will be stubbed in to the building for TI to distribute.

5. Electrical panels will be provided and electrical services will be brought from the existing transformer connection location point into the building to a location to be shown in the construction drawings.

6. The exterior envelope will be either wood frame with stucco and glass windows or metal stud framing with stucco and glass windows.

7. Store front doors will be provided. All exterior doors and hardware will be provided.

8. All utility connections from the existing connection points to be brought into the building to a location to be shown in the construction drawings.

9. The site work in the construction zone is included to have standard landscaping with irrigation and the parking lot to be asphalt, and concrete sidewalks commensurate with existing improvements. Any damage to be restored to original state.

10. The C & S of the building design to LEED Silver only.

11. Roofing will be an industry standard roofing material.

12. Roof will be designed and built to allow for solar panels to be installed by the City.

In addition to above scope and design criteria items,scope, Developer will provide a $4 Million allowance to City to use for any of the following in City's discretion:

1. The incremental costs of any design upgrades to the included design criteria in this DA that City desires be included in the scope for the New City Hall.

2. The incremental costs to be borne by City pursuant to the terms of the Agreement as a result of delays due to Litigation Challenges and its impacts on schedule and consequent cost escalations.

The construction of the New City Hall is subject to the following:

1. Except as otherwise required by Applicable Law, Developer does not have to follow the Public Contracting Code requirements in procuring contractors and materials.

2. Developer will use union affiliated general contractors and require the general contractor to hire union skilled crafts sub-contractors in constructing City Hall or, if required under Applicable Law, comply and cause its contractors and subcontractors to comply with Prevailing Wage Laws.