RESOLUTION NO. _____

A RESOLUTION OF THE CITY OF SANTA CLARA, CALIFORNIA APPROVING AND ADOPTING A SECOND AMENDMENT TO THE DISPOSITION AND DEVELOPMENT AGREEMENT BETWEEN THE CITY OF SANTA CLARA AND RELATED SANTA CLARA, LLC, FOR RELATED SANTA CLARA PROJECT LOCATED AT 5155 STARS AND STRIPES DRIVE, SANTA CLARA

Addendum to the City Place Santa Clara Environmental Impact Report (SCH #2014072078)
PLN24-00060 (General Plan Amendment, Rezoning, and Development Agreement Amendment)

WHEREAS, on January 31, 2024, Related Santa Clara, LLC ("Developer"), filed a development application to modify the approvals for a mixed-use development project for the approximately 240-acre City-owned site generally located north of Tasman Drive, east of Great America Parkway and San Tomas Aquino Creek, west of Guadalupe River, and south of State Route 237 (APNs: 104-03-043, 104-03-042, 104-03-041, 104-03-036, 104-01-102, 097-01-039, and 097-01-073), most of which was formerly occupied by a landfill, Santa Clara Golf & Tennis Club, Fire Station 10, and is now occupied by a Bicycle-Motocross (BMX) track, the Ameresco Methane Plant, the Eastside retention Basin, and vacant lots ("Project Site"); and

WHEREAS, on June 28, 2016, the City Council: certified the Santa Clara City Place Environmental Impact Report ("EIR") [SCH #2014072078] and adopted a set of CEQA Findings, a Statement of Overriding Considerations, and a Mitigation Monitoring and Reporting Program ("MMRP") in accordance with the requirements of the California Environmental Quality Act ("CEQA"); adopted a General Plan Amendment changing the Project Site's land use designation to Urban Center/Entertainment District and making corresponding text and figure changes throughout the General Plan; approved a rezoning of the Project Site to the Planned Development - Master Community (PD-MC) Zoning designation governed by the accompanying Master Community Plan ("MCP") for the Related Santa Clara project (the "Approved Project," previously known as "City Place"); and approved a Development Agreement ("DA") and a Disposition and Development Agreement ("DDA") to define the Developer's obligations to

develop the Approved Project and define terms for ground leasing the Project Site to the Developer; and

WHEREAS, in 2020 and 2021, the City adopted First, Second, and Third Addenda to the 2016 Santa Clara City Place EIR in connection with its approval of the Development Area Plan ("DAP") for Phase 1, the DAP for Phase 2, and the City Place Revised Soil Import and Earthwork Plans Project, respectively (together, the First, Second, and Third Addenda to the 2016 EIR constitute the "Santa Clara City Place EIR"); and

WHEREAS, the Developer proposes to modify the Approved Project to allow a range of light industrial uses on Parcels 1 and 2 (APN 097-01-073 and 097-01-039) of the Project Site in conjunction with the already-approved office, retail, commercial, hotel, residential, and park and open spaces uses allowed throughout the Project Site without modifying the 9.16 million gross square feet of development or overall development intensities already allowed on the Project Site (the "Proposed Project"); and

WHEREAS, the Developer has applied to amend the General Plan land use designation applicable to the Project Site to allow for a range of light industrial uses within the Urban Center/Entertainment District ("General Plan Amendment"); and

WHEREAS, the Developer has simultaneously applied for a Zoning amendment that proposes a text amendment to revise the permitted uses under the PD-MC Zoning designation to include a range of light industrial uses as permitted or conditionally permitted uses within that Zoning district and add a new "Scheme C" land use scenario to the MCP, as more particularly described in the attached MCP Scheme C Supplement (the "Zoning Amendment"); and

WHEREAS, the Developer has also requested to amend its existing Development Agreement ("DA") with the City to incorporate provisions related to the Proposed Project ("DA Amendment"), and City staff have negotiated and recommend the DA Amendment; and

WHEREAS, the Developer has also requested to amend its existing Disposition and Development Agreement (as previously amended, the "DDA") with the City to incorporate

provisions related to the Proposed Project, and City staff have negotiated and recommended a draft DDA amendment, which is attached as an Exhibit to this Resolution and incorporated herein by this reference ("Second Amendment to the Disposition and Development Agreement" or the "DDA Amendment", and the DDA Amendment, together with the General Plan Amendment, Zoning Amendment, and DA Amendment are the "Project Approvals"); and

WHEREAS, the DDA Amendment and the Project documents contemplated therein, including ground leases for the Project Site, will provide the City with fair market value for the Project Site, taking into account the development and market risk, extraordinary up-front costs, and reasonable private development return expectations; and

WHEREAS, prior to approval of the DDA, the City made findings that the transaction complied with Section 54220 et seq. of the California Government Code (the "Surplus Lands Act") as it existed at the time, and the City incorporates such findings herein by reference; and

WHEREAS, on May 6, 2025, the City Council held a Study Session focused on the Proposed Project, public comments and the Project Approvals; and

WHEREAS, in order to ensure that all potential environmental impacts of the Proposed Project were thoroughly analyzed, the City caused a fourth Addendum to the Santa Clara City Place EIR ("Addendum") to be prepared in accordance with CEQA Guidelines Section 15164; and

WHEREAS, prior to taking action on this Resolution, the City Council has exercised its independent judgement and reviewed and considered the Santa Clara City Place EIR and the Addendum and concluded that, for the reasons set forth in the Addendum, no further environmental review is required for the modifications to the Approved Project contemplated by the Proposed Project; and

WHEREAS, on June 18, 2025, a notice of public hearing the July 8, 2025, City Council Hearing for this item was published in the *Santa Clara Weekly*; and

WHEREAS, on June 18, 2025, a notice of public hearing for the July 8, 2025, City Council Hearing for this item was mailed to property owners within a 1,000 foot radius of the Project Site boundaries; and

WHEREAS, pursuant to SCCC Section 18.146.020, on June 26, 2025, notice of the City Council Hearing on July 8, 2025, was posted at City Hall, the Central Park Library, the Mission Branch Library, the Northside Branch Library, and on the City's website; and

WHEREAS, on July 8, 2025, the City Council held a duly noticed public hearing to consider the Addendum to the Santa Clara City Place EIR, the MMRP included as Appendix A to the Addendum identifying applicable mitigation measures from the original MMRP, the Project Approvals, and all pertinent information in the record during which the City Council invited and considered any and all verbal and written testimony and evidence offered in favor of and in opposition to the Proposed Project.

NOW THEREFORE, BE IT RESOLVED BY THE CITY OF SANTA CLARA AS FOLLOWS:

1. The City Council hereby finds that the above Recitals are true and correct and by this reference makes them a part hereof.

2. The City Council hereby approves the Second Amendment to the Disposition and Development Agreement, and hereby authorizes and directs the City Manager to sign the DDA Amendment (i) substantially in the form attached as an Exhibit hereto, or (ii) in the City Manager's discretion, in consultation with the City Attorney, in a form that consolidates the existing DDA (as previously amended) and the amendments set forth in the attached form of DDA Amendment into a single Amended and Restated Disposition and Development Agreement, and in either case subject to such minor and clarifying changes consistent with the terms thereof as may be approved by the City Manager in consultation with the City Attorney prior to execution thereof.

3. The Resolution, including the Second Amendment to the Disposition and Development Agreement approval described in Section 2 above, is based on the findings set forth above, the Addendum to the City Place Santa Clara EIR, the Addendum to the City Place Santa Clara EIR Resolution, the General Plan Amendment, the Development Agreement Amendment, and the Rezoning.

4. The City Manager is further authorized and directed to perform all other acts, enter into all other agreements and execute all other documents necessary or convenient to carry out the purposes of this Resolution and the Second Amendment to the Disposition and Development Agreement.

5. If any section, subsection, sentence, clause, phrase, or word of this Resolution is for any reason held by a court of competent jurisdiction to be unconstitutional or invalid for any reason, such decision shall not affect the validity of the remaining portions of the Resolution. The City of Santa Clara, California, hereby declares that it would have passed this Resolution and each section, subsection, sentence, clause, phrase, and word thereof, irrespective of the fact that any one or more section(s), subsection(s), sentence(s), clause(s), phrase(s), or word(s) be declared invalid.

6. Effective date. This Resolution shall take effect at such time as Ordinance No. XXXX approving the Development Agreement becomes effective, and if such Ordinance has not become effective by December 31, 2025, this Resolution shall be deemed to be void and of no further force or effect.

I HEREBY CERTIFY THE FOREGOING TO BE A TRUE COPY OF A RESOLUTION PASSED AND ADOPTED BY THE CITY OF SANTA CLARA, CALIFORNIA, AT A REGULAR MEETING THEREOF HELD ON THE 8TH DAY OF JULY 2025, BY THE FOLLOWING VOTE:

AYES:	COUNCILORS:
NOES:	COUNCILORS:
ABSENT:	COUNCILORS:
ABSTAINED:	COUNCILORS:

ATTEST: _____
NORA PIMENTEL, MMC
ASSISTANT CITY CLERK
CITY OF SANTA CLARA

Attachments incorporated by reference:

1. Disposition and Development Agreement Second Amendment

SECOND AMENDMENT TO DISPOSITION AND DEVELOPMENT AGREEMENT

City Place Santa Clara

This Second Amendment to the Disposition and Development Agreement ("**Second Amendment**") is entered into as of _____, 2025 (the "**Second Amendment Effective Date**"), by and between the City of Santa Clara ("**City**"), a chartered municipal corporation, and Related Santa Clara, LLC ("**Developer**"), a Delaware limited liability company.

R E C I T A L S

This Second Amendment is made with reference to the following facts, intentions and understandings of the Parties:

A. Background. The City and Developer entered into that certain Disposition and Development Agreement dated August 12, 2016 (as amended from time to time, the "**Agreement**") for the development of City Place Santa Clara. Defined terms in this Second Amendment have the meanings ascribed to them in the original Agreement.

B. Scheme C Variant. At the request of Developer, the City adopted an amendment to the Master Community Plan in the form of a Master Community Plan Scheme C Supplement (City Council Resolution No. 25-_____). The Master Community Plan Scheme C Supplement authorized a new Scheme C Variant that includes the same total development area as Scheme A and Scheme B, having a total of approximately 9,164,400 square feet of mixed use, but would include (i) approximately 800,000 of retail; (ii) the same number of hotel rooms and residential units as Scheme A; (iii) approximately 4,517,400 square feet of office on Parcel 4; and (iv) approximately 1,600,000 square feet of light industrial uses on Parcels 1 and 2 (as described in the Master Community Plan Scheme C Supplement, the "**Scheme C Variant**").

C. Environmental Review. The City analyzed the potential environmental impacts of the proposed Scheme C Variant and adopted a Fourth Addendum to EIR (City Council Resolution No. 25-_____), in which it determined that the use of the Project Site under the Agreement, as amended for the Scheme C Variant, are included within the scope of the Project EIR in that the potential environmental impacts of the development and use of the Project Site for the Scheme C Variant under the DDA and the Master Community Plan are addressed in the Project EIR.

D. Scheme C Variant Project Approvals. Following the City's approval of the Fourth Addendum, the City took the following actions to implement the Scheme C Variant, all of which are deemed to be included within the definition of "Project Approvals" as set forth in the Agreement:

Amendments to the Santa Clara General Plan to include a Light Industrial land use for Parcels 1 and 2 and related minor text amendments (City Council Resolution No. 25-_____);

Amendments to the PD-MC zoning as applicable to the Project Site and adoption of the Master Community Plan Scheme C Supplement (City Council Resolution No. 25-_____);

Amendments to the Development Agreement (City Council Ordinance No. 25-_____);

Approval of this Second Amendment by City Council Resolution No. _____, and authorizing the City Manager to incorporate the First Amendment to Disposition and Development Agreement and this Second Amendment into an Amended and Restated Disposition and Development Agreement. For purposes of this Second Amendment, revisions to the original Agreement are shown in blue for additions, red for deletions and green for moved or repositioned text.

A G R E E M E N T

In consideration of the foregoing Recitals, which are hereby incorporated into this Second Amendment as if set forth in full, the Parties hereby agree as follows:

Disposition and Development Agreement Amendments

Section 1.2.1 of the Agreement is hereby amended and restated in its entirety to read as follows:

> 1.2.1 Subdivision. Master Developer intends to submit to the City an application for the Tentative Map in accordance with CSCC Chapter 17.05 (Subdivisions), as may be amended from time to time, in order to create the Airspace Parcels and the Landfill Parcels. The Airspace Parcels as shown on the Tentative Map will consist of those Development Parcels that are congruent with the footprint of the City Landfill Parcels but located above the top of the fill layer of the landfill cap, as more particularly described in the Landfill Operation and Management Term Sheet attached hereto as Exhibit M (the "**Landfill O&M Term Sheet**"), but excluding any public streets. Within thirty (30) days after recordation of the First Final Map creating the Airspace Parcels, the Parties shall prepare an Exhibit B-2 that will be appended to this Agreement and become a part thereof that shall set forth the legal description of the Landfill Parcel and the Airspace Parcels. Each Phase of development will be conveyed to the Phase Developer by reference to a subsequent phased Final Map or a metes and bounds description that in either case is consistent with the corresponding Airspace Parcel as shown on the Tentative Map; provided, however, that if the Phase is conveyed by a metes and bounds description, the applicable Phase Developer will be required to record a phased Final Map covering the applicable Phase prior to issuance of the first building permit within the applicable Phase. Each Ground Lease requires the parties to process a boundary adjustment through a lot line adjustment or other legal process upon Completion of the applicable Infrastructure in order to finally determine the boundaries of the applicable Airspace Parcel that is subject to the Ground Lease. The Parties anticipate that each Final Map will identify the Building parcels that are anticipated to be divided into and operated as separate condominium projects. The timing for approvals and filings of Tentative Maps and Final Maps shall be governed by Section 9.5 hereof.

Section 1.5 of the Agreement is hereby amended and restated in its entirety to read as follows:

1.5 Master Developer's Role Generally. Master Developer shall be the master developer for the Project, coordinating the development of the Project in cooperation with City, Phase Developers and others as more fully provided herein. Either Master Developer or an assignee of Master Developer pursuant to a "Permitted Transfer," as described in Section 22.6.1(b) shall have the obligation to serve as the Phase Developer for Phase 1 and 2, as shown on the Phasing Plan attached hereto as Exhibit E. If the Scheme C Variant is selected as provided under Section 6.2.1(c), then either Master Developer or an assignee of Master Developer pursuant to a "Permitted Transfer" as described in Section 22.6.1(b) or a "Scheme C Consent Transfer" as described in Section 22.4.2(b) shall have the obligation to serve as the Phase Developer for any Phase within Parcels 1 and 2 that is Taken Down by Master Developer or its designated Phase Developer(s). Subject to its timely Take Down of Phases 1, 2 and 2A, Master Developer, on behalf of itself or an Affiliate, retains the exclusive option to Take Down Phases 3 through 7 as the Phase Developer thereof in accordance with the terms of this Agreement; provided, however, that the failure of Master Developer to Take Down any Phase other than Phases 1, 2 and 2A shall not affect its option to Take Down future Phases. For the avoidance of doubt, Master Developer, on behalf of itself or an Affiliate, shall not be required to exercise its Phase Option and Take Down all or any portion of Phase 2 or Phase 2A as a prerequisite to its ability to exercise its Phase Option and Take Down any Phase that includes a portion of Parcels 1 or 2 (each Phase Option exercise and Take Down of any Phase that includes Parcel 1 or Parcel 2 that occurs before Phase 2 or Phase 2A, an "Early Take Down"); provided, however, that except as provided in Section 1.7 and Section 3.2.3, an Early Take Down shall not affect the Schedule of Performance applicable to Phase 2 or Phase 2A, or the City's remedies for Master Developer's failure to Take Down Phase 1, Phase 2 or Phase 2A by the applicable Outside Dates therefor in the Schedule of Performance, subject to Excusable Delay, as provided in Section 21.2.1(b). In addition to Master Developer's other rights and obligations under this Agreement, Master Developer remains obligated to City for the payment of all Financial Obligations hereunder. The procedures applicable to Master Developer's exercise of an Early Take Down are as set forth in Section 3.2.3.

Section 1.7 of the Agreement is hereby amended to add the following sentence at the end of the paragraph.

The Schedule of Performance includes a Scheme C Overlay Schedule of Performance that applies to the Project unless Land Take Down for Phase 2 occurs before the first applicable Scheme C SOP Overlay Phase Option Notice Outside Date, as more particularly described in Section 3.2.3.

Section 3.1 of the Agreement is hereby amended and restated in its entirety to read as follows:

3.1 Phasing Plan. The development of the Project will take place over a total of up to eight (8) Phases, each of which is conceptually illustrated on the Phasing Plan attached hereto as Exhibit E. The Phasing Plan illustrates on a conceptual level the

size, and order of the Phases, given City's and Master Developer's best estimates of the conditions forecast for the expected development period; however, this Agreement anticipates that other than Phases 1, 2 and 2A (and except as otherwise provided under Section 3.2.3 with respect to an Early Take Down), the subsequent Phases as shown on the Phasing Plan may be reconfigured, re-ordered and/or developed in partial Phases, subject to the provisions of Article 4 hereof. Notwithstanding the foregoing, Master Developer's rights and obligations with respect to Phase 2A shall be as set forth in Section 4.8 below.

Section 3.2.2 of the Agreement is hereby amended and restated in its entirety to read as follows:

3.2.2 All Subsequent Phases. Subject to the fulfillment of its obligations under Section 3.2.1 above for Phases 1, 2 and 2A (and except as otherwise provided under Section 3.2.3 hereof with respect to an Early Take Down), Master Developer shall have the right, but not the obligation, to exercise Phase Options for, and to Take Down, Phases 3 through 7. The Take Down of the remainder of the Phases and subsequent development of each Phase may occur in any sequence or order Master Developer chooses, including concurrently, subject to compliance with the provisions of this Agreement.

The following new Section 3.2.3 of the Agreement is hereby added to the Agreement:

3.2.3 Early Take Down.

(a) Early Take Down Generally. Notwithstanding anything to the contrary in this Agreement (including Section 3.2.1 or Section 3.2.2 hereof) and without limiting the City's remedies under Section 21.3 (Remedies) and Section 21.4 (Termination) for Master Developer's failure to Take Down Phase 1, Phase 2 or Phase 2A by the applicable Outside Dates therefor in the Schedule of Performance, Master Developer, on behalf of itself or an Affiliate, shall have the right to exercise an Early Take Down at any time before or after exercising its Phase Option and/or Taking Down all or any portion of Phase 2 or Phase 2A, and shall have the obligation to exercise an Early Take Down in accordance with the Scheme C SOP Overlay if Land Take Down for Phase 2 has not occurred by the first applicable Scheme C SOP Overlay Phase Option Notice Outside Date (as further provided in Section 3.2.3(b)). For the avoidance of doubt and ease of administration, the exercise of an Early Take Down shall not result in the renumbering of Phase 1, Phase 2, Phase 2A or Phase 3 for purposes of this Agreement. For example, if Master Developer exercises its Phase Option for Parcel 1 prior to Take Down of Phase 2, Parcel 1 shall be considered "Phase 4".

(b) Scheme C Schedule of Performance. Exhibit F (Schedule of Performance) also includes a Schedule of Performance Scheme C Overlay (the "Scheme C SOP Overlay") that sets forth Outside Dates for Phase Option Notice, DAP Submittal, Land Take Down and Commencement of Construction of

Infrastructure for each Phase within Parcels 1 and 2 under Scheme C. The Scheme C SOP Overlay will be triggered only if Land Take Down for Phase 2 has not occurred by the first applicable Scheme C SOP Overlay Phase Option Notice Outside Date. Once triggered, the next applicable Outside Date will be the earlier to occur of (i) the Outside Date in the Schedule of Performance for the Phase 2 Phase Option Notice; or (ii) the Outside Date in the Scheme C SOP Overlay for the next Parcel 1 or 2 Phase Option Notice. If the Scheme C SOP Overlay Outside Date occurs first, then the same framework will apply to all future Phases going forward. If the Phase 2 Schedule of Performance Outside Date occurs first, then the original Schedule of Performance will govern all future Outside Dates. Schedule 3.2.3, attached to this Agreement, sets forth examples of the application of the Scheme C SOP Overlay.

The following new Section 4.1.1(f) of the Agreement is hereby added to the Agreement:

(f) If Multiple Ground Leases are contemplated as provided in Section 4.2.2, the proposed number of Multiple Ground Leases within the Phase, the general geographic boundaries of each and the allocation of Base Rent for each Ground Lease.

Section 4.1.2 of the Agreement is hereby amended and restated in its entirety to read as follows:

4.1.2 Phasing Criteria. The parties acknowledge and agree that many factors, including, but not limited to, general economic conditions, the local housing market, capital markets, general market acceptability, the adequacy of municipal services, and local tax burdens, will determine the rate at which various product types within the Project can be developed and absorbed. Therefore, with the exception of Phases 1, 2 and 2A (and except as otherwise provided under Section 3.2.3 with respect to an Early Take Down), the boundaries and order of development for each Phase shall be established by Master Developer in connection with its exercise of each Phase Option, so long as any change in Phase boundaries meets the following criteria (collectively, the "Phasing Criteria"): (i) all Phase boundaries depicted in the Phasing Plan remain consistent overall with the Phase boundaries for the EOS Variant (and, if selected, the Scheme C Variant), as shown in the MCP, provided, however, that with the exception of Phases 1, 2 and 2A, each designated Phase is not required to be consistent with the conceptual phasing descriptions set forth in Section 2.3 of the MCP (or Section 2C.3 of the Scheme C Supplement, if selected); (ii) any proposed changes to the Phasing Plan shall not change the dates set forth in the Schedule of Performance (unless extended as permitted hereunder for Excusable Delay); and (iii) no Phase shall be reconfigured such that more than twenty percent (20%) of its land area is reallocated to another Phase or Phases and further provided that Phase 2A shall not be reconfigured without the prior written consent of City, in its sole discretion.

Section 4.2 of the Agreement is hereby amended and restated in its entirety to (i) add a new Section heading, (ii) amend existing Section 4.2 and renumber it as Section 4.2.1, and (iii) add a new Section 4.2.2, all as follows:

4.2 Partial Phases and Multiple Phase Ground Leases.

4.2.1 Partial Phases. Upon Master Developer's election, Master Developer shall have the option to submit a Phase Option Notice in accordance with Section 4.1 above for less than all of the land within the boundaries of a particular Phase (as applicable, a "Partial Phase"), except for Phase 2A, for which Master Developer shall not have a Partial Phase option and which shall governed by the provisions of Section 4.8, below.

(a) Partial Phase Criteria. In addition to the requirement that the overall Phase meet the Phasing Criteria set forth in Section 4.1.2, above, any such proposed Partial Phase must meet the following criteria (the "Partial Phase Criteria"), except to the extent otherwise Approved by the City Manager:

(i) The total acreage of such Partial Phase shall be no less than twenty (20) acres; and

(ii) City shall have determined that any remaining portion of the Phase, as shown in the Phasing Plan proposed as part of the applicable Phase Option Notice, constitutes a developable area.

(b) Nomenclature. The first Partial Phase within a Phase shall be referred to in the Phasing Plan and known as "[Phase Number]-A," the second Partial Phase shall be referred to in the Phasing Plan and known as "[Phase Number]-B," and so forth.

(c) Modifications to Allowed Square Footage Table. If any Phase Option Notice is delivered to City for a Partial Phase after the date upon which City and Master Developer have conclusively determined the Allowed Square Footage Table pursuant to Article 10, below, then concurrently with the Phase Option Notice, Master Developer shall deliver to City a modified Allowed Square Footage Table in accordance with Section 10.2, below. City and Master Developer shall work together to finalize the modified Allowed Square Footage Table in accordance with the Approval procedure outlined in Section 10.1, below.

(d) Timing. The failure to meet a Phase Outside Date (as such term is defined in Article 7, below) for any portion of a Phase shall be governed by Article 7, below; provided, however, that submittal of a Phase Option Notice for the first Partial Phase in Phases 4 through 7 shall adjust the Phase number and Phase Outside Date for all future Phases. By way of

example only, and not limitation, if Phase 6 were partially Taken Down prior to any portion of Phase 5 being taken down, then Phase 6 would become Phase 5 for the purposes of this Agreement, and the Phase Outside Dates formerly applicable to Phase 5 would apply to the Phase 6 boundaries instead; however, if Phase 5 were partially Taken Down and subsequently Phase 6 were partially Taken Down, then the Phase Outside Dates applicable to Phase 5 would apply to the property within the boundaries of Phase 5, and the Phase Outside Dates applicable to Phase 6 would apply to the property within the boundaries of Phase 6.

(e) Partial Phases for City Center Phases. The City Center Phases may be Taken Down as Partial Phases subject to the foregoing Partial Phase Criteria, provided, however, that a Partial Phase Take Down any of such City Center Phases shall not adjust the Phase numbers or the Phase Outside Dates for those Phases and the Base Rent for a Partial Phase within such Phases shall be calculated in accordance with Section 6.3.3 hereof.

(f) Terminology. For the purposes of this Agreement, any use of the term "Phase" shall be deemed to mean one or more Partial Phases, as the context requires.

4.2.2 Multiple Ground Leases. Whether or not Master Developer elects to Take Down Partial Phases in accordance with Section 4.2.1, Master Developer shall have the right to take down each Phase in multiple Ground Leases (as applicable to each Phase, the "Multiple Ground Leases"), subject to compliance with Section 6.6, except for Phase 2A, for which Master Developer shall not have a Multiple Ground Lease option and which shall be governed by the provisions of Section 4.8, below

(a) Multiple Ground Lease Criteria. In addition to the requirement that the overall Phase meet the Phasing Criteria set forth in Section 4.1.2, above, each Multiple Ground Lease must meet the following criteria (the "**Multiple Ground Lease Criteria**"), except to the extent otherwise Approved by the City Manager.

(i) Master Developer shall have a right to up to three Multiple Ground Leases within each Phase of Parcels 1 and 2 so long as the City shall have determined that the premises under each Multiple Ground Lease and any remaining portion of the applicable Phase constitutes a developable area. City approval in connection with the applicable DAP approval, or subsequently, by and through the City Manager, shall be required for any number of Ground Leases in excess of three Multiple Ground Leases within each Phase of Parcels 1 and 2, provided, however, that City shall not withhold its consent if Master Developer provides reasonably detailed evidence that such additional Multiple Ground Leases are reasonably required to facilitate leasehold financing or attract desirable tenants and the City shall

have determined that the premises under each Multiple Ground Lease and any remaining portion of the applicable Phase constitutes a developable area. The parcel that is the subject of each Multiple Ground Lease shall be a legal parcel for purposes of compliance with the Subdivision Map Act.

(ii) Master Developer shall have a right to enter into Multiple Ground Leases for each Phase within Parcel 4 to be established in connection with each applicable Parcel 4 DAP. Master Developer shall identify the proposed number and boundaries of the Multiple Ground Leases in each Phase Option Notice, if known, and in each applicable DAP application. As part of its approval of the applicable DAP application, the City shall not withhold its consent to Multiple Ground Leases for each Phase on Parcel 4 if the request meets the following criteria: (i) Master Developer provides evidence from third-party experts reasonably satisfactory to the City that the requested Multiple Ground Leases in the size and location requested are the minimum reasonably required to facilitate leasehold financing and/or attract desirable tenants; (ii) the City shall have determined that the premises under each Multiple Ground Lease, and any remaining portion of the Phase, constitutes a developable area; and (iii) the total number of Multiple Ground Leases will not exceed ten (10) within Phase 2 or three (3) within each of Phase 3 and the Northwest Office Parcel. The parcel that is the subject of each Multiple Ground Lease shall be a legal parcel for purposes of compliance with the Subdivision Map Act. If additional Multiple Ground Leases are subsequently requested after City Council approval of the applicable DAP application, such additional Multiple Ground Leases may be approved by the City Manager, subject to the Multiple Ground Lease Criteria.

(iii) The annual Base Rent applicable to the Phase to be Taken Down in Multiple Ground Leases shall be allocated amongst the Multiple Ground Leases in accordance with Section 6.8, or otherwise equitably allocated with the City's approval such that there shall be no decrease to the City of the applicable annual Base Rent applicable to the entirety of the Phase.

(iv) Each Multiple Ground Lease must comply with the applicable requirements of Section 6.1.

(b) Nomenclature. Each Multiple Ground Lease in a Phase shall be referred to in the updated Phasing Plan and known as "[Phase Number]-A," the second Multiple Ground Lease shall be referred to in the Phasing Plan and known as "[Phase Number]-B," and so forth; provided, however, that if the Multiple Ground Lease is within a Partial Phase, the first Multiple Ground Lease within the Partial Phase will be known as "[Phase Number] – [Partial Phase Letter] -1"; the second Multiple Ground Lease shall be referred to in the Phasing Plan and known as "[Phase Number] –[Partial Phase Letter] -2" and so forth.

Section 4.3.1 of the Agreement is hereby amended and restated in its entirety to read as follows:

> 4.3.1 Phase Option Notice Timing. In order to provide the City with adequate advance notice to discontinue the BMX Track located on Parcel 1 and deliver the applicable Phase free of all tenants in accordance with Section 13.2.1, for any Phase or Partial Phase on which the BMX Track is located and operational, Developer shall provide a Phase Option Notice at least twelve (12) months prior to the anticipated actual Take Down of such Phase or Partial Phase.

The first paragraph of Section 4.5 of the Agreement is hereby amended and restated in its entirety to read as follows:

> 4.5 Designation of Phase Developer. Master Developer shall have the right, simultaneously with its submittal of a Phase Option Notice, to submit a proposal (the "Phase Developer Designation") to designate another Person as the Phase Developer for the Phase (or Partial Phase or for each Multiple Ground Lease) in question in accordance with the provisions set forth in Article 22 hereof, and shall notify City whether the Phase Developer Designation is a Permitted Transfer or will require a Consent Transfer.

Section 4.5.1 of the Agreement is hereby amended and restated in its entirety to read as follows:

> 4.5.1 If the Phase Developer Designation would require a Consent Transfer pursuant to Article 22 and if City disapproves of the proposed Phase Developer in accordance with the terms and provisions thereof, then, except to the extent that Master Developer elects to dispute such disapproval in accordance with the dispute resolution provisions of Article 20 hereof, Master Developer shall at its option, exercisable within ten (10) days after its receipt of City's disapproval, notify City in writing of Master Developer's election to: (i) become the Phase Developer for such Phase (or Partial Phase or Multiple Ground Lease); (ii) designate another Person as the Phase Developer for such Phase (or Partial Phase or Multiple Ground Lease); or (iii) elect to rescind its exercise of the Phase Option in question. If Master Developer does not elect an option in clause (i) or clause (ii) above within such ten (10) day period, Master Developer shall be deemed to have elected the option in clause (iii). If Master Developer elects the option in clause (ii) above, then such a designation shall again be a proposed assignment and processed in accordance with the terms of this Section 4.5. This process shall repeat itself until the earliest to occur of the following: (a) Master Developer elects to become the Phase Developer for such Phase (or Partial Phase or Multiple Ground Lease); (b) City approves the proposed Assignment; and (c) Master Developer is deemed to have rescinded its exercise of the Phase Option in question.

Section 4.6 of the Agreement is hereby amended and restated in its entirety to read as follows:

4.6 Effect of Failure of Master Developer to Exercise Phase Option. Except with respect to Phases 1, 2 and 2A (and subject to Section 3.2.3 with respect to an Early Take Down), if Master Developer fails to submit a Substantially Complete Phase Option Notice to City for any portion of a Phase by the applicable Outside Date (as it may be extended by Excusable Delay, if applicable), such failure shall not constitute a default hereunder by Master Developer but City may submit to Master Developer a Phase Termination Notice and terminate Master Developer's rights with respect to the applicable Phase (or portion thereof) in accordance with the terms of Article 7 hereof.

The first paragraph of Section 4.8 of the Agreement is hereby amended and restated in its entirety to read as follows:

4.8 Special Procedures for Phase 2A. Pursuant to City Council Resolution No. 16-8337, the City Council adopted the EOS Variant for the parcel shown on the Phasing Plan as Phase 2A ("Phase 2A"), which EOS Variant is reflected in the MCP. As a public benefit to the Project, the Parties have agreed to proceed with the EOS Variant in which Phase 2A will be reserved for park, recreation and open space uses that are complementary to, and do not unreasonably interfere with, the City Center Phases. In order to implement the EOS Variant in connection with the rest of the Project, Phase 2A shall be subject to the following provisions, notwithstanding anything to the contrary in this Agreement, including this Article 4:

Section 4.8.1(e) of the Agreement is hereby amended and restated in its entirety to read as follows:

(e) Master Developer shall pay to the City up to Five Million Dollars ($5,000,000) for the design and construction of the City Place Park, as described in the MCP (the "**City Place Park**"), of which Five Hundred Thousand Dollars ($500,000) may be used by the City for planning and design work (including visioning and community outreach and engagement) for the initial concept design (the "**City Place Park Design Contribution**"), with the remaining amount to be used for construction of the Phase 2A park (the "City Place Park Construction Contribution"). City shall include its anticipated City Place Park planning and design costs in its Semi-Annual Budget and Master Developer shall advance funds for the City Place Park Design Contribution in accordance with the procedures for payment of City Costs set forth in Section 26 up to the maximum amount payable of Five Hundred Thousand Dollars ($500,000). Master Developer shall pay to City the City Place Park Construction Contribution within thirty (30) days after request by City, but in no event earlier than the City's Commencement of the City Place Park improvements. City shall use the City Place Park Construction Contribution solely for Hard Costs for construction of the City Place Park and shall provide Master Developer with quarterly invoices showing its expenditure of the City Place Park Construction Contribution up to the maximum amount.

Section 5.1.3 of the Agreement is hereby amended and restated to replace "to the extent know" with "to the extent known".

Sections 5.3.1(b)(i) and 5.3.1(b)(ii) of the Agreement is hereby amended and restated in its entirety to read as follows:

(b) Final Station Site Improvements.

(i) Promptly after the later to occur of (i) City acquisition of the City Council-approved relocation site for the Fire Station (the "Relocation Trigger Event"), and (ii) the date that the Schedule C Entitlements have become final, binding and non-appealable, Master Developer, at its sole cost and expense but in consultation with City staff, shall promptly prepare conceptual design drawings for the final station in the approved location (the "Final Station Site Improvements") along with an anticipated construction schedule. Conceptual design drawings for the Fire Station Site Improvements shall be at a level of detail reasonably acceptable to City staff for presentation to the City Council for approval. City Council approval of the Final Station Site Improvements shall be a condition to Commencement of Infrastructure within Phase 2 or any Parcel subject to a DAP approved under Scheme C, whichever occurs first; provided, however, if Developer is ready to Commence Infrastructure within Phase 2 or any Parcel subject to a DAP approved under Scheme C, as applicable, and the Relocation Trigger Event has not yet occurred, then Developer may Commence the applicable Infrastructure, and its obligation to prepare conceptual design drawings and a construction schedule for the Final Station Site Improvements shall be deferred until such time as the Relocation Trigger Event has occurred.

(ii) Subject to the terms of Section 5.3.1(b)(iii), below, Master Developer shall Complete the Final Station Site Improvements no later than the earlier to occur of (1) issuance of the first Certificate of Occupancy for any Building within Phase 2; or (2) issuance of Certificates of Occupancy for the first 1,000,000 square feet of development of Parcels 1 and 2 combined.

The following new Section 5.3.8 of the Agreement is hereby added to the Agreement:

5.3.8 Pedestrian/Bicycle Connection.

(a) Feasibility Study. Exhibit 3C-12 of the Scheme C Variant identifies a potential location for a pedestrian/bicycle connection between Parcels 2 and Parcel 4, subject to confirmation through a Developer-funded study as provided in the Disposition and Development Agreement. In furtherance thereof, in connection with the submittal of a DAP for Parcel 2 or Parcel 4, whichever is earlier, Developer shall cause to be prepared, at Developer's sole cost and expense, a feasibility study that will identify, comparatively evaluate and develop schematic designs for two potential locations for a pedestrian and bicycle bridge that could connect Parcel 2 to the East Park on Parcel 4 (the "Ped/Bike Connection"). The Ped/Bike Connection shall

include a pedestrian and bicycle path within Parcel 2 that conveniently serves to connect residents of the Tasman East development located south of Parcel 2 to the eastern end of the proposed Ped/Bike Connection bridge. As part of the study, Developer shall confer with applicable agencies having jurisdiction to ensure that then-available design criteria are considered in the feasibility study, but the feasibility study shall not require approval of such agencies. The feasibility study shall use existing survey and mapping information to develop the two options of schematic plans and sections that will include the following elements:

a description of existing conditions;
space planning and land use;
preliminary grading plans;
ADA access requirements;
a summary of all construction codes applicable to the proposed design; and
basic structural, civil and lighting requirements.

The feasibility study shall also, at a concept level, address and evaluate the following for each of the two options:

physical constraints,
future environmental clearances and regulatory approvals that would foreseeably be required, and
effectiveness of each option to meet the goal of pedestrian and bicycle connectivity between Tasman East and Parcel 4, all at a level of detail reasonably designed for the City to evaluate the feasibility of the Ped/Bike Connection, including the environmental and permitting processes and challenges, and obtain preliminary cost estimates.

Land Reservation. Each applicable DAP for Parcel 2 and Parcel 4 will include a reservation of land reasonably sufficient to accommodate the locations for the Ped/Bike Connection identified in the feasibility study, including land within the western edge of Parcel 2, the area reserved for the East Park on Parcel 4, and connecting the Ped/Bike Connection to the Tasman East development. The feasibility study and land reservation through the grant of a public land and aerial easements for construction, operation, and maintenance shall constitute the full extent of Developer's obligations with respect to the Ped/Bike Connection.

City Election; Termination of Land Reservation.

(i) No later than eighteen (18) months after any Land Take Down that includes the proposed locations for the Ped/Bike Connection, the City shall notify Developer in writing as to whether it chooses to pursue the design, permitting and construction of the Ped/Bike Connection, and if so, in which of the two potential locations. If City decides to proceed, the City shall bear all costs and expenses associated with the Ped/Bike Connection. Developer's obligation to reserve the

applicable land shall terminate and Developer may use the applicable portion of land for any use consistent with the Project Approvals in any of the following cases:

(A) City notifies Developer of its intent not to pursue the Ped/Bike Connection;

(B) if City elects to pursue the Ped/Bike Connection in one of the two potential locations, the land reservation for the location not chosen shall terminate upon such election;

(C) City fails to notify Developer of its intent to pursue or not pursue the Ped/Bike Connection within eighteen (18) months after any Land Take Down that includes the proposed locations for the Ped/Bike Connection; or

(D) City elects to pursue the Ped/Bike Connection but fails to commence construction within three (3) years after such election, subject to Force Majeure; provided that such period of time may be extended for a period of time reasonably approved by Developer if the City has obtained all necessary entitlements and applicable permits have been issued within such three (3) year time period.

Section 6.1.9(d) of the Agreement is hereby amended and restated in its entirety to read as follows:

(d) To the extent that Take Down of any of Phases 3 through 7 has not occurred within ten (10) years after the first to occur of either (i) execution and delivery of a Ground Lease for Phase 2, or (ii) execution and delivery of the first Ground Lease for Parcel 1 or Parcel 2 under Scheme C, then the initial annual Base Rent for each such Phase shall increase at the rate of three percent (3%) per annum from the end of such period until the date that the Phase Option is exercised with respect to such Phase.

The following new Section 6.1.9(e) of the Agreement is hereby added to the Agreement:

(e) Except as may otherwise be adjusted under Section 6.1.9(a) above, the amount of initial Base Rent for a Ground Lease for Parcels 1 and 2 shall remain the same under for any Ground Lease entered into pursuant to an approved DAP for any of Scheme A, Scheme B or Scheme C with the following exception: each Ground Lease for Parcel 1 or Parcel 2 under Scheme C shall include an escalator clause substantially in the form attached hereto as ***Schedule 6.1.9(e)*** that will increase Base Rent if a Data Center is constructed on the applicable premises.

Section 6.2.1(c) of the Agreement is hereby amended and restated in its entirety to read as follows:

(c) Prior to the earlier to occur of (1) execution of the first Ground Lease for all or any portion of Parcels 1 or 2 for which the City has approved a DAP that relies on the Scheme C Variant densities and land uses; or (2) execution of a Ground Lease for all or any portion of Parcel 4 for which the City has approved a DAP that relies on the Scheme C Variant densities or land uses and would cause total development within Parcel 4 to exceed the maximum density (including Development Transfers allowed therein) permitted under Scheme A or Scheme B. Master Developer shall submit to the City a written election to proceed under the Scheme C Variant of the MCP and its agreement that all future DAPs will be reviewed for consistency with the Scheme C Variant.

Section 6.2.2(c) of the Agreement is hereby deleted in its entirety.

Section 6.4 of the Agreement is hereby amended and restated in its entirety to read as follows:

6.4 Memorandum of Ground Lease and Revised Phasing Plan. Upon the execution and delivery by City and the Phase Developer of any Ground Lease within a Phase, City shall execute and deliver (i) a Memorandum of Ground Lease in recordable form in substantially the form attached to the Ground Lease, and (ii) a revised Phasing Plan which shall set forth the updated Phasing Plan that reflects the boundaries of the Phase then being Taken Down, including Multiple Ground Lease boundaries within such Phase reflecting the nomenclature described in Section 4.2.2(b). Within five (5) Business Days after execution of each Ground Lease, Master Developer shall record the Memorandum of Ground Lease in the Official Records and shall deliver to City original copies of the fully-executed Ground Lease and Memorandum of Ground Lease. The revised Phasing Plan shall be subject to Section 29.29 hereof (Plans on Record with City).

Section 6.5 of the Agreement is hereby amended and restated in its entirety to read as follows:

6.5 Effect of Failure of Master Developer to Take Down a Phase. Except with respect to Phases 1, 2 and 2A (and except as otherwise provided under Section 3.2.3 with respect to an Early Take Down), if Master Developer fails to Take Down any portion of a Phase by the applicable Outside Date (as it may be extended by Excusable Delay, if applicable), such failure shall not constitute a default hereunder by Master Developer but City may submit to Master Developer a Phase Termination Notice and terminate Master Developer's rights with respect to the applicable Phase (or portion thereof) in accordance with the terms of Article 7 hereof.

Section 6.6 of the Agreement is hereby amended and restated in its entirety to read as follows:

6.6 Multiple Ground Leases within a Phase.

6.6.1 Multiple Ground Leases Permitted; Phase Outside Dates Not Affected. Master Developer shall have the option to Take Down each Phase in Multiple Ground Leases so long as the conditions set forth in Section 4.2.2 and Section 6.2 are met or waived by the applicable Party. Take Down of any of Phase by Multiple Ground Leases shall not adjust the Phase numbers or the Phase Outside Dates for the applicable Phase.

6.6.2 Initial Base Rent for Multiple Ground Leases. Notwithstanding the provisions of Sections 6.1.9(a) and 6.1.9(b), above, if Master Developer Takes Down a Phase with Multiple Ground Leases, as provided in Section 4.2.2 above, the initial annual Base Rent for each Multiple Ground Lease shall be determined by multiplying the Base Rent for the applicable Phase as set forth in Section 6.1.8 (as increased, if applicable, pursuant to Section 6.1.9(d) hereof) by a fraction, the numerator of which is the gross square feet of the land area of the premises subject to the applicable Multiple Ground Lease and the denominator of which shall be the gross square feet of the land area of the Phase, as shown in the Phasing Plan for the Project as of the Reference Date. Notwithstanding the foregoing, if requested by Master Developer and subject to City approval, the Initial Base Rent may be equitably allocated amongst all Multiple Ground Leases in the applicable Phase in a different proportion so long as there shall be no decrease to the City of the annual Base Rent applicable to the entirety of the Phase.

The first two sentences of Section 7.1 of the Agreement are hereby amended and restated in its entirety to read as follows:

7.1 Notice of Intent to Terminate. The Schedule of Performance attached as Exhibit F hereto (which includes the Scheme C SOP Overlay) sets forth the Outside Dates for certain events over the life of the Project, including: (i) submission of Phase Option Notices for each Phase; (ii) submission of a Substantially Complete DAP for each Phase; and (iii) Taking Down each Phase (these three Outside Dates together shall be referred to herein as the "Phase Outside Dates"). Except with respect to Phases 1, 2 and 2A, if Developer fails to meet any Phase Outside Date (as it may be extended by Excusable Delay, if applicable) for all or any portion of a Phase (including any Phase within Parcels 1 and 2 that becomes subject to the Scheme C SOP Overlay), such failure shall not constitute a default hereunder by Developer, but City may notify Developer that City intends to terminate Developer's rights with respect to the portion of the applicable Phase for which Developer has not met the Outside Date in question, based on the Phase boundaries depicted in the Phasing Plan then in effect (the "**Phase Termination Notice**").

The following new Section 7.3 of the Agreement is hereby added to the Agreement:

7.3 Special Provisions for Parcels 1 and 2. The provisions of Section 7.1 and Section 7.2 apply equally to a failure to meet the Outside Dates in the Scheme C SOP Overlay, except as follows: If (i) the City sends Developer a Phase Termination Notice for

any of the three Phases within Parcels 1 or 2 due to failure to meet the applicable Outside Dates in the Scheme C SOP Overlay, and (ii) Developer does not choose to remedy the Phase Termination Notice as provided in Section 7.1, Developer may, instead, send the City a written notice within forty-five (45) days of the City's Phase Termination Notice in which Developer agrees to forfeit one of the Scheme C Phases within Parcels 1 and 2, such that the selected Phase will become subject to termination and the Development Opportunity under Section 7.1 and Section 7.2. Developer, at its election, may select the Phase to be forfeited provided, however, that the Parcel 2 Phase identified on the Phasing Plan as Phase 7 (i.e., the southeastern portion of Parcel 2) may only be selected if the Parcel 1 Phase (identified on the Phasing Plan as Phase 5) and the southwestern Parcel 2 Phase (identified on the Phasing Plan as Parcel 6) have not previously been Taken Down or forfeited. If Developer fails to either cure the Phase Termination Notice or make its forfeiture election within such forty-five (45) day period, the City, in its sole discretion, may select the applicable forfeiture Phase that will be subject to termination and the Development Opportunity pursuant to Section 7.1 and Section 7.2.

Section 9.1.1 of the Agreement is hereby amended and restated to replace "(subject to Excusable Delay), as relevant" with "(subject to Excusable Delay, as relevant)".

Section 9.1.4 of the Agreement is hereby amended and restated in its entirety to read as follows:

> 9.1.4 Construction Covenants under CC&Rs and Certain Ground Leases. Without limiting Section 9.1.3, the Master CC&Rs will include a covenant requiring the construction of all buildings to be prosecuted diligently and continuously, and further requiring the owner of any work of construction that is left in an unfinished state for more than one hundred and twenty (120) consecutive days or a total of one hundred and eighty (180) days to take reasonable measures to protect public health and safety, protect the building structure from the elements and screen unsightly elements from view (such as fencing, painting or attractive screens or coverings) (the "Construction Covenant"). The City shall be a named third party beneficiary of the Construction Covenant. The Master CC&Rs shall provide the master association thereunder with a right of entry to enforce the Construction Covenant and a right to impose special assessments to recover any costs expended in connection with the enforcement thereof. If, at the time of execution of a Ground Lease, the Master CC&Rs have not yet been recorded against the applicable Ground Lease parcel, the applicable Ground Lease will include a Construction Covenant consistent with this Section 9.1.4 covering the period from the Commencement Date of the Ground Lease through recordation of the Master CC&Rs against the applicable Ground Lease premises that includes the Construction Covenant.

The following new Sections 9.4 and 9.5 of the Agreement are hereby added to the Agreement, and the numbering in the remainder of Article 9 is hereby adjusted accordingly:

> 9.4 Form of CC&Rs; Timing. City and Developer shall agree on the form of Master Conditions, Covenants and Restrictions (as more particularly defined in

Exhibit H attached hereto, the "Master CC&Rs") and record the same prior to the issuance of a Certificate of Occupancy for the first Building constructed within the Project. Each Phase shall be annexed into the first recorded set of Master CC&Rs (and Area Specific CC&Rs, if applicable), no later than the issuance of the Certificate of Occupancy for the first Building constructed within the applicable Phase.

9.5 Subdivision Maps. A Tentative Map or Vesting Tentative Map covering all of the property within a particular Phase shall be approved by Council before Take Down of all or any portion of the applicable Phase. A Final Map approved to the satisfaction of the Director of Public Works shall have been filed for recordation for the applicable Phase prior to the issuance of any certificate of occupancy for any building located within the Phase.

The words "conditions set forth in Section 9.3" contained in the first sentence of each of Sections 9.6 and 9.7 of the Agreement (as such section numbers have been amended pursuant to the foregoing paragraph) are hereby amended and restated in their entirety and replaced with "conditions set forth in Section 9.3 and 9.4".

Section 14.2 of the Agreement is hereby amended and restated in its entirety to read as follows:

14.2 Apportionment of Costs.

14.2.1 City Landfill Costs; Excluded Landfill Costs; Shared Landfill Costs.

(a) City Landfill Costs Defined. For purposes of this Agreement, the term "City Landfill Costs" includes all costs incurred by the City related to its operation and maintenance of the landfill on the Project site, but expressly excluding all of the following costs, unless, and only to the extent that, such costs are incurred as a direct result of Master Developer's construction activities or Project operations:

(i) Costs related to activities conducted on the City Landfill Parcels by third-parties (e.g., 49ers parking; the BMX facilities/activities), or by other City departments or City agencies unrelated to the ongoing operation and maintenance of the landfill (e.g., City employee parking or City-sponsored special events);

(ii) Costs of repair or damage caused by the sole negligence or misconduct by the City or any of its employees, contractors, agents, invitees or licensees;

(iii) Costs related to remedial responses (including any related fines, penalties or other administrative costs) or other actions undertaken by the City due to the existence, release, migration, leakage and/or escape, transport, generation, remediation and/or mitigation of any Hazardous Materials located on, at or under the City Landfill Parcels as of the Effective Date, or that later migrate or come to be located on, at or under the City Landfill Parcels after the Effective Date, except to the extent that such remedial response was required as a result of Master Developer's Environmental Activity;

(iv) Costs incurred for activities on any property located outside of the City Landfill Parcels; and

(v) Costs incurred in connection with the use and operation of the City Utility Facility parcel designated in the MCP, including the retention basin and storm drain pump station, sewer pump station, and various other public facilities located thereon.

(b) Shared Landfill Costs. In addition, the Parties hereby agree that City Landfill Costs will include only fifty percent (50%) of costs incurred by the City for landfill operation and maintenance activities on or related to any of the City Landfill Parcels that Master Developer has either not yet Taken Down nor conducted physical construction activities of any kind thereon (but expressly excluding any costs related to items 14.1(a) (i) through (v) above) (such costs, the "Shared Landfill Costs"). As of the Second Amendment Effective Date, the City Landfill Parcels that Master Developer has either not yet Taken Down nor conducted physical construction activities of any kind thereon consist of Parcels 1 and 2.

(c) Excluded Landfill Costs Defined. For purposes of this Section 14.2, the defined term "**Excluded Landfill Costs**" shall mean, collectively, (i) the items described in subsections 14.2.1(a)(i) through (v) (except to the extent that, such costs are incurred as a direct result of Master Developer's construction activities or Project operations), and (ii) the other 50% of Shared Landfill Costs not assumed by Master Developer under Section 14.2.1(b). City shall be solely responsible for all Excluded Landfill Costs without right of reimbursement.

14.2.2 Establishment of Initial and Adjusted Baseline.

(a) Initial Baseline. The Parties have agreed that as of the Effective Date (i.e., August 12, 2016), the City's baseline for City Landfill Costs is deemed to be Four Hundred Fifty Thousand Dollars ($450,000) per year (the "**Initial Baseline**"). The Initial Baseline will be increased by a CPI Adjustment on each anniversary of the Effective Date, with the last adjustment to occur as of August 12, 2023.

(b) Adjusted Baseline. The Parties have agreed that the City's baseline for City Landfill Costs as of August 13, 2024 is deemed to be $650,000 (the "**Adjusted Baseline**"). The Adjusted Baseline will be increased by a CPI Adjustment on July 1, 2025 and each July 1 thereafter during the Term.

14.2.3 Apportionment of City Landfill Costs from and after July 1, 2024. This Section 14.2.3 applies only to City Landfill Costs incurred from and after July 1, 2024.

(a) Budget Meet and Confer; City Contracting.

(i) Draft Budget; Meet and Confer. Commencing with City fiscal year 2026/27, City shall provide to Master Developer its draft annual budget for City Landfill Costs for the upcoming City fiscal year promptly upon availability but in no event later than

sixty (60) days before July 1.), along with reasonably detailed supporting documentation that sets forth a general description of the scope of the City Landfill Costs anticipated for the upcoming budget year. Master Developer shall have an opportunity to review and comment on the draft budget and supporting documentation. Upon Master Developer's request, City will make good faith efforts to meet and confer with Master Developer prior to July 1and shall reasonably consider suggestions or proposals for cost and scope efficiencies that might reasonably be expected to reduce City Landfill Costs for the applicable budget year. Notwithstanding the foregoing, for fiscal year 2025/26, City shall provide Master Developer with the relevant budget and supporting information for fiscal years 2025/26 on or around the Effective Date hereof and the meet and confer process shall occur within thirty (30) days after the Second Amendment Effective Date. Notwithstanding the foregoing, the Parties acknowledge that the proposed budget is subject to review and approval by the City in its sole and absolute discretion. City shall use reasonable good faith efforts to keep Master Developer apprised during the course of each fiscal year as to budget overruns.

(ii) Contract Tracking. With respect to any third-party contracts for City Landfill Costs, City will direct each such contractor to track its scope of work and costs in a manner reasonably designed to readily identify City Landfill Costs that are included in the Annual Landfill Statement (as defined in Section 14.2.3(b)) and those that are Excluded Landfill Costs, including identifying, to the extent appropriate and feasible, the geographic location of work undertaken by the applicable contractors. In addition, City will instruct relevant City staff working on the maintenance and operation of the landfill on the City Landfill Parcels to record time in a manner that can readily identify Excluded Landfill Costs.

(b) Invoice and Payment. Within ninety (90) days after the end of each City fiscal year during the Term, starting with the fiscal year 2024/25, City shall provide Master Developer with a written report (the "**Annual Landfill Statement**") that contains, at a minimum, the following information: (i) the amount of City Landfill Costs incurred by City for the previous fiscal year (including "open book" backup of such costs, including copies of invoices); (ii) if a particular City Landfill Cost might pertain to both City Landfill Costs and Excluded Costs, an equitable allocation of such costs between City Landfill Costs and Excluded Landfill Costs; (iii) a report or certification by a qualified engineer to confirm the costs properly reflect the City Landfill Costs calculated in accordance with this Section 14.2; and (iv) the amount by which the City Landfill Costs for the applicable fiscal year exceeded the Adjusted Baseline for the applicable fiscal year, subject to the maximum cap as set forth in Section 14.2.3(c) below (the "**Developer Annual Landfill Payment**"). Within sixty (60) days following its receipt of the Annual Landfill Statement, Master Developer shall (a) pay the City the amount of the Developer Annual Landfill Payment that is uncontested, plus (b) to the extent that Developer contests any amounts of the Developer's Annual Landfill Payment or the appropriateness of any City Landfill Costs contained therein (e.g., whether any of such City Landfill Costs should be excluded as an Excluded Landfill Cost), a written response to the Annual Landfill

Statement, including a reasonably detailed analysis of the reasons for contest. City and Master Developer shall, for sixty (60) days after Master Developer's submittal of such written response, attempt to resolve their differences concerning any contested amounts of the Developer Annual Landfill Payment; if they are unable to do so, either of them may submit the matter to arbitration as provided in Article 20.

(c) Each year, Master Developer's obligation to reimburse City for that year's Developer Annual Landfill Costs pursuant to this Section 14.2 shall be limited to the lesser of (i) the Developer Annual Landfill Payment and (ii) an amount originally equal to (x) One Million Three Hundred Fifty Thousand Dollars ($1,350,000), increased by a CPI Adjustment on July 1 of each year, starting on July 1, 2025 (as adjusted from time to time, the "Adjusted Landfill Term Cap"). Master Developer may assign this obligation without prior consent of City to the Master Owners' Association established for the Project Site, which obligation may be documented in the Master CC&Rs or other appropriate instrument recorded against the Airspace Parcels. The provisions of this Section 14.2 shall survive any expiration or termination of this Agreement with respect to Master Developer and all Phase Developers.

14.2.4 Apportionment of City Landfill Costs before July 1, 2024. This Section 14.2.4 applies only to City Landfill Costs incurred between the Effective Date and June 30, 2024.

(a) Meet and Confer; Final Payment Amounts. Promptly upon the Second Amendment Effective Date, City and Master Developer shall meet and confer to review and agree on the amount of City Landfill Costs incurred by the City during the period between the Effective Date and June 20, 2024 (the "**Initial Landfill Term**"), taking into account exclusions attributable to the Excluded Landfill Costs for such period. Within ninety (90) days after the Second Amendment Effective Date (as such date may be extended by the reasonable agreement of the Parties), the Parties shall agree on the following: (i) the total amount of City Landfill Costs incurred by City during the Initial Landfill Term; (ii) the Initial Baseline for each year of the Initial Landfill Term as adjusted on each Anniversary Date of the Effective Date; (iii) the amount by which City Landfill Costs for each year of the Initial Landfill Term exceeded the Initial Baseline, as adjusted for the applicable year, up to a maximum annual cap of One Million Dollars ($1,000,000) as of the Effective Date, increased by a CPI Adjustment on each Anniversary Date of the Effective Date thereafter through August 12, 2023 (the "**Initial Landfill Term Cap**"); and (iv) the total amount due from Master Developer for the Initial Landfill Term, payable pursuant to Section 14.2.4(b) below. If the Parties are unable to agree on any of the foregoing matters within such 90-day period, either Party may submit the matter to arbitration as provided in Article 20.

(b) Master Developer Payment. Master Developer shall reimburse the City for seventy-five percent (75%) of the amount by which City Landfill Costs incurred during each year or partial year of the Initial Landfill Term exceeded the Initial

Baseline (as adjusted in accordance with Section 14.1.2(a)) for each applicable year or partial year), up to the applicable Initial Landfill Term Cap in effect for each applicable year or partial year (the "**Initial Landfill Term Payment**"). The Initial Landfill Term Payment shall be due on the later to occur of (i) thirty (30) days after the Parties agree on the amount of the Initial Landfill Term Payment under Section 14.1.4(a) (including resolution of all disputes to the extent submitted to arbitration under Article 20); and (ii) thirty (30) days after the Scheme C Entitlements become final, binding and unappealable. For avoidance of doubt, the Initial Baseline and the Initial Landfill Term Cap, as both adjusted in accordance herewith, shall remain in effect through June 30, 2024, after which time, the Adjusted Baseline and the Adjusted Landfill Term Cap shall go into effect. The last Initial Landfill Term Payment shall be for the period of August 12, 2023 through June 30, 2024.

The third sentence of Section 15.2.2(a) of the Agreement is hereby amended and restated in its entirety to read as follows:

> The procedures for establishment of the Master Developer share of costs for Public Streets (which procedures may be adjusted in subsequent DAP applications by mutual agreement) shall be established prior to final approval of the Master CC&Rs pursuant to Section 9.4 and the ongoing funding obligation shall be reflected in the Master CC&Rs.

The final sentence of Section 15.2.2(b) of the Agreement is hereby amended and restated in its entirety to read as follows:

> The procedures for establishment of the Developer's costs and the Party responsible for the Park Maintenance (which procedures may be adjusted in subsequent DAP applications by mutual agreement) shall be established prior to final approval of the Master CC&Rs pursuant to Section 9.4 and the ongoing funding obligation shall be reflected in the Master CC&Rs.

Section 15.2.2(c)(ii) of the Agreement is hereby amended and restated in its entirety to read as follows:

> (ii) Fire. City will provide appropriate fire protection services and equipment to the Project at its sole cost and expense, except as otherwise provided in this subsection (ii). At any time (at Master Developer's election) after approval of the PCLUP for the Project but in no event later than in connection with the DAP application for Phase 2, City will commission at Master Developer's expense an independent study by a third party expert jointly selected by City and Master Developer (the "**Fire Protection Assessment Study**") that will provide an assessment and recommendations for the level of fire protection services (equipment, FTEs and equipment replacement costs and timing) to address hazardous materials issues on the Landfill Parcel (collectively, "**Fire Protection Services Obligations**"). The study will also include recommendations for the timing of such equipment and FTEs in relation to the development of the Project. No later than the first DAP

application to be submitted for Scheme C on either Parcel 1 or Parcel 2, as applicable, the City, in consultation with Master Developer and at Master Developer's expense, will cause the selected third-party expert to update the Fire Protection Assessment Study. Developer shall be obligated to pay the costs for Fire Protection Services Obligations at the level and in accordance with the timing set forth in the Fire Protection Assessment Study up to a maximum of 4.5 fire protection FTEs annually, one piece of equipment if recommended by the study and replacement costs for such equipment at such times as indicated by the study.

The following new Section 22.4.2(b) of the Agreement is hereby added to the Agreement, and the numbering in the remainder of Section 22.4.2 is hereby adjusted accordingly:

(b) Unless this Section 22.4.2(a) is waived by the City Council in its sole discretion, if the Scheme C Variant is selected in accordance with Section 6.2.1(c), Master Developer shall not undertake a Consent Transfer for any Phase within Parcels 1 and 2 until the Infrastructure in the applicable Phase is Substantially Complete, unless all of the following conditions are satisfied (which conditions shall be in addition to, and not in lieu of, all other conditions applicable to a Consent Transfer) (a Consent Transfer meeting these requirements, a "**Scheme C Consent Transfer**"):

(i) Master Developer has provided evidence reasonably satisfactory to the City that Master Developer will continue to maintain an active and continuing ownership or management role in the development of the applicable Phase;

(ii) In evaluating the qualifications of the Transferee Team and the satisfaction of the Experience Requirement, the City is reasonably satisfied that the proposed Phase Developer has the requisite experience in the ownership, operation, management and development of light industrial uses at a scale and quality as necessary to fully comply with the applicable standards and guidelines of the MCP; and

(iii) The Consent Transfer will not result in a release of Master Developer under Section 22.7 with respect to the obligations hereunder with respect to the Transferred Phase.

The first sentence of Section 22.5.2 of the Agreement is hereby amended and restated in its entirety to read as follows:

22.5.2 City's Consent; Standards. The withholding or conditioning of City's consent to any proposed Consent Transfer shall be reasonable and shall be based solely on one or more of the following criteria (and, with respect to a Scheme C Consent Transfer, the additional conditions specified in Section 22.4.2(b)):

Section 24.1.1 of the Agreement is hereby amended and restated in its entirety to read as follows:

24.1.1 "**Force Majeure**" means any delay suffered by a Party in performing an obligation, exercising a right or meeting a deadline under any of the Project Documents to the extent such delay is caused by any of the following: war; acts of terrorism; insurrection; strikes or lock-outs not caused by, or outside the reasonable control of, the Party claiming an extension; riots; floods; earthquakes; fires; casualties; acts of God; acts of the public enemy; epidemics; quarantine restrictions; freight embargoes; lack of transportation not caused by, or outside the reasonable control of, the Party claiming an extension; governmental restrictions or priority; environmental conditions existing or discovered on or affecting the Project Site or any portion thereof, including those resulting from the investigation or remediation of such conditions; litigation that enjoins construction or other work on the Project Site or any portion thereof, causes a lender to refuse to fund a loan or to accelerate payment on a loan, or would cause a reasonably prudent developer either to forbear from commencing construction or other work on the Project Site or any Phase or portion thereof or to suspend construction or other work; market-wide disruptions in (i) the public financing markets that delay or materially increase the cost of public financing for the Project to the extent such public financing was reasonably anticipated by Master Developer in a Financing Plan submitted under Section 5.1.2 in connection with its construction of public improvements, or (ii) in the private financing markets due to market-wide financial crises (such as the 2008 Global Financial Crises; the S&L Crisis of the 1980s; or fallout from the COVID-19 pandemic) that materially limit or delay the availability of private financing (items (i) and (ii) collectively, "**Market-Wide Disruptions**"); unusually severe weather; inability to secure necessary labor, materials or tools; delays of any contractor, subcontractor or supplier; moratorium, as defined in California Government Code Section 66452.6(f); litigation, ballot measures or referenda challenging City's or another regulatory body's approval of the Project (or any part thereof) or any of the Project Documents; the inability to obtain on a timely basis other approvals required for commencement and completion of the improvements contemplated for the Project (assuming that Developer is using commercially reasonable efforts to obtain such approvals); actions or inquiries by a Governmental Authority; the occurrence of Landfill or other construction cost premiums that render development of a Parcel or portion thereof commercially uneconomic; and delays caused by the City's inability to comply with its obligations regarding title under Article 13 hereof. Without limiting the foregoing, (1) the time for performance of Developer's obligations to submit a Substantially Complete DAP application and to Take Down land for any particular Phase under the Schedule of Performance shall be extended for each day that the City exceeds its review and approval periods for the applicable DAP application as set forth in the DAP Procedures; and (2) the time for performance of Developer's obligations to meet the outside dates set forth in the Phase Schedule of Performance for an applicable Phase shall be extended for each day that the City exceeds its review and approval periods for the applicable architectural review application as set forth in the DAP Procedures.

Section 24.1.3 of the Agreement is hereby amended and restated in its entirety to read as follows:

> 24.1.3 Notwithstanding anything to the contrary in this Section 24.1, the following shall not be Excusable Delay: (1) the lack of credit or financing, unless such lack is the result of Materially Adverse Economic Conditions or arises in connection with a Market-Wide Disruption; or (2) the appointment of a receiver to take possession of the assets of Developer, an assignment by Developer, for the benefit of creditors, or any other action taken or suffered by Developer under any insolvency, bankruptcy, reorganization, moratorium or other debtor relief act or statute.

The following new Section 24.1.4 of the Agreement is hereby added to the Agreement:

> 24.1.4 Notwithstanding anything to the contrary in this Section 24.1, if Developer elects to proceed with Scheme C, the occurrence of Materially Adverse Economic Conditions shall not be an Excusable Delay with respect to any future dates on the Schedule of Performance applicable to Parcels 1 and 2.

Section 24.2 of the Agreement is hereby amended and restated in its entirety to read as follows:

> 24.2 Period of Excusable Delay or Force Majeure. The period of an Excusable Delay or Force Majeure shall commence to run from the time of the commencement of the cause and, subject to Section 24.3 hereof, shall run for the duration of the event of Excusable Delay or Force Majeure. The Party claiming Excusable Delay or Force Majeure shall provide notice to the other applicable Parties of such Excusable Delay or Force Majeure within a reasonable time following the commencement of the cause. If, however, notice by the Party claiming such extension is sent to the other Parties more than sixty (60) days after the commencement of the cause, the period shall commence to run only sixty (60) days before the giving of such notice, provided that the Party claiming the extension gives notice within a reasonable time following the commencement of the cause. No extension for Excusable Delay or Force Majeure shall cause any future dates in the Schedule of Performance applicable to the Party claiming Excusable Delay or Force Majeure, or other date for performance occurring after the date of the notice, to be extended, unless such future dates are eligible to be extended in their own right by reason of Excusable Delay or Force Majeure. Notwithstanding the foregoing, extensions for an Excusable Delay or Force Majeure obligation in the Schedule of Performance shall serve to extend other Schedule of Performance obligations within the same Phase if such dates for performance are directly tied to each other in the Schedule of Performance. Notwithstanding anything to the contrary in this Article 24, Master Developer or any applicable Phase Developer shall not be entitled (A) to abandon any portion of the Project Site that it has Taken Down or where it has Commenced Initial Improvements without first taking appropriate measures to leave the property in good and safe condition, (B) to extend the Outside Dates for the Completion of Initial Improvements or other Improvements that have Commenced to the extent that

Excusable Delay or Force Majeure is not related to such activities, (C) to cease paying taxes or assessments on any real property it owns within the Project Site, (D) to avoid the obligation to maintain in effect Adequate Security or other financial assurances, (E) to avoid or delay its obligations to construct the Initial Improvements, except to the extent an Excusable Delay or Force Majeure relates to Master Developer's or the applicable Phase Developer's obligations for such construction, or (F) to avoid or delay its payment of the Financial Obligations.

Exhibit A of the Agreement is hereby amended to modify and/or add the following definitions in appropriate alphabetical order:

"**Building**" means each physical structure located within a Phase that is intended for human occupancy or the conduct of a business, including hotels, retail, light industrial and office space and apartments.

"**Environmental Activity**" means any storage, installation, existence, release, threatened release, discharge, generation, abatement, removal, disposal, handling or transportation from, under, into or on the City Landfill Parcels of any Hazardous Material.

"**Hazardous Material**" means any material, waste, chemical, compound, substance, mixture, or byproduct that is identified, defined, designated, listed, restricted or otherwise regulated under Environmental Laws as a "hazardous constituent", "hazardous substance", "hazardous waste constituent", "infectious waste", "medical waste", "biohazardous waste", "extremely hazardous waste", "pollutant", "toxic pollutant", or "contaminant", or any other designation intended to classify substances by reason of properties that are deleterious to the environment, natural resources, wildlife or human health or safety, including, without limitation, ignitability, infectiousness, corrosiveness, radioactivity, carcinogenicity, toxicity and reproductive toxicity. Hazardous Material includes, without limitation, any form of natural gas, petroleum products or any fraction thereof, asbestos, asbestos-containing materials, PCBs, PCB-containing materials, and any substance that, due to its characteristics or interaction with one or more other materials, wastes, chemicals, compounds, substances, mixtures or byproducts, damages or threatens to damage the environment, natural resources, wildlife or human health or safety.

"**Master CC&Rs**" is defined in Section 9.4.

"**Ped/Bike Connection**" is defined in Section 5.3.8.

"**Phase Developer**" means, with respect to a Phase (or Partial Phase or Multiple Ground Lease), the developer thereof (which may include Master Developer) and the tenant under the Ground Lease for such Phase or Multiple Ground Lease, as such Person is determined under Article 3 or, following a permitted transfer of such Person's rights and obligations under such Ground Lease, means such transferee.

"**Scheme C**" or the "**Scheme C Variant**" means the Scheme C Variant as described in Master Community Plan Scheme C Supplement, approved by the City Council on _____, 2025 by Resolution No. _____.

"**Scheme C Entitlements**" means the City Council Ordinances and Resolutions referenced in Recital D to this Second Amendment.

"**Second Amendment Effective Date**" means the date that the Second Amendment to Disposition and Development Agreement is approved by the City Council.

Schedule 3.2.3 attached hereto is hereby appended to the Agreement and becomes a part thereof.

Schedule 6.1.9(3) attached hereto is hereby appended to the Agreement and becomes a part thereof.

Exhibit F attached hereto amends and restates Exhibit F of the Agreement in its entirety, including adding the Schedule of Performance – Scheme C Overlay.

Miscellaneous

Entire Agreement. This Second Amendment, together with the Agreement, constitutes the entire understanding and agreement between the Parties with respect to the subject matter contained herein. All other terms and conditions of the Agreement shall remain in full force and effect.

Binding Effect. This Second Amendment shall be binding upon and inure to the benefit of the Parties and their respective successors and assigns.

Governing Law. This Second Amendment shall be interpreted, construed, and enforced in accordance with the laws of the State of California.

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

CITY

CITY OF SANTA CLARA, a municipal corporation

By: _____
Name: Jovan Grogan
Title: City Manager

Approved as to form:

By: _____
Name: Glen Googins
Title: City Attorney

Approved on _____, 2025

City Council Resolution No. ____

[SIGNATURES CONTINUED ON FOLLOWING PAGE]

DEVELOPER

RELATED SANTA CLARA, LLC,
a California limited liability company

By: _____
Name: _____
Title: _____

ACKNOWLEDGMENT

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

State of California)

County of _____)

On _____ before me, _____, a 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.

Signature _____ (Seal)

ACKNOWLEDGMENT

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

State of California)

County of _____)

On _____ before me, _____, a 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.

Signature _____ (Seal)

SCHEDULE 3.2.3

Examples of Early Take Down Scenarios

1. Assumptions

The Outside Date in the Exhibit F Schedule of Performance for Land Take Down for Phase 2 is December 23, 2027, but remains subject to further extension by Excusable Delay.

The Outside Date in the Scheme C SOP Overlay for Land Take Down for the first Phase within Parcels 1 or 2 is November 19, 2028.

2. Examples

Example 1: Scheme C SOP Overlay Not Triggered. Master Developer complies with the Exhibit F Schedule of Performance for Phase 2 by causing Land Take Down for Phase 2 by December 23, 2027. In such case, the Scheme C SOP Overlay no longer applies and all future Phases remain governed by the Exhibit F Schedule of Performance.

Example 2: Scheme C SOP Overlay Triggered; Master Developer Meets Outside Date for Parcel 1 or 2 Land Take Down. The Outside Date for Phase 2 Land Take Down is extended by reason of Excusable Delay through December 23, 2029. In order to retain its Take Down rights to Parcels 1 and 2 under Scheme C, Master Developer must Take Down the first Phase within Parcels 1 or 2 by November 19, 2028 (with Outside Dates for Phase Option Notice and DAP Submittal to occur 8 and 4 months prior, respectively). Thereafter, the next Outside Date will be December 23, 2029 for Phase 2 Land Take Down. Once Phase 2 is Taken Down in time, all future Schedule of Performance Dates will be as set forth on the original Exhibit F Schedule of Performance. However, if the Outside Date for Phase 2 is further extended beyond November 19, 2031 (3 years after Parcel 1 or 2 Take Down), the next applicable Land Take Down Outside Date will be November 19, 2031 for the second Phase within Parcels 1 or 2 (with Outside Dates for Phase Option Notice and DAP Submittal to occur 8 and 4 months prior, respectively).

Example 3: Scheme C SOP Overlay Triggered; Master Developer Fails to Meet Outside Date for Parcel 1 or 2 Land Take Down. The Outside Date for Phase 2 Land Take Down is extended by reason of Excusable Delay through December 23, 2029. If Master Developer fails to Take Down the first Phase within Parcels 1 or 2 by November 19, 2028, then one of the Phases in Parcel 1 or 2 will revert to City, as provided in Section 7.3. Thereafter, the next Outside Date will be December 23, 2029 for Land Take Down for Phase 2. If the Outside Date for Phase 2 Land Take Down is not further extended for Excusable Delay, then so long as Master Developer Takes Down

Phase 2 by December 23, 2029, all future Schedule of Performance Dates will be as set forth on the original Exhibit F Schedule of Performance. However, if Master Developer fails to Take Down Phase 2 by December 23, 2029, City may exercise its termination remedies under Section 7.3

SCHEDULE 6.1.9(3)

For any Ground Lease on Parcels 1 or 2, if Scheme C is selected, insert the following new Section 3.3.4 into the Ground Lease:

3.3.4 Adjustments to Base Rent for Data Center Development

If Tenant uses, or enters into any Sublease for the use of, the Premises or any portion thereof for a Data Center (as defined in the MCP), then effective upon the issuance of a building permit for the Data Center (the "**Data Center Rent Escalation Date**"), the Base Rent attributable to the parcel of land on which the Data Center is located shall automatically increase by one hundred percent of the amount in effect immediately prior to the Data Center Rent Escalation Date. If the Data Center parcel occupies a legal parcel that is less than the entirety of the Premises, then the Base Rent escalation shall be calculated by multiplying the Base Rent in effect immediately prior to the Data Center Rent Escalation Date by a fraction, the numerator of which is the square footage of the Data Center parcel and the denominator of which is the total square footage of the Premises. Within thirty (30) days after the Data Center Rent Escalation Date: (i) City and Tenant shall execute and exchange an instrument confirming the new Base Rent retroactive to the Data Center Rent Escalation Date, but the failure of either party to execute such instrument shall not affect the effectiveness of the Base Rent escalation; and (ii) Tenant shall pay to City the applicable Base Rent increase for the applicable Lease Year, prorated on the basis of twelve months of thirty (30) days each for the remainder of the applicable Lease Year.

EXHIBIT F

Schedule of Performance - General[1]

Adjusted for Materially Adverse Economic Condition ending November 30, 2025 (subject to continuation pursuant to DDA)

Take Down Phase	Outside Date for Phase Option Notice[2]	Outside Date for first DAP Submittal	Outside Date for Land Take Down	Outside Date for Commencement of Construction of Infrastructure
1[3]	N/A*	N/A*	N/A*	Within 2 years after Actual Take Down of Phase 1[4]
2[5]	N/A*	N/A*	December 23, 2027	Within 2 years after Actual Take Down of Phase 2

1 All Outside Dates are subject to extension for Excusable Delay in accordance with the DDA other than any Take Down Phase located on Parcels 1 or 2, which Outside Dates shall only be subject to Force Majeure.

2 Notwithstanding the Outside Dates for Phase Option Notice, for any Phase or Partial Phase on which the BMX Track is located and operational, Developer shall provide a Phase Option Notice no less than twelve (12) months prior to the Outside Date for Take Down of such Phase of Partial Phase as required by Section 4.3 of the DDA.

3 All references to Phase 1 are to the Phase 1 shown in the Phasing Plan for the Project approved by the City by letter dated December 19, 2022.

4 For clarification, because Excusable Delay has been in effect since Actual Take Down of Phase 1, the Outside Date for Commencement of Construction of Infrastructure on Phase 1 shall be 2 years after the Excusable Delay ends, subject to future periods of Excusable Delay, if applicable.

5 All references to Phase 2 are to the Phase 2 shown in the Phasing Plan for the Project approved by the City by letter dated December 19, 2022.

* For Phases 1 and 2, the Phase Option Notice and DAP have already been submitted, and Take Down of Phase 1 occurred December 20, 2022.

Phase 2A	Three (3) months prior to Outside Date for Land Take Down	n/a	The earlier to occur of: (i) 12 months after Commencement of construction of any residential buildings within Phase 2; or (ii) 24 months from the Commencement of Infrastructure within	n/a
3	Eight (8) months prior to Outside Date for Land Take Down	Four (4) months prior to Required Land Take Down Date	4 years after Actual Phase 2 Take Down	Within 1 year after Actual Take Down of Phase 3
4	Eight (8) months prior to Outside Date for Land Take Down	Four (4) months prior to Required Land Take Down Date	5 years after Actual Phase 3 Take Down	Within 2 years after Actual Take Down of Phase 4
5	Eight (8) months prior to Outside Date for Land Take Down	Four (4) months prior to Required Land Take Down Date	3 years after Actual Phase 4 Take Down	Within 2 years after Actual Take Down of Phase 5
6	Eight (8) months prior to Outside Date for Land Take Down	Four (4) months prior to Required Land Take Down Date	2 years after Actual Phase 5 Take Down	Within 2 years after Actual Take Down of Phase 6
7	Eight (8) months prior to Outside Date for Land Take Down	Four (4) months prior to Required Land Take Down Date	2 years after Actual Phase 6 Take Down	Within 2 years after Actual Take Down of Phase 7

SCHEDULE OF PERFORMANCE – SCHEME C OVERLAY

Take Down Phase	**Outside Date for Phase Option Notice**	**Outside Date for first DAP Submittal**	**Outside Date for Land Take Down**	**Outside Date for Commencement of Construction of Infrastructure**
First Phase of Scheme C Parcels 1 and 2	8 Months prior to Outside Date for Land Take Down	Four (4) months prior to Outside Date for Land Take Down	3 years after the date that the Schedule C Entitlements have become final, binding and non-appealable	Within 1 year after Actual Take Down of the first Scheme C Parcel
Second Phase of Scheme C Parcels 1 and 2	Eight (8) months prior to Outside Date for Land Take Down	Four (4) months prior to Required Land Take Down Date	3 years after the Actual Take Down of the first Scheme C Parcel	Within 1 year after Actual Take Down of the applicable Scheme C Parcel
Last Phase of Scheme C Parcels 1 and 2	Eight (8) months prior to Outside Date for Land Take Down	Four (4) months prior to Required Land Take Down Date	3 years after the Actual Take Down of the first Scheme C Parcel	Within 1 year after Actual Take Down of the applicable Scheme C Parcel