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DEVELOPMENT AGREEMENT FOR MISSION POINT (MIXED USE)

BETWEEN

THE CITY OF SANTA CLARA,

a chartered California municipal corporation,

AND

INNOVATION COMMONS OWNER LLC,

a Delaware limited liability company

Effective Date *_____

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DEVELOPMENT AGREEMENT
FOR
MISSION POINT
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This DEVELOPMENT AGREEMENT ("Agreement"), dated for reference purposes as of _____, 2024 is entered into by and between CITY OF SANTA CLARA ("City"), a chartered California municipal corporation, and INNOVATION COMMONS OWNER LLC, a Delaware limited liability company ("Developer"), (collectively the "Parties") and is effective on the date set forth in Recital N.

RECITALS

Developer and City enter into this Agreement on the basis of the following facts, understandings and intentions, and the following recitals are a substantive part of this Agreement:

A. Sections 65864 through 65869.5 of the California Government Code authorize the City to establish procedures to enter into binding development agreements with persons having legal or equitable interests in real property located within the City for development of property.

B. "The Code of the City of Santa Clara, California" ("SCCC") Section 17.10.010 and following, establishes the authority and procedure for review and approval of proposed development agreements.

C. Developer is currently the legal owner of the property ("Property") governed by this Agreement. The Property consists of nine (9) separate parcels (APNs 104-04-064, 104-04-065, 104-04-111, 104-04-112, 104-04-113, 104-04-142, 104-04-143, 104-04-150 and 104-04-151) totaling approximately 48.6 acres, as further legally described and depicted in Exhibit A, attached hereto and incorporated by this reference.

D. Developer has submitted the following application(s) to the City (each such application being referenced herein as modified and finally approved by the City Council): (i) a General Plan Amendment to change the use designation of the Property from the existing *High-Intensity Office/R&D* designation to a newly established designation of *Urban Center Mixed Use and Urban Center Mission Point)* (#PLN _____; CEQ _____) ("General Plan Amendment"); (ii) a rezoning of the Property ("Rezoning") from *High Intensity Office/R&D* to *Planned Development* ("PD") with a Development Plan that includes a Transportation Demand Management Plan ("TDMP"), Affordable Housing Plan ("AHP") and Parks & Open Space Plan ("POSP") (#PLN _____, CEQ _____) (collectively, the "Development Plan"); and (iii) a vesting tentative subdivision map to merge and re-subdivide the Property, vacate Democracy Way, including relocation of the underground public improvements (#PLN _____, CEQ_____) ("VTM"). The applications in the foregoing subparagraphs D. (i),(ii), and (iii) are collectively referred to as the "Project Approvals".

E. The Project Approvals would authorize the Developer to redevelop the Property with an infill, mixed-use neighborhood consisting of up to 3 million gross square feet ("gsf") of

office/research and development ("R&D") space, approximately 100,000 gsf of neighborhood retail space, and up to 1,800 multifamily residences by consolidating, on a smaller portion of the Property, the square footage for office/R&D previously assumed in the City's General Plan (for the former Yahoo! campus) to accommodate new multifamily housing, including affordable housing, public parks and private open space, neighborhood serving services, childcare and retail, Silicon Valley Power ("SVP") facilities (collectively, the "Project").

F. The Project components, including but not limited to the proposed buildings, access and parking facilities, landscaping, parks and open space, and infrastructure improvements, and potential development sequencing to ensure necessary infrastructure support for the Project are all more particularly shown in the Development Plan consisting of *____ sheets of plans dated _____ and on file with City (#PLN _____, CEQ _____), the VTM consisting of * _____ sheets of plans dated _____ and on file with the City (#PLN _____, CEQ_____), and the applicable conditions of approval, subject of that certain Notice of Conditions of Approval recorded in the Official Records as Document No. _____ ("COAs") for the Development Plan and VTM, all incorporated herein by reference as if set forth in full. Certain improvements as set forth in the COAs are necessary to provide infrastructure support for the Project.

G. Through this Agreement, the Parties intend to preserve the size and density of development as set forth in the Project Approvals. City and Developer each acknowledge that development and construction of the Project is a large-scale undertaking involving major investments by Developer and City, and assurances that Developer will be allowed to develop and use the Property in accordance with the terms and conditions set forth herein and the existing rules governing development of the Property will benefit both Developer and City.

H. City is willing to enter this Agreement for the reasons enumerated in SCCC Section 17.10.010 to (i) eliminate uncertainty in the comprehensive development planning of large-scale projects in the City, such as the Project; (ii) secure orderly development and fiscal benefits for public services, improvements and facilities planning in the City, including the voluntary, supplementary community benefits offered by the Developer; (iii) meet the goals of the General Plan; and (iv) plan for and concentrate public and private resources for the mutual benefit of both Developer and City.

I. Developer acknowledges and recognizes that material inducements for the City to enter into this Agreement include opportunities to:

i. Support the City's North Santa Clara planning effort by converting an underutilized 48.6-acre site, primarily used as a surface parking lot, to a pedestrian-oriented, high-intensity and high-density mixed-use development that is sustainable and inclusive by design, with a range of building types, connections between people, places, and open space;

ii. Broaden the housing supply and business opportunities in North Santa Clara through development of a human-centric, interconnected urban

neighborhood that provides a diverse and complementary mix of residential, commercial, retail and community uses with up to 3 million gsf of office/research and development ("R&D") space, approximately 100,000 gsf of neighborhood retail space, approximately 10,000 sf childcare and up to 1,800 multifamily residences;

iii. Promote an active pedestrian realm with continuous access to at-grade, podium-level, and rooftop private open space and at-grade public parks with flexible programming that will add substantial public park area and private open space to North Santa Clara;

iv. Promote and support local, regional, and State of California (State) mobility and greenhouse gas reduction objectives to reduce vehicle miles traveled and infrastructure costs through infill and mixed-use development in an existing urbanized and transit-rich area;

v. Facilitate ridership of multimodal transportation and minimize vehicular infrastructure, while providing efficient access to sufficient and flexible parking that meets current and future demand;

vi. Meet and exceed the City's Affordable Housing Ordinance and Inclusionary Zoning requirements; and

vii. Promote and facilitate opportunities for childcare and grocery services in North Santa Clara; and

viii. Provide at least $5 Million, subject to CPI, in voluntary funding towards public art and cultural programing; and

ix. Provide up to $3 Million, subject to CPI, in voluntary funding for the City-led intersection improvements at Mission College and Great America Parkway.

x. Provide up to $3.5 Million, subject to CPI, in voluntary funding for the City's purchase of a new ladder truck and fire engine; and

xi. Provide for the voluntary allocation of point of sale to secure tax revenues from the construction of the Project for the benefit of the City's general fund.

b. In addition to the benefits of the Project and the voluntary community benefit contributions by Developer, the Project will also provide for, upgraded utility infrastructure, payment of substantial new development impact fees, school fees, increased property taxes to support public services and facilities and provide opportunities for construction and permanent jobs.

J. City's willingness to enter into this Agreement is a material inducement to Developer to implement the Project, and Developer proposes to enter this Agreement in order (i) to

obtain assurances from City that the Property may be developed, constructed, completed and used pursuant to this Agreement, and in accordance with existing policies, rules and regulations of the City, subject to the exceptions and limitations expressed herein and the term of this Agreement; and (ii) to provide for a coordinated and systematic approach to funding the cost of certain public improvements and facilities planned by the City, and to establish the timing and extent of contributions required from Developer for these purposes.

K. Developer requested City enter into this Agreement, and proceedings have been taken in accordance with State law, as set forth below.

L. On *_____, _____, and _____, City's Planning Commission held a duly noticed public hearings on the Project, where following public testimony, the Planning Commission by adoption of Resolutions *_____, ____, _____, and _____ recommended that the City Council (i) approve and certify the Final Environmental Impact Report ("EIR") pursuant to the California Environmental Quality Act ("CEQA"), making findings with respect thereto, adopting a Mitigation Monitoring and Reporting Plan ("MMRP"), and adopting a Statement of Overriding Considerations ("SOC"); (ii) approve the General Plan Amendment; (iii) approve the Rezoning and Development Plan, including TDMP and AHP, subject to COAs; (iv) approve the VTM, subject to COAs; and (v) approve this Agreement.

M. On *_____, the City Council held a duly noticed public hearing on the Project, where following public testimony, the City Council, by adoption of Resolutions * ____, ___, ____ and ____ (i) approved and certified the EIR pursuant to CEQA, making findings with respect thereto and adopting a MMRP and SOC; (ii) approved the General Plan Amendment; (iii) approved the Rezoning and Development Plan, including TDMP and AHP, subject to COAs; (iv) approved the VTM, subject to COAs; and introduced Ordinance No. *_____, approving this Agreement.

N. On *_____, the City Council adopted Ordinances Nos. *_____ and _____, rezoning the property and approving the Development Plan, and enacting this Agreement, and the Ordinances became effective thirty (30) days later on *_____ ("Effective Date").

AGREEMENT

NOW, THEREFORE, pursuant to the authority contained in California Government Code Section 65864 and following, and SCCC Section 17.10.010 and following, and in consideration of the mutual representations, covenants and promises of the Parties, the Parties hereto agree as follows below. A glossary of defined terms in this Agreement is provided in Exhibit C.

1. TERM

1.1 Effective Date. The term ("Term") of this Agreement shall commence on the Effective Date (set forth above) and shall continue for a period of ten (10) years after the Effective Date, unless sooner terminated or extended as hereinafter provided.

1.2 Term Extensions. Notwithstanding the provisions of Section 1.1 the Term may be extended as follows and each such extension shall be documented by Operating Memoranda pursuant to Section 22.1:

a. First Extension. If either of the following (a)(i) [First Extension Performance Option] or (a)(ii) [First Extension Payment Option], below occur then the Term of this Agreement may, at the request of the Developer, be extended by an additional five (5) years for a total Term of fifteen (15) years:

(i) First Extension Performance Option: a building permit(s) ("Building Permit") has been issued for a residential building within the Project containing at least ninety (90) units for Very Low Income Households prior to January 15, 2031 and at least two and one half (2.5) acres or more of public or private parks or trail improvements on the Property have been approved and either completed or subject to a binding public improvement agreement and secured by financial security acceptable to the City (e.g., performance bonds), and at least one of the following (A) or (B) has occurred:

(A) Developer satisfies the obligations in Section 4.16 related to delivery of a Grocery Store or an Approved Grocery Alternative ("Grocery Performance Milestone"); or

(B) Developer satisfies the obligations in Section 4.17 related to delivery of Childcare Facility or an Approved Childcare Alternative ("Childcare Performance Milestone").

(ii) First Extension Payment Option. Developer pays to the City an amount of one dollar ($1.00), as adjusted by CPI from the Effective Date, for all remaining maximum allowed square feet of the Project that are not complete or subject to a Building Permit as of the date the First Extension Payment Option is exercised.

b. Second Extension. If, in addition to satisfaction of (a) [First Extension] above, either of the following (b)(i) [Second Extension Performance Option] or (b)(ii) [Second Extension Payment Option], below occur, then the Term of this Agreement may, at the request of the Developer, be extended, by an additional five (5) years for a total Term of twenty (20) years:

(i) Second Extension Performance Option. A Building Permit has been issued for at least one hundred and eighty (180) total affordable units, and at least 5 acres or more of public or private parks or trail improvements on the Property have been approved and either complete or subject to a binding public improvement agreement and secured by financial security acceptable to the City (e.g., performance bonds), and Developer has completed either the

Grocery Performance Milestone or the Childcare Performance Milestone as defined in (a)(i).

(ii) Second Extension Payment Option. Developer pays to the City an amount of one dollar and fifty cents ($1.50), as adjusted by CPI from the Effective Date, for all remaining maximum allowed square feet of the Project that are not complete or subject to a Building Permit as of the date the Second Extension Payment Option is exercised.

c. Third Extension. If, in addition to satisfaction of (a) [First Extension] and (b) [Second Extension], above, either of the following (c)(i) [Third Extension Performance Option] or (c)(ii) [Third Extension Payment Option], below occur, then the Term of this Agreement may, at the request of the Developer, be extended by an additional five (5) years for a total Term of (25) years.

(i) Third Extension Performance Option. A Building Permit has been issued for at least two hundred and seventy (270) total affordable units, at least 7.4 acres or more of public or private parks or trail improvements on the Property have been approved and either complete or subject to a binding public improvement agreement and secured by financial security acceptable to the City (e.g., performance bonds), and Developer has completed both the Grocery Performance Milestone and the Childcare Performance Milestone as defined in (a)(i).

(ii) Third Extension Payment Option. Developer pays to the City an amount of two dollars ($2.00), as adjusted by CPI from the Effective Date, for all remaining maximum allowed square feet of the Project that are not complete or subject to a Building Permit as of the date the Third Extension Payment Option is exercised.

1.3 Expiration. Following expiration of the Term or any extension, or if sooner terminated, this Agreement shall have no force and effect, subject, however, to post-termination obligations of Developer and City. The Parties agree that the term of any VTM shall expire and be of no further force or effect upon expiration of this Agreement.

2. DEVELOPMENT OF THE PROPERTY

2.1 Property. The Property that is the subject of this Agreement is that certain real property described in Exhibit A attached hereto. The Parties acknowledge that the VTM is intended to resubdivide the entire Property. Therefore, upon the request of Developer, City agrees to meet and confer with Developer on whether, for ease of future reference, to replace the legal description in Exhibit A with the final legal descriptions shown on the recorded Final Map(s) that describe the entire Property, subject to the City's confirmation that the Final Maps accurately describe the Property. The determination of whether to replace the legal description in Exhibit A with the final legal descriptions shown on the Final Map(s) shall be made at the City's sole discretion.

2.2 Binding Covenants. It is intended and agreed that the provisions of this Agreement shall constitute covenants that shall run with the Property, and the benefits and burdens hereof shall bind and inure to all successors in interest to the Parties hereto.

2.3 Life of Approvals. Pursuant to Government Code section 66452.6(a) and this Agreement, the life of the Project Approvals (defined in Recital D) and all subsequent Project approvals, including but not limited to architectural approval(s) and tree removal permit(s) (each a "Subsequent Project Approval" and collectively with the Project Approvals the "Approvals") shall automatically be extended to and until the later of the following: (1) the end of the Term of this Agreement; or (2) the end of the term or life of any such Approval. Notwithstanding the foregoing, the Vested Elements secured by Developer under this Agreement shall have a life no greater than the Term of this Agreement, and any extension thereof.

2.4 Vested Elements. The permitted uses of the Property, the maximum density and intensity of use, the maximum heights, locations, numbers and gross square footage of the proposed buildings, the provisions for vehicular access and parking, reservation or dedication of land for public purposes or fees in-lieu thereof, provision for construction of public improvements and/or required fees associated with the Project as provided in, and limited by, the Approvals and this Agreement, shall be vested and are hereby vested and referred to as vested elements ("Vested Elements"). In addition to the foregoing Vested Elements, other terms and conditions of development applicable to the Project are set forth in the following documents as they exist as of the Effective Date:

a. The General Plan of the City of Santa Clara, current as of the Effective Date, the terms and conditions of which are incorporated herein by this reference;

b. SCCC, current as of the Effective Date, including the Rezoning;

c. The Development Plan, including the TDMP and AHP, and VTM, including the COAs imposed thereon;

d. All other applicable City plans, policies, programs, regulations, ordinances and resolutions of the City in effect as of the Effective Date, which regulate development of the Property and implementation of the Project, and which are not inconsistent with the terms of this Agreement ("Other Regulations");

e. Any permits and/or Subsequent Approvals, including but not limited to additional subdivision maps or lot line adjustments, if any, final maps, site and architectural review, demolition permits, Building Permits, grading permits, and infrastructure improvement plans processed in accordance with the terms of this Agreement Upon approval, each such Subsequent Approval shall be incorporated into this Agreement and vested hereby; and,

f. Proof of availability of sufficient water supply demonstrating the Project's compliance with Government Code § 66473.7.

2.5 Permitted Uses. The permitted uses for the Property and the Project include the following, all as more particularly described in the Development Plan and all of which must be implemented in accordance with the Approvals and the COAs, and MMRP. The number of residential units and amount of square footage for each use are subject to the Minor Change process as set forth in Section 11.2(b):

a. Up to 1,800 residential units and related amenity space;

b. Up to 3 million gross square feet ("gsf") of office/R&D and related amenity space;

c. Approximately 100,000 gsf of neighborhood retail uses; and

d. Approximately 10,000 gsf of childcare facilities.

2.6 Present Right to Develop. Subject to Developer's fulfillment of the provisions of this Agreement, including the Development Plan and COAs, the City hereby grants to Developer the present vested right to develop and construct on the Property all the improvements authorized by, and in accordance with, this Agreement and the Vested Elements. To the extent permitted by law, no future modification (including by later-adopted initiative and/or referendum) of the City's General Plan, SCCC, ordinances, policies or regulations that purport to (i) limit the rate or timing of development, size of buildings or other improvements (including developable square footage), or amount of development of the portions of the Project to be built; or (ii) impose fees, exactions or conditions upon development, occupancy or use of the Property other than as provided in the Project Approvals and the COAs and MMRP, or pursuant to this Agreement, shall apply to the Property; provided, however, that nothing in this Agreement shall prevent or preclude City from adopting any fees or land use regulations or amendments thereto, expressly permitted herein.

2.7 Timing of Improvements; No Moratoria. Subject to the Project Approvals and this Agreement, Developer shall have the right to develop the Project at such time as Developer deems appropriate subject to Section 2.3 and this Section 2.7 within the exercise of its subjective business judgment. The Parties acknowledge and agree that presently the Developers cannot predict the timing of the Project. Therefore, the Developers have no obligation to develop or construct all or any component of the Project. The timing, sequencing, and phasing of the Project is solely the right and responsibility of Developers in the exercise of their business judgment so long as it is consistent with the Vested Rights and the MMRP. Because the California Supreme Court held in *Pardee Construction Co. v. City of Camarillo* (1984) 37 Cal.3d 465 that failure of the Parties therein to provide for the timing of development resulted in a later-adopted initiative restricting the timing of development to prevail over the Parties' agreement, it is the Parties' intent to cure that deficiency by acknowledging and providing that the Developers shall have the right to develop the Property in such order, at such rate, and at such times as Developers deem appropriate within the exercise of its subjective business judgment and the provisions of this Agreement. No annual (or other) limit, moratoria, or

other limitation upon the number of, or pacing of, buildings which may be constructed, or Building Permits which may be obtained, or the like shall apply to the Project.

2.8 Agreement and Comprehensive Plan for Development. The Parties acknowledge that, except as specifically set forth herein, the Project Approvals, the MMRP, and COAs set forth a comprehensive schedule of all development terms and conditions, development mitigation measures and fees, special assessments, special taxes, exactions, fees in-lieu, charges and dedications required in the public interest to be contributed, paid or constructed due to development of the Project on the Property. All fees referred to herein, may be subject to an annual increase until paid, but only if such increase is applied equally to similarly situated projects on a City-wide or area-wide basis, and any such annual increase shall be limited in the manner specified in Section 3.

2.9 Design of On-Site and Off-Site Improvements. Development of the Property shall be subject to Architectural Review Process by City pursuant to the policies, regulations and ordinances, including Article 6 of the City Zoning Code entitled "Permit Processing Procedures", in effect as of the Effective Date, and subject to the Vested Elements, the MMRP, and this Agreement. No such Architectural Review shall, without Developer's consent, require development of the Property inconsistent with the Vested Elements, or MMRP unless City determines it is necessary to protect against conditions which create a substantial adverse risk to the physical health or safety of residents or users of the Project or the affected surrounding region. The Vested Elements and the MMRP, and all improvement plans prepared in accordance thereof, shall govern the design and scope of all on-site and off-site improvements benefiting or to be constructed on the Property. In no event shall Architectural Review approval by City be conditioned on or require any change in the Vested Elements or the MMRP, without Developer's consent.

2.10 Development of the Site. In consideration for the City entering into this Agreement, Developer agrees to perform all of its obligations contained in this Agreement in the time and manner set out in this Agreement, the MMRP, the COAs and the Project Approvals.

2.11 Integrated Development. City and Developer acknowledge that the Project is, and shall be considered, an integrated development. It is thus the intention of the Parties that, if construction on one component of the Project is commenced, any additional development of the Property will adhere to this Agreement and the Project Approvals. However, nothing in this Agreement is intended: (i) to prevent Developer from individually commencing and completing development of any portion of the Project, even if development on other portions thereof has not been commenced and/or completed; (ii) to prevent Developer from independently marketing, selling, renting and/or occupying all, or any portion of, such developed space, pursuant to Section 12, provided that all current obligations under this Agreement and the Development Plan and all infrastructure requirements for the existing developed space have been met; and (iii) to require Developer to develop any portion of the Project (even if development on another portion of the Project has been commenced and/or completed).

2.12 Building Standards. Developer hereby agrees to employ all reasonable efforts such that the Project will be built to LEED Neighborhood Development Silver or equivalent

standards, LEED CS Gold or equivalent standards for commercial buildings and LEED NC Silver for residential buildings, all as described in more detail in the Project Approvals.

3. EFFECT OF AGREEMENT

3.1 Subsequent State or Federal Laws or Regulations. As provided in California Government Code section 65869.5, this Agreement shall not preclude the application to the Project of changes in laws, regulations, plans or policies, to the extent that such changes are required by changes in county, regional, State or federal laws or regulations ("Changes in the Law"). In the event Changes in the Law prevent or preclude compliance with one or more material provisions of this Agreement, Developer may request that such material provisions be modified or suspended, or performance delayed, as may be necessary to comply with Changes in the Law, and City may take such action as it deems necessary to be consistent with the intent of this Agreement.

3.2 Changes to Existing Regulations. Except as otherwise specifically provided, only the following changes to the Vested Elements, including such changes adopted by the electorate through the powers of initiative, or otherwise, shall apply to the development of the Property:

a. Subject to Section 3 herein, Citywide regulations, ordinances, policies, programs, resolutions or fees adopted after the Effective Date that are not in conflict with the Vested Elements and the terms and conditions for development of the Property established by this Agreement, or otherwise applicable regulations existing as of the Effective Date. Changes to the General Plan, SCCC or other regulations shall be deemed to conflict with the approvals and this Agreement ("Conflicting City Law") if such changes prevent development of the Property in substantial accordance with the Approvals; require significant changes in the development of the Property from what is contemplated by the Approvals; significantly delay, ration or impose a moratorium on development of the Property; or require the issuance of discretionary or nondiscretionary permits or approvals by the City other than those required as of the Effective Date. A fee shall be deemed to conflict with this Agreement if it is an increase in an existing fee by more than the amount permitted pursuant to Section 4 below.

b. Any law, regulation or policy which would otherwise be Conflicting City Law, but through this Agreement or by later separate document, application to the Property has been consented to in writing by the Developer.

3.3 Further Reviews. Developer acknowledges that existing land use regulations, the Vested Elements and this Agreement contemplate the possibility of further reviews of elements or portions of the Project by the City including potential CEQA analysis, if required. Nothing in this Agreement shall be deemed to limit the legal authority of City with respect to these reviews as provided by, and otherwise consistent with, this Agreement and the Vested Elements. In no event shall such further review by City revisit the COAs and Project Approvals or be conditioned on or require any change in the

Project except as contemplated by the COAs, the Project Approvals and/or this Agreement.

3.4 Local Rules. Future development on the Property shall be subject to all the official rules, regulations and policies (collectively "Local Rules") of the City which govern uses, architectural design, landscaping, public improvements and construction standards, and which are contained in and not inconsistent with the Vested Elements or are in effect as of the Effective Date, with the exception that revisions or amendments to the Local Rules necessitated by reasonable public health or fire and life-safety considerations shall apply as though the rules were in effect as of the Effective Date. Notwithstanding any other provision of this Agreement, and without limitation as to any other exceptions contained in this Agreement, City shall retain the authority to take the following actions, so long as such action is applied on a Citywide basis to similarly situated projects:

a. Adopt and apply property transfer taxes and/or excise taxes;

b. Adopt and apply utility charges;

c. Adopt updates to building and/or fire codes;

d. Maintain the right of voters to act by initiative or referendum, but only to the extent that the initiative or referendum does not affect or interfere with any vested rights acquired by the Developer in this Agreement; except that this Agreement itself is subject to referendum; and,

e. Take other actions not expressly prohibited by the terms or provisions of this Agreement.

3.5 Future Exercise of Discretion by City. This Agreement shall not be construed to limit the authority or obligation of City to hold necessary public hearings, or, except as provided herein, to limit discretion of the City or any of its officers or officials with regard to rules, regulations, ordinances or laws which require the exercise of discretion by City or any of its officers or officials. Except as provided herein, this Agreement shall not prevent City from applying new rules, regulations and policies, or from conditioning future Project development approval applications on new rules, regulations and policies that do not conflict with the terms of the Vested Elements or this Agreement.

4. DEVELOPMENT FEES, EXACTIONS AND DEDICATIONS.

4.1 Development Fees, Exactions and Dedications. During the time period between the Effective Date and the time period that is seven (7) years after the Effective Date (such time period, as extended by any delay due to Force Majeure hereinafter the "Development Fee Vested Period"), the types and amounts of fees, special assessments, special taxes, exactions and dedications (collectively "Fees") payable due to the development, build out, occupancy and use of the Property pursuant to this Agreement shall be exclusively those set forth in the Project Approvals, the COAs and as specified in this Agreement. Notwithstanding any amendments to the Fees or imposition of any new City fees, taxes, special assessments or other exactions during the Development Fee

Vested Period, the Fees set forth in this Agreement, the COAs, and Project Approvals shall be the only fees, charges, special assessments, special taxes, dedications and exactions payable to City due to development of the Property during the Development Fee Vested Period; provided however that any automatic and generally applicable increases to such Fees occurring during the Development Fee Vested Period pursuant to an ordinance adopted prior to the Development Vested Period shall apply to the Fees. The defined term "Fees" for this purpose does not include Load Fees adopted by Silicon Valley Power. The Development Fee Vesting Period shall be extended (if still in effect at the time) or reset (if expired at the time) for a period(s) of four (4) years upon the date of City approval of an Architectural Review Permit for any portion of the Project based on whatever Fees are in effect as of the reset date (each a "Development Fee Vesting Locking Period"). Each Development Fee Vesting Locking Period shall be documented by Operating Memoranda pursuant to Section 22.1. After the Development Fee Vesting Period has expired (subject to the Development Fee Vesting Locking Periods noted above), all Fees payable due to the development, build out, occupancy and use of the Property pursuant to this Agreement shall be those Fees, and in the amounts, then in effect so long as such Fee is (i) generally applicable on a city-wide or area-wide basis for similar land uses, and (ii) are not redundant as to the Project of a fee, dedication, program, requirement, or facility that is imposed or required under this Agreement, the COAs, or the Project Approvals. Notwithstanding anything to the contrary herein, if the Developer complies with the requirements of Section 4.8, Art in Public and Private Development Funding, the Project shall not be subject to any public art fee (or similarly titled development fee or special tax adopted for the purposes of increasing the amount of public/publicly accessible art or generating funding for such purpose) adopted by the City as set forth in Section 4.8.

4.2 Processing Fees. Processing fees, including without limitation Building Permit application, processing and inspection fees ("Processing Fees"), may be increased if the increase is applicable Citywide and reflects the reasonable cost to City of performing the administrative processing or other service for which the particular Processing Fee is charged. New Processing Fees may be imposed if the new Processing Fees apply to all similarly situated projects or works within the City and if the application of these Processing Fees to the Property is prospective only. Processing Fees shall be due and payable on an individual project application basis, so that only those fees applying to the actual construction of each portion of the Project shall be paid upon the issuance of the appropriate permits for that portion of the Project. Developer shall pay the costs associated with the planning, processing and environmental review process for the Project, provided that such costs shall be limited to (i) reasonable costs directly associated with the preparation of the EIR; (ii) fees ordinarily charged by City for processing land use applications and permits, provided that such fees and costs are applied to Developer in the same manner as other similarly situated applicants seeking similar land use approvals and are not limited in applicability to the Project or to related uses; and (iii) fees associated with third-party contract permit plan checking, if applicable, above those normally charged by the City. Pursuant to Section 4.3, Developer shall reimburse City for reasonable staff overtime expenses incurred by City in processing review, approval, inspection and completion of the Project provided that such overtime expenses are (a) reasonably necessary for the completion of the Project in

accordance with Developer's schedule; and (b) applied to Developer in the same manner as similarly situated project applicants.

4.3 Reimbursement to City. Notwithstanding the foregoing limitations on Processing Fees, Developer agrees to reimburse City for expenses over and above Processing Fees paid by Developer as an applicant for reasonable third-party contractual costs incurred by City relating to any expedited processing of entitlements and environmental review related to this Agreement requested by the Developer. Such reimbursement shall be due within sixty (60) days of receipt of an invoice from the City.

4.4 Dedications. Developer shall offer to dedicate to City, upon request by City, all portions of the Property designated in the Project Approvals or Conditions of Approval for public easements, streets or public areas.

4.5 Mitigations. Developer agrees to contribute to the costs of public facilities and services in the amounts set forth in the Project Approvals, MMRP, and COAs as required to mitigate impacts of the development of the Property ("Mitigations"). City and Developer recognize and agree that but for Developer's contributions to mitigate the impacts arising as a result of the entitlements granted pursuant to this Agreement, City would not and could not approve the development of the Property as provided by this Agreement. City's approval of development of the Property is in reliance upon, and in consideration of, Developer's agreement to make contributions toward the cost of public improvements and public services as provided to mitigate the impacts of development of the Property.

4.6 Affordable Housing Provisions. Developer agrees to provide onsite residential units at affordable rents/costs, as set forth in the AHP (set forth in Section 2.11 of the Development Plan). The City's baseline Inclusionary Housing Policy requires developers of for sale and rental residential developments (including mixed use projects) of ten (10) or more units to provide at least fifteen (15%) percent of their units at rents or prices affordable to extremely low, very low, low and moderate income households, or some combination thereof, as long as the distribution of affordable units average for all rental units does not exceed a maximum of one hundred percent (100%) of area median income or the average for all affordable for-sale rental units does not exceed one hundred percent (100%) AMI, and for the affordable units to be dispersed with the market rate units. Inclusionary units are subject to reduced required fees, and any calculations that result in fractional units pay in-lieu fees. The Project must meet all requirements of the City's existing Affordable Housing Ordinance and all affordable housing units must be dispersed with the market rate units, unless, upon the request of Developer, an alternate plan is approved by the City Council pursuant to the AHP and existing Affordable Housing Ordinance. When and if the City Council approves an alternative plan pursuant to the AHP, such alternative plan shall be incorporated by reference in this Agreement so long as such alternate plan otherwise complies with this Agreement. In addition, the Developer has voluntarily agreed to meet and exceed this requirement as provided in the AHP by proposing to provide an average affordability of eighty (80%) AMI with no individual affordable rental unit exceeding a maximum of one hundred percent (100%)

AMI and no individual affordable for-sale unit exceeding a maximum of one hundred and twenty percent (120%) AMI.

4.7 Open Space and Parks. Developer acknowledges its obligation to provide parkland, pay a fee in lieu thereof, or a combination of such dedication and fee pursuant to Chapter 17.35 of the City Code. Notwithstanding the preceding provisions of Section 4 or any other provisions in this Agreement to the contrary, the provisions of this Section 4.7 shall exclusively govern the dedication of parkland and payment of fees due in lieu of parkland dedication, and the credits against the amount of such parkland dedication and/or such in lieu fees, with respect to the Project. Said fees shall be assessed per development of the Project's residential units and shall be paid prior to the issuance of a building permits for vertical construction of residential buildings and the timing of dedication and delivery of parkland shall be as set forth in a park improvement agreement executed between the City and Developer. In addition, the Project will comply with the following with respect to open space and parks as the Project is implemented:

a. **Minimum Park and Open Space Improvements**. Subject to the City's formal public park review process, concurrent with issuance of Building Permits resulting in a cumulative of five hundred (500) or more residential units within Area D, the Developer will have completed or entered into a public improvement agreement with the City to complete a minimum of one and a half (1.5) acres or more of public park or private open space improvements with a public access easement that include play areas for children ages 2 to 5 and ages 5 to 12.

b. **Maintenance of Public Parks**. The Parties acknowledge that the size and design of the public park is conceptual and will be subject to the City's process under the Park Ordinance. When a public park is proposed by the Developer, in addition to the park improvement agreement and as a condition of approval, the Developer will enter into a maintenance agreement with the City to maintain the proposed public parks on the Property consistent with City's standard and typical maintenance standards for a minimum of forty years from dedication ("Public Park Maintenance Period"). The Parties agree that the target maximum annual maintenance cost for the public park, including an annualized reserve for anticipated capital replacement costs during the Public Park Maintenance Period, is one dollar and sixteen cents ($1.16) per square foot of public park, as adjusted by CPI from the Effective Date (the "Target Maximum Public Park Maintenance Cost"). The Target Maximum Public Park Maintenance Cost is intended to cover one hundred percent (100%) of reasonable annual park maintenance and capital replacement during the Public Park Maintenance Period based on current conceptual park designs and assumes private maintenance by Developer as an independent contractor. If at the time the public parks are designed, Developer proposes a design or programmatic elements that result in estimated annual maintenance costs that exceed the Target Maximum Public Park Maintenance Cost, the Developer will nevertheless accept responsibility for maintenance of the parks and assume responsibility for one hundred percent (100%) of annual maintenance costs during the Public Park Maintenance Period. If, however, the City requests changes to the park design or programmatic elements proposed by

Developer that increase estimated maintenance costs above the Target Maximum Public Park Maintenance Cost, the Parties will meet and confer in good faith on design changes to reduce maintenance costs to at or below the Target Maximum Public Park Maintenance Costs. If the City does not wish to accept design changes that would reduce maintenance costs, the City may instead elect to enter into an agreement with the Developer to reimburse maintenance costs in excess of the Target Maximum Public Park Maintenance Cost for the Public Park Maintenance Period. After the Public Park Maintenance Period, the City will be solely responsible for all public park maintenance and capital replacement costs for any dedicated public park.

c. **Maintenance of Public Trails**. When a public trail is proposed by the Developer on the Property, in addition to the trail improvement agreement and as a condition of approval, the Developer will enter into a maintenance agreement with the City to maintain the proposed public trail on the Property consistent with City's standard and typical maintenance standards for a minimum of forty years from dedication ("Public Trail Maintenance Period"). The Parties agree that the target maximum annual maintenance cost for the public trail, including an annualized reserve for anticipated capital replacement costs during the Public Trail Maintenance Period, is one dollar and sixteen cents ($1.16) per square foot of public trail, as adjusted by CPI from the Effective Date (the "Target Maximum Public Trail Maintenance Cost"). The Target Maximum Public Trail Maintenance Cost is intended to cover one hundred percent (100%) of reasonable annual public trail maintenance and capital replacement during the Public Trail Maintenance Period based on current conceptual public trail designs and assumes private maintenance by Developer as an independent contractor.

d. **Public Access to Private Open Space**. Public access easements will apply to ground level private open space of a public facing nature over which pedestrian, bicycle traffic, or other public use is reasonably anticipated or would provide a convenience, amenity value, and/or help create pedestrian or bicycle connectivity. Delineation of areas subject to such public access easements will be determined at the time of Architectural Design Review approval for each Project phase or subphase that includes ground level private open space improvements. Areas subject to access easements are anticipated to consist of privately-owned sidewalks, pedestrian plazas, parks, bike lanes, streets, and landscaped areas directly adjacent to public parks or rights of way. Upon completion of each phase of applicable private open space in the Project, Developer to provide a public access easement over the applicable areas with either 24/7 access, or other reasonable hours as appropriate depending on the location, to be recorded prior to the applicable certificate of occupancy. The City shall not be responsible for any maintenance costs for the public access easement areas.

4.8 Art in Public and Private Development Funding. Parties agree that art in public and private development has come to be an essential element in placemaking, social practice, and the creation of vibrant and economically successful communities. As such, the Developer agrees to invest an aggregate (reasonable hard and soft third party costs for

processing, design, construction and installation) minimum amount of five million dollars ($5,000,000), as adjusted by CPI, in original art features within the Project ("Public Art Funding"). These features must be publicly visible and/or accessible and may include, but are not limited to: sculptures, murals, exhibition or performance spaces and functional art such as decorative benches, bike racks or other architectural design features that are commissioned original pieces of art approved by the City. Placemaking activities such as temporary art installations or cultural arts programming that the general public can participate in are also considered acceptable uses of the Public Art Funding. All projects to be supported by the Public Art Funding shall be submitted to the City with a maintenance plan for approval. The Developer shall spend , or place in an escrow held by the City, at least Three Million Dollars ($3,000,000), adjusted by CPI, of the Public Art Funding prior to the exercise of First Extension of the Term of this Agreement, and at least the full amount of the Public Art Funding prior to the exercise of the Second Extension of the Term. If the requirement in the preceding sentence is satisfied, the Project shall not be subject to any new public art fee or similar public arts requirements adopted by the City for the longer of the full Term of this Agreement or through completion of the Project. Any escrowed funds shall remain in an earmarked account for use on the Project until five (5) years after termination of this Agreement. After that time, any unspent funds remaining in escrow will be available to the City for any public art purpose within the City in the City's sole discretion. The obligations of this Section 4.8 shall survive termination of this Agreement.

4.9 Local Transportation Improvements; Fair Share Traffic Fees. In addition to all applicable traffic impact fees pursuant to Santa Clara Code Section 17.15.330, Developer agrees to the total sum of up to Six Million One Hundred Thousand Sixty Two Thousand Three Hundred and Ninety Six Dollars ($6,162,396) ("Fair Share Traffic Fees ") payable to the City to mitigate the Project's contributions to certain local and regional intersection improvements identified in the EIR and further specified and allocated in Exhibit B ("Allocation of Fair Share Traffic Fees"). The Fair Share Traffic Fees shall be payable at the times and in the amounts shown on Allocation of Fair Share Traffic Fees. At the Developer's option, Developer may pay Fair Share Traffic Fees in cash when due, or by use of a bond or letter of credit, to be credited proportionately to such intersection improvement or otherwise subject to the provisions of this Section 4.9. In the event the City permits the Developer to build any local transportation improvements over and above the Project's fair share, Developer shall be entitled to reimbursement from traffic fees paid to City by properties not associated with the Project and which benefit from the improvements over and above the Project's fair share when those properties develop.

4.10 Sewer Connection Fee. If the City should adopt an ordinance subsequent to the Effective Date of this Agreement that permits reduced Sewer Connection Fees as a result of onsite conservation measures, the Developer may apply for consideration of such reductions toward the Sewer Connection Fees paid on behalf of the Project. Applications may be filed for any portion of the Project, if that portion of the Project has a minimum of one year of ninety percent (90%) occupancy prior to receipt of the application by the City.

4.11 Vacation of Democracy Way. The City agrees to approve the vacation of Democracy Way as shown in the VTM and may utilize any applicable procedure permissible under the City Charter and/or the SCCC to effectuate the vacation of the street right of way easement, including all required relocation of public utilities (the "Street Easement Vacation"). The Street Easement Vacation is subject to the reservation of a public utility easement therein until the relocation of all required public utilities existing within Democracy Way as of the Effective Date ("Existing Public Utilities"). Developer shall, at its cost, relocate or cause to be relocated all Existing Public Utilities ("Relocation Work"). Promptly following the completion of such Relocation Work, the City shall vacate the reserved public utility easement within the Vacated Street Area pursuant to the summary vacation procedures set forth in Streets and Highways Code Section 8300 *et seq*. When the Developer commences the Relocation Work, the City will, promptly upon receipt of a written request to do so from Developer and at the Developer's cost, prepare an appraisal of the fair market value of the street right of way easement by a qualified appraiser ("ROW Appraisal"). The Developer will have the right to review the qualifications and scope of work for the Appraisal prior to its preparation, and the City shall consider and address any reasonable objections of the Developer in good faith. The Developer shall pay to the City the fair market value established by the ROW Appraisal ("FMV"), minus the actual and reasonable soft and hard costs of the Relocation Work ("Relocation Costs"). Developer will pay to the City the amount (if any) that the FMV exceeds the Relocation Costs. If, however, the Relocation Costs exceed the FMV, no amount will be due to either Party. The Street Easement Vacation and any payment due to the City under this Section 4.11 shall be completed prior to the recordation of a Final Map for either Area A or Area B (whichever is earlier), as depicted on the VTM. The Parties acknowledge that this process may take several years to complete, and that the City will commence this process only upon the written request of the Developer and execution of a reimbursement agreement for the City's actual, reasonable costs related to implementation of this Section 4.11.

4.12 Utility Improvements. Developer shall, at its cost, upgrade existing public utilities per the infrastructure delivery plan set forth in the Project Approvals. Developer shall be entitled to reimbursement for any upsizing of public utilities to serve connections from properties not associated with the Project.

4.13 SVP Facilities. Special facilities may be required for the provision of electric service to the Project. Developer agrees to fulfill its commitments to SVP pursuant to the COAs and, if required, a separate agreement to be entered with SVP.

4.14 Transportation Services. Developer agrees to implement the Transportation Demand Management Plan, as set forth in Section 2.10 of the Development Plan, in order to facilitate the usage of multi-modal transit in cooperation with the City, other public agencies, and other local business interests.

4.15 Point of Sale for Project Construction. The Developer agrees to, prior to issuance of Building Permits, to the extent allowed by law, to require all persons and entities providing materials to be used in connection with the construction and development of, or incorporated into, the Project, including by way of illustration but not limitation bulk

lumber, concrete, structural steel, roof trusses and other pre- fabricated building components, to (a) obtain a use tax direct payment permit; (b) elect to obtain a subcontractor permit for the job site of a contract valued at Five Million Dollars ($5,000,000) or more; or (c) otherwise designate the Property as the place of use of material used in the construction of the Project and the place of sale of all fixtures installed in and/or furnished in order to have the local portion of the sales and use tax distributed directly to City instead of through the county-wide pool. Developer shall instruct its general contractor(s) to, and shall cause such general contractor(s) to instruct its/their subcontractors to, cooperate with City or City's consultant to ensure the local sales/use tax derived from construction of the Project is allocated to City to the fullest extent possible and to the extent allowed by law. This Section 4.15 shall not apply to tenants who perform their own tenant improvement work. To assist City or City's consultant in its efforts to ensure that such local sales/use tax is so allocated to City, Developer shall on an annual basis, or as frequently as quarterly upon City's or City's consultant request, provide City or City's consultant with such information as shall be reasonably requested by City or City's consultant regarding subcontractors working on the Project with contracts in excess of the amount set forth above, including a description of all applicable work and materials and the dollar value of such subcontracts, and, if applicable, evidence of their designation, such as approvals or applications for the direct payment permit, of City as the place of use of such work and materials. City or City's consultant may use such information to contact each subcontractor who may qualify for local allocation of use taxes to City. The City's sole and exclusive remedy for any failure of any general contractor(s) or subcontractor(s) to allocate sales and use tax revenues as provided herein or to comply with this Section 4.15 will be specific performance.

4.16 Grocery Store. If and when the northeastern portion of Area B, fronting Tasman Drive and Old Ironsides, is developed by the Developer during the Term (as the Term may be extended), such development must be designed, as part of the Architectural Design Review application and related Building Permit plans, to include a grocery store that meets the following minimum criteria: (a) a minimum of fifteen thousand (15,000) square feet of leasable area and (b) capable of providing traditional grocery store products including fresh produce, dairy, meat and fish, and dry goods ("Grocery Store"). As part of such development, Developer shall construct or pay all costs associated with completion of the Grocery Store to an initial core and shell condition (meaning all basic structural and life safety improvements are completed not including any tenant improvements) prior to the issuance of a final certificate of occupancy for the building that includes the Grocery Store. If the Developer proposes development on Area B that does not include the area proposed for the Grocery Store, the Developer shall submit information with the Architectural Review Permit to the City to confirm that such development will not limit, conflict with or otherwise adversely impact the future feasibility of the Grocery Store. If the Developer wishes to move the Grocery Store, the Director may, in their reasonable discretion, approve an alternative location as part of an Architectural Design Review application without amendment to this Agreement (in which case requirements of this Section 4.16 would apply to such alternative location). Such alternative location shall be documented by the Parties by Operating Memorandum pursuant to Section 22.1. The Parties acknowledge the grocery store market is subject to fluctuation and there is no guarantee that a third party tenant will be available to lease the

space on commercially reasonable terms. For a period of three (3) years from completion of initial core and shell improvements such that the Grocery Store is available and ready to execute a binding lease with a grocery tenant and commence tenant improvements, the Developer will make good faith efforts to market and lease the Grocery Store to a grocery store tenant providing traditional grocery store products including fresh produce, dairy, meat and fish, and dry goods, and will provide the Director regular updates (not less than quarterly) on these marketing and leasing efforts until a binding lease is entered into with a tenant ("Grocery Store Marketing Period"). The commencement and conclusion of the Grocery Store Marketing Period shall be documented by the Parties by Operating Memorandum pursuant to Section 22.1. During the Grocery Store Marketing Period, the Developer shall offer the Grocery Store at commercially reasonable terms, as supported by qualified broker information, including a commercially reasonable tenant improvement allowance and a triple net rental rate that does not exceed a fair market rent for a grocery store, considering the condition of the space and the tenant improvement allowance. Developer will promptly notify City when a tenant providing a Grocery Store has executed a lease of the Grocery Store. If a lease is not entered into despite good faith marketing and leasing efforts within the Grocery Store Marketing Period, the Developer will have no further obligations related to the Grocery Store and can use the Grocery Store area for any permitted purpose. This Section 4.16 shall survive termination of this Agreement through the Grocery Store Marketing Period.

If, at the time the Developer submits for Architectural Review for building(s) within the applicable portion of Area B, the grocery market is either saturated or Developer demonstrates that a grocery tenant is otherwise unlikely, the Developer may submit a market study to the City, request the Director to engage a qualified consultant (retained by the City with expense reimbursed by Developer) to evaluate the market study. If the Director, in their reasonable discretion based on the information in the market study and findings of the City's qualified consultant, confirms a grocery tenant is unlikely, then Developer and City will meet and confer in good faith to identify one or more alternative community benefits to replace the Grocery Store. Such alternative community benefit(s) are subject to mutual approval of Developer and City (by the Director and City Manager), each in their reasonable discretion. City approval is subject to a finding that the proposed alternative community benefit(s) would have a dollar value (net cost or financial impact to the Project) at least equal to the Grocery Store and acceptance is in the best interests of the City ("Approved Grocery Store Alternative). Such Approved Grocery Store Alternative will not require an amendment to this Agreement, but will be documented in writing by Operating Memoranda pursuant to Section 22.1. Until an Approved Grocery Store Alternative is formally approved by Operating Memoranda, the Developer must continue to comply with the requirements of this Section 4.16.

4.17 Childcare Facility. If and when the portion of Area D fronting the SFPUC right of way is developed by the Developer during the Term, as the Term may be extended, such development must be designed, as part of the Architectural Design Review application and related Building Permit plans, to include a childcare facility that meets the following minimum criteria: (a) suitable to be open to the public, (b) a minimum of eight thousand (8,000) square feet of interior leasable area and an outdoor play area, and (c) capable of compliance with applicable state regulations on childcare facilities ("Childcare Facility").

As part of such development, Developer shall construct or pay all costs associated with completion of the Childcare Facility to an initial core and shell condition (meaning all basic structural and life safety improvements are completed not including any tenant improvements) prior to the issuance of a final certificate of occupancy for the building that includes the Childcare Facility. If the Developer wishes to move the Childcare Facility, the Director may, in their reasonable discretion, approve an alternative location as part of an Architectural Design Review application without amendment to this Agreement (in which case requirements of this Section 4.17 would apply to such alternative location). If requested and approved, such alternative location shall be documented by the Parties by Operating Memorandum pursuant to Section 22.1. The Parties acknowledge the childcare market is subject to fluctuation and there is no guarantee that a third party tenant will be available to lease the space on commercially reasonable terms. For a period of three (3) years from completion of initial core and shell improvements, such that the Childcare Facility is available and ready to execute a binding lease with a childcare tenant and commence tenant improvements, the Developer will make good faith efforts to market and lease the Childcare Facility to a tenant providing a daycare use, and will provide the Director regular updates (not less than quarterly) on these marketing and leasing Efforts until a binding lease is entered into with a tenant ("Childcare Facility Marketing Period"). The commencement and conclusion of the Childcare Facility Marketing Period shall be documented by the Parties by Operating Memorandum pursuant to Section 22.1. During the Childcare Facility Marketing Period, the Developer shall offer the Childcare Facility at commercially reasonable terms, as supported by qualified broker information, including a commercially reasonable tenant improvement allowance and a triple net rental rate that does not exceed a fair market rent for a childcare facility considering the condition of the space and the tenant improvement allowance. Developer will promptly notify City when a tenant providing a Childcare Facility has executed a lease of the Childcare Facility. If a lease is not entered into despite good faith marketing and leasing efforts within the Childcare Facility Marketing Period, the Developer will have no further obligations related to the Childcare Facility and can use the Childcare Facility area for any permitted purpose. This Section 4.17 shall survive termination of this Agreement through the Childcare Marketing Period.

If, at the time the Developer submits for Architectural Review for building(s) within the applicable portion of Area D, the childcare market is either saturated or Developer otherwise demonstrates that a childcare tenant is unlikely, the Developer may submit such market study to the City and request to the Director to confirm (by a qualified consultant retained by the City with expense reimbursed by Developer). If the Director, in their reasonable discretion based on the information in the market study and findings of the City's qualified consultant, confirms Developer's study demonstrating a childcare tenant is unlikely, then Developer and City will meet and confer in good faith to identify one or more alternative community benefits to replace the Childcare Facility. Such alternative community benefit(s) are subject to approval of Developer and the Director and City Manager in their reasonable discretion. City approval is subject to a finding that the proposed alternative community benefit(s) would have a dollar value (net cost or financial impact to the Project) at least equal to the Childcare Facility and acceptance is in the best interests of the City ("Approved Childcare Alternative). Such Approved Childcare Alternative will not require an amendment to this Agreement, but will be

documented in writing by Operating Memoranda pursuant to Section 22.1. Until an Approved Childcare Alternative is formally approved by Operating Memoranda, the Developer must continue to comply with the requirements of this Section 4.17.

4.18 Regional Traffic Fee. As a voluntary contribution, Developer will pay One Dollar ($1.00) per square foot, adjusted by CPI, at the issuance of each Building Permit for office/R&D within the Project ("Regional Traffic Fee"), up to a maximum of Three Million Dollars ($3,000,000), as adjusted by CPI from the Effective Date, to the City for traffic intersection improvements. Once paid, Regional Traffic Fees are non-refundable

4.19 Fire Equipment Contribution. As a voluntary contribution, Developer will pay up to a maximum of Three Million Five Hundred and One Thousand and Fifty Dollars ($3,501,050), as adjusted by CPI, to the City for purchase of a fire engine and a tractor drawn areal apparatus. One Million Two Hundred Thousand Dollars ($1,200,000)), as adjusted by CPI, for the purchase of the fire engine is due prior to/at the issuance of certificate(s) of occupancy that totals, in the aggregate, one million five hundred thousand (1,500,000) gross square feet of building. area in the Project. The remaining Two Million Three Hundred and One Thousand and Fifty Dollars ($2,301,050)), adjusted by CPI, for the purchase of the tractor drawn aerial apparatus is due prior to/at issuance of certificate(s) of occupancy that totals, in the aggregate, three million square gross feet of building area in the Project.

4.20 Minimum Residential Parking. Developer shall provide a minimum of one (1) parking space per residential unit in the Project, and may provide up to twenty-five percent (25%) of these minimum parking spaces through shared parking pursuant to SCCC Section 18.38.040 (A) [Exceptions and Reductions to Parking Requirements].

5. STANDARD OF REVIEW OF PERMITS

5.1 Standard of Review of Permits. All Subsequent Approvals required by Developer to develop the Property, but including (i) road construction permits, (ii) grading permits, (iii) Building Permits, (iv) fire permits, and (v) Certificates of Occupancy, shall be issued by City after City's review and approval of Developer's applications, provided that City's review of the applications is limited to determining whether the following conditions are met:

a. The application is complete; and,

b. The application demonstrates that Developer has complied with the Vested Elements, the MMRP and the applicable Local Rules.

6. PRIORITY

6.1 Priority. In the event of conflict between the General Plan, this Agreement, SCCC, Other Regulations and Local Rules, all as they exist on the Effective Date, the Parties agree that the following sequence establishes the relative priority of each item: (1) the General Plan, as existing on the Effective Date; (2) this Agreement; (3) the Development Plan as modified by the COAs, (4) VTM as modified by the COAs, (4) Mitigation Monitoring and Reporting Program, (5) the other Project Approvals, (6) SCCC, and (7) Other Regulations and Local Rules.

7. COOPERATION IN IMPLEMENTATION

7.1 Cooperation in Implementation. Upon Developer's satisfactory completion of all required preliminary actions provided in the Project Approvals, and payment of required fees, if any, City shall proceed in a reasonable and expeditious manner, in compliance with the deadlines mandated by applicable agreements, statutes or ordinances, to complete all steps necessary for implementation of this Agreement and development of the Property in accordance with the Project Approvals, including the following actions:

a. Scheduling all required public hearings by the Zoning Administrator, Planning Commission and City Council; and,

b. Processing and checking all maps, plans, land use and architectural review permits, permits, building plans and specifications and other plans relating to development of the Property filed by Developer as necessary for complete development of the Property. Developer, in a timely manner, shall provide City with all documents, applications, plans and other information necessary for the City to carry out its obligations hereunder and to cause City's planners, engineers and all other consultants to submit in a timely manner all necessary materials and documents. It is the Parties' express intent to cooperate with one another and to diligently work to implement all land use and building approvals for development of the Property in accordance with the Development Plan and the terms hereof. At Developer's request and sole expense, City shall retain outside building consultants to review plans or otherwise assist City's efforts in order to expedite City processing and approval work. City shall cooperate with Developer, and assist Developer in obtaining any third-party governmental or private party permits, approvals, consents, rights of entry, or encroachment permits, needed for development of the Project or any other on or offsite improvements.

8. PERIODIC REVIEW

8.1 Annual Review; Special Review. City and Developer shall review all actions taken pursuant to the terms of this Agreement annually during each year of the Term, within thirty (30) days prior to each anniversary of the Effective Date unless the City and Developer agree in writing to conduct the review at another time pursuant to SCCC Section 17.10.220(a). Special Reviews may be conducted pursuant to the provisions of SCCC Section 17.10.220(b).

8.2 Developer's Submittal. Within ninety (90) days before each anniversary of the Effective Date, Developer shall submit a letter ("Compliance Letter") to the Community Development Director ("Director"), along with a copy directed to the City Attorney's Office, describing Developer's compliance with the terms of the Conditions of Approval and this Agreement during the preceding year. The Compliance Letter shall include a statement that the Compliance Letter is submitted to the City pursuant to the requirements of Government Code Section 65865.1, this Agreement, and SCCC. The reasonable cost of each annual review or special review conducted during the term of this Agreement shall be reimbursed to the City by Developer. Such reimbursement shall include all direct and indirect expenses reasonably incurred in such annual reviews.

8.3 City's Findings. Within sixty (60) days after receipt of the Compliance Letter, the Director shall determine whether, for the year under review, Developer has demonstrated good faith substantial compliance with the terms of this Agreement. If the Director finds and determines that Developer has complied substantially with the terms of this Agreement, or does not determine otherwise within sixty (60) days after delivery of the Compliance Letter, the annual review shall be deemed concluded, Developer shall be deemed to have complied in good faith with the terms and conditions of this Agreement during the year under review, and this Agreement shall remain in full force and effect. Upon a determination of compliance, the Director shall, if requested by Developer, issue a recordable certificate confirming Developer's compliance through the year under review. Developer may record the certificate with the Santa Clara County Recorder's Office. If the Director initially determines the Compliance Letter to be inadequate in any respect, he/she shall provide notice to that effect to Developer as provided in SCCC Section 17.10.220. If, after a duly noticed public hearing thereon, the City Council finds and determines based on substantial evidence that Developer has not complied substantially in good faith with the terms of this Agreement for the year under review, the City Council shall give written notice thereof to Developer specifying the noncompliance and such notice shall serve as a notice of default under Section 10.1. If Developer fails to cure the noncompliance within a reasonable period of time as established by the City Council, the City Council, in its discretion, may (i) grant additional time for compliance by Developer, or (ii) following the hearing described in SCCC Section 17.10.250, modify this Agreement to the extent necessary to remedy or mitigate the non-compliance, or (iii) terminate this Agreement. Except as affected by the terms hereof, the terms of SCCC Section 17.10.240(b)(2), and following, shall govern the City's compliance review process. During any review, Developer shall bear the burden of proof to demonstrate good faith compliance with the terms of this Agreement. If the City Council does not hold a hearing and make its determination within one hundred and twenty (120) days after delivery of the Compliance Letter for a given year, then it shall be deemed conclusive that Developer has complied in good faith with the terms and conditions of this Agreement during the period under review.

9. REIMBURSEMENTS

9.1 Reimbursements. The Parties agree that Developer shall not be entitled to reimbursement for the construction of any private or public improvement explicitly

provided by the Project Approvals, except as expressly provided in this Agreement or the COAs.

10. DEFAULT AND REMEDIES

10.1 Default. Failure by either Party to perform any material term or provision of this Agreement shall constitute a default, provided that the Party alleging the default gave the other Party advance written notice of the default and thirty (30) days to cure the condition, or, if the nature of the default is such that it cannot be cured within thirty (30) days, the Party receiving notice shall not be in default if the Party commences performance of its obligations within the thirty (30) day period and diligently completes that performance. Written notice shall specify in detail the nature of the obligation to be performed by the Party receiving notice.

10.2 Remedies. It is acknowledged by the Parties that City and Developer would not have entered into this Agreement if City or Developer were to be liable in damages under, or with respect to, this Agreement or the application thereof. City and Developer shall not be liable in damages to each other, or to any assignee, transferee or any other person, and Developer and City covenant not to sue for or claim damages from the other. Upon Developer's or City's material default, and failure to cure within a reasonable time depending on the nature of the default after demand by the non-defaulting Party, the non-defaulting Party shall institute mediation under Section 26 of this Agreement. If mediation fails to resolve the dispute, each Party shall have the right, in addition to all other rights and remedies available under this Agreement, to (i) bring any proceeding in the nature of specific performance, injunctive relief or mandamus, and/or (ii) bring any action at law or in equity as may be permitted by law or this Agreement. The Parties acknowledge that monetary damages and remedies at law generally are inadequate upon the occurrence of a default. Therefore, specific performance or other extraordinary equitable relief (such as injunction) is an appropriate remedy for the enforcement of this Agreement, other remedies at law being inadequate under all the circumstances pertaining as of the Effective Date of this Agreement and any such equitable remedy shall be available to the Parties.

10.3 Default by Developer/Withholding of Building Permit. City may, at its discretion, without submitting to mediation, refuse to issue a Building Permit for any structure within the Property, if Developer has materially failed and refused to complete any requirement that is a Condition of Approval, or that is applicable to the Building Permit requested. In addition, where City has determined that Developer is in default as described above, City may also refuse to issue the Developer any permit or entitlement for any structure or property located within the Project. This remedy shall be in addition to any other remedies provided for by this Agreement.

11. AMENDMENT OR TERMINATION

11.1 Agreement to Amend or Terminate. Subject to Section 22 regarding Operating Memoranda and Section 11.2 regarding future actions and minor changes, City and

Developer, by mutual agreement, may terminate or amend the terms of this Agreement, pursuant to Section 24.

11.2 Modification to Approvals. City and Developer anticipate that the Project will be implemented in accordance with the Vested Elements and the MMRP. The foregoing actions and other necessary or convenient implementation actions shall not require an amendment to this Agreement.

a. City and Developer understand and acknowledge that changes to the Project which would not, in the discretion of the City, substantially comply with the Vested Elements or MMRP would necessitate subsequent review and approval, which will not be unreasonably withheld or delayed. Upon the written request of Developer, City may agree to make a substantive amendment or modification to the Project Approvals, including the Development Plan in compliance with procedural provisions set forth in the Development Plan or other land use ordinances and regulations in effect on the date of application for amendment or modification. The amendment or modification of the Development Plan shall be done pursuant to Section 24, unless treated as a minor change as described in Section 11.2(b) below.

b. If Developer seeks a modification to the Approval(s), the Director or his/her designee shall determine: (i) whether the requested modification is minor when considered in light of the Project as a whole; and (ii) whether the requested modification is consistent with this Agreement and applicable law. If the Director or his/her designee finds, in his or her sole discretion, that the proposed modification is minor, consistent with this Agreement and applicable law, and will result in no new significant impacts not addressed and mitigated in the EIR, the modification shall be determined to be a "Minor Change" and shall not be considered an amendment to the applicable Approval(s) and shall not require a formal amendment to this Agreement. Upon the Director's approval, any Minor Change shall become part of the applicable Approvals and this Agreement, and shall be deemed a Vested Element. Without limiting the generality of the foregoing, lot line adjustments, minor alterations to vehicle circulation patterns or vehicle access points, substitutions of comparable landscaping for any landscaping shown on any final development plan or landscape plan, variations in the location of utilities and other infrastructure connections that do not substantially alter the design concepts of the Project, and minor adjustments to the Project Site diagram constitute Minor Changes. Notwithstanding the foregoing, Minor Changes shall not exceed five percent (5%) of the number proposed for modification.

11.3 Enforceability of Agreement. The City and Developer agree that unless this Agreement is amended or terminated pursuant to its terms, this Agreement shall be enforceable by either Party notwithstanding any subsequent change to or adoption of any applicable General Plan, Specific Plan, SCCC, Other Regulation or Local Rule adopted by City, with the exceptions listed in this Agreement.

12. MORTGAGEE PROTECTION: CERTAIN RIGHTS OF CURE

12.1 Mortgagee Protection. This Agreement shall be superior and senior to all liens placed upon the Property or any portion thereof after the date on which this Agreement or a memorandum thereof is recorded, including the lien of any deed of trust or mortgage ("Mortgage"). Notwithstanding the foregoing, no breach hereof shall defeat, render invalid, diminish or impair the lien of any Mortgage made in good faith and for value, but all of the terms and conditions contained in this Agreement shall be binding upon and effective against all persons and entities, including all deed of trust beneficiaries or mortgagees ("Mortgagees") who acquire title to the Property or any portion thereof by foreclosure, trustee's sale, deed in-lieu-of foreclosure, voluntary transfer or otherwise.

12.2 Mortgagee Obligations. City, upon receipt of a written request from a foreclosing Mortgagee, shall permit the Mortgagee to succeed to the rights and obligations of Developer under this Agreement, provided that all defaults by Developer hereunder that are reasonably susceptible of being cured are cured by the Mortgagee as soon as reasonably possible, provided, however, that in no event shall such Mortgagee personally be liable for any defaults or monetary obligations of Developer arising prior to acquisition of possession of such property by such Mortgagee. The foreclosing Mortgagee shall have the right to find a substitute developer to assume the obligations of Developer, which substitute shall be considered for approval by the City pursuant to Section 13 of this Agreement, but shall not, itself, be required to comply with all of the provisions of this Agreement.

12.3 Notice of Default to Mortgagee. If City receives notice from a Mortgagee requesting a copy of any notice of default given to Developer and specifying the address for service thereof, City shall endeavor to deliver to the Mortgagee, concurrently with service thereof to Developer, all notices given to Developer describing all claims by the City that Developer has defaulted hereunder. If City determines that Developer is not in compliance with this Agreement, City also shall endeavor to serve notice of noncompliance on the Mortgagee concurrently with service on Developer. Each Mortgagee shall have the right, but not the obligation, during the same period available to Developer to cure or remedy, or to commence to cure or remedy, the condition of default claimed or the areas of noncompliance set forth in City's notice.

13. ASSIGNABILITY

13.1 Assignment. Neither Party shall convey, assign or transfer ("Transfer") any of its interests, rights or obligations under this Agreement without the prior written consent of the other Party, which consent shall not be unreasonably withheld or delayed. In no event shall the obligations conferred upon Developer under this Agreement be transferred except through a Transfer of all or a portion of the Property. Should Developer Transfer any of its interests, rights or obligations under this Agreement, it shall nonetheless remain liable for performance of the obligations for installation of public improvements and payment of fees, unless the transferee executes an Assumption Agreement in a form reasonably acceptable to the City whereby the transferee agrees to be bound by the relevant terms of the Agreement, including the obligations for installation of public

improvements and payment of fees. During the Term, Developer shall provide City with written notice of a request to Transfer any interest in this Agreement forty-five (45) days prior to any such contemplated Transfer. Any such request for a Transfer shall be accompanied by quantitative and qualitative information that substantiates, to the City's reasonable satisfaction, that the proposed transferee has the capability to fulfill the rights and obligations of this Agreement. Within thirty (30) days of such a request and delivery of information, the City Manager shall make a determination, in his or her sole discretion, as to whether the Transfer shall be permitted or whether such Transfer necessitates an Amendment to this Agreement, subject to approval by the City Council. Each successor in interest to Developer shall be bound by all of the terms and provisions applicable to the portion of the Property acquired. This Agreement shall be binding upon and inure to the benefit of the Parties' successors, assigns and legal representatives. This Agreement shall be recorded by the City in the Santa Clara County Recorder's Office promptly upon execution by each of the Parties.

13.2 Covenants Run With The Land. This Agreement, the PD Zoning, and the General Plan Amendment are legislative in nature, and apply to the Property as regulatory ordinances. All of the provisions, agreements, rights, powers, standards, terms, covenants and obligations contained in this Agreement shall run with the land and shall be binding upon the Parties and their respective heirs, successors (by merger, consolidation or otherwise) and assigns, devisees, administrators, representatives, lessees and all other persons or entities acquiring the Property, any lot, parcel or any portion thereof and any interest therein, whether by sale, operation of law or other manner, and shall inure to the benefit of the Parties and their respective successors.

13.3 Pre-Approved Transfers. The following Transfers shall not require approval by the City, and shall automatically, upon the satisfaction of the conditions in Section 13.1 above, result in the release of Developer of its obligations hereunder as they may relate specifically to the specific property or asset sold or transferred: (a) sale or lease of the property in its entirety to any other Party to this Agreement or to any affiliate of Developer; (b) sale or lease of one or more buildings to any other Party to this Agreement or to any affiliate of Developer; and (c) a loan or mortgage pertaining to the Property. As used herein, an "affiliate of Developer" means any entity that directly controls or is controlled by or under common control with Developer, whether through the ownership or control of voting interest, by contract, or otherwise.

13.4 Release Upon Transfer. Upon the Transfer of Developer's rights and interests hereunder pursuant to the preceding subparagraph of this Agreement, Developer shall be released from the obligations under this Agreement with respect to the Property transferred, sold or assigned, arising subsequent to the date of City approval of such Transfer; provided, however, that any transferee, purchaser or assignee approved by the City expressly assumes the obligations of Developer under this Agreement. In any event, the transferee, purchaser or assignee shall be subject to all the provisions hereof and shall provide all necessary documents, certifications and other necessary information prior to City approval.

13.5 Non-Assuming Transferees. Except as otherwise required by a transferor, the burdens, obligations and duties of such transferor under this Agreement shall not apply to any purchaser of any individual commercial or residential condominium offered for sale. The transferee in a transaction described above and the successors and assigns of such a transferee shall be deemed to have no obligations under this Agreement, but shall continue to benefit from the vested rights provided by this Agreement for the duration of the Term hereof. Nothing in this Section 13 shall exempt any property transferred to a non-assuming transferee from payment of applicable fees, taxes and assessments or compliance with applicable COAs.

13.6 Foreclosure. Nothing contained in this Section 13 shall prevent a Transfer of the Property, or any portion thereof, to a lender as a result of a foreclosure or deed in lieu of foreclosure, and any lender acquiring the Property, or any portion thereof, as a result of foreclosure or a deed in lieu of foreclosure shall take such Property subject to the rights and obligations of Developer under this Agreement; provided, however, in no event shall such lender be liable for any defaults or monetary obligations of Developer arising prior to acquisition of title to the Property by such lender, and provided further, in no event shall any such lender or its successors or assigns be entitled to a building permit or occupancy certificate until all fees due under this Agreement (relating to the portion of the Property acquired by such lender) have been paid to City.

14. CONTROLLING LAW

14.1 Controlling Law. This Agreement shall be governed by the laws of the State of California, and the exclusive venue for any disputes or legal actions shall be the County of Santa Clara. Developer shall comply with all requirements of State and federal law, in addition to the requirements of this Agreement, including, without limitation, the payment of prevailing wages, if required by applicable law. In any event, Developer shall pay prevailing wages for all work on off-site public improvements related to the Project.

15. GENERAL

15.1 Construction of Agreement. The language in this Agreement in all cases shall be construed as a whole and in accordance with its fair meaning.

15.2 No Waiver. No delay or omission by either Party in exercising any right or power accruing upon the other Party's noncompliance or failure to perform under the provisions of this Agreement shall impair or be construed to waive any right or power. A waiver by either Party of any of the covenants or conditions to be performed by Developer or City shall not be construed as a waiver of any succeeding breach of the same or other covenants and conditions.

15.3 Agreement is Entire Agreement. This Agreement and all exhibits attached hereto or incorporated herein, together with the Vested Elements and the MMRP, are the sole and entire Agreement between the Parties concerning the Property. The Parties acknowledge and agree that they have not made any representation with respect to the subject matter of this Agreement or any representations inducing the execution and

delivery, except representations set forth herein, and each Party acknowledges that it has relied on its own judgment in entering this Agreement. The Parties further acknowledge that all statements or representations that heretofore may have been made by either of them to the other are void and of no effect, and that neither of them has relied thereon in its dealings with the other.

15.4 Estoppel Certificate. Either Party from time to time may deliver written notice to the other Party requesting written certification that, to the knowledge of the certifying Party, (i) this Agreement is in full force and effect and constitutes a binding obligation of the Parties, (ii) this Agreement has not been amended or modified either orally or in writing, or, if it has been amended or modified, specifying the nature of the amendments or modifications, and, (iii) the requesting Party does not have knowledge of default in the performance of its obligations under this Agreement, or if in known default, describing therein the nature and monetary amount, if any, of the default. A Party receiving a request shall execute and return the certificate within thirty (30) days after receipt thereof. The City Manager shall have the right to execute the certificates requested by Developer. At the request of Developer, the certificates provided by City establishing the status of this Agreement with respect to any lot or parcel shall be in recordable form, and Developer shall have the right to record the certificate for the affected portion of the Property at its cost.

15.5 Severability. Each provision of this Agreement which is adjudged by a court of competent jurisdiction to be invalid, void or illegal shall in no way affect, impair or invalidate any other provisions hereof, and the other provisions shall remain in full force and effect.

15.6 Further Documents. Each Party shall execute and deliver to the other all other instruments and documents as may be reasonably necessary to carry out this Agreement.

15.7 Time of Essence. Time is of the essence in the performance of each and every covenant and obligation to be performed by the Parties hereunder.

15.8 Defense and Indemnification Provisions. Developer, and with respect to the portion of the Property transferred to them, each Developer transferee, hereby releases and agrees to protect, defend, hold harmless and indemnify City, its City Council, its officers, employees, agents and assigns (the "Indemnified Parties") from and against all claims, injury, liability, loss, cost and expense or damage, however same may be caused, including all costs and reasonable attorney's fees in providing the defense to any claim arising from the performance or non-performance of this Agreement by Developer. This provision is intended to be broadly construed and extends to, among other things, any challenge to the validity of this Agreement, environmental review for the Project, entitlements, or anything related to the passage of the Agreement by the City.

15.9 Construction. This Agreement has been reviewed and revised by legal counsel for both the City and Developer and no presumption or rule that ambiguities shall be construed against the drafting Party shall apply to the interpretation or enforcement of this Agreement.

16. TERMINATION

16.1 Termination. This Agreement shall terminate upon the earlier of (i) expiration of the Term, or (ii) when the Property has been fully developed and all of Developer's obligations have been fully satisfied as reasonably determined by City, or (iii) after all appeals have been exhausted before a final court of judgment, or issuance of a final court order directed to the City to set aside, withdraw, or abrogate the City's approval of this Agreement or any material part thereof. Upon termination of this Agreement as to all of the Property, at the request of Developer the City shall record a Notice of Termination for each affected parcel in a form satisfactory to the City Attorney in the Office of the Santa Clara County Recorder.

16.2 Effect Upon Termination on Developer Obligations. Termination of this Agreement as to the Developer shall not affect any of the Developer's obligations to comply with the City's General Plan, SCCC, MMRP, COAs, Project Approvals, or any terms and conditions of any applicable zoning, or subdivision map or other land use entitlement approved with respect to the Project, nor shall it affect any other covenants or development requirements in this Agreement specified to continue after the termination of this Agreement, or obligations to pay assessments, liens, fees or taxes.

16.3 Effect Upon Termination on City. Upon any termination of this Agreement as to all or a portion of the Property, the Approvals, Development Plan, Conditions of Approval, limitations on fees and all other terms and conditions of this Agreement shall no longer be vested with respect to the Property, or portion thereof, and the City shall no longer be limited by this Agreement, to make any changes or modifications to the Approvals, conditions or fees applicable to the Property or portion thereof.

17. NOTICES

17.1 Notices. Except as otherwise expressly provided herein, all notices and demands pursuant to this Agreement shall be in writing and delivered in person, by commercial courier or by first-class certified mail, postage prepaid. Except as otherwise expressly provided herein, notices shall be considered delivered when personally served, upon delivery if delivered by commercial courier, or two (2) days after mailing if sent by mail. Notices shall be sent to the addresses below for the respective parties; provided, however, that either Party may change its address for purposes of this Section by giving written notice to the other Party. These addresses may be used for service of process:

To City:

City Clerk
City of Santa Clara
1500 Warburton Avenue
Santa Clara, CA 95050

With copy to:
City Attorney
City of Santa Clara
1500 Warburton Avenue
Santa Clara, CA 95050

To Developer:

Innovation Commons Owner, LLC
c/o Kylli Inc.
4995 Patrick Henry Drive
Santa Clara, CA 95054
Attention: Ou Sun

With copy to:
Holland & Knight LLP
560 Mission Street Suite 1900
San Francisco, CA 94105
Attention: Tamsen Plume

The provisions of this Section shall be deemed directive only and shall not detract from the validity of any notice given in a manner that would be legally effective in the absence of this Section.

18. DEVELOPER INDEPENDENT CONTRACTOR

18.1 Developer is an Independent Contractor. Developer is not an agent or employee of City, but is an independent contractor with full rights to manage its employees subject to the requirements of the law. All persons employed or utilized by Developer in connection with this Agreement are employees or contractors of Developer and shall not be considered employees of City in any respect.

19. PROJECT AS A PRIVATE UNDERTAKING

19.1 Project as a Private Undertaking. It is specifically understood and agreed that the Project is a private development. No partnership, joint venture or other association of any kind between City and Developer is formed by this Agreement.

20. NONDISCRIMINATION

20.1 Nondiscrimination. Developer shall not discriminate, in any way, against any person on the basis of race, color, national origin, gender, marital status, sexual orientation, age, creed, religion or disability in connection with or related to the performance of this Agreement.

21. FORCE MAJEURE

21.1 Force Majeure. In addition to any specific provisions of this Agreement, performance of obligations hereunder shall be excused and the term of this Agreement shall be extended during any period of delay caused at any time by reason of: floods, earthquakes, fires or similar catastrophes; wars, riots or similar hostilities; strikes and other labor difficulties beyond the Party's reasonable control; pandemics and epidemics that, due to specific provisions of a federal, state or local governmental declaration of emergency prohibit development or implementation of the Project; the enactment of new laws or restrictions imposed by other governmental or quasi-governmental entities preventing this Agreement from being implemented; or litigation involving this Agreement or the Approvals, which delays any activity contemplated hereunder, unless such action is brought by Developer. City and Developer shall promptly notify the other Party of any delay hereunder as soon as possible after the delay has been, or should have been, known.

22. OPERATING MEMORANDA

22.1 Operating Memoranda. The provisions of this Agreement require a close degree of cooperation between City and Developer, and refinements and further development of the Project may demonstrate that clarifications with respect to the details of performance of City and Developer or minor revisions to the Project are appropriate. If and when, from time to time, during the term of this Agreement, City and Developer agree that such clarifications or minor modifications are necessary or appropriate, they may effectuate such clarifications through operating memoranda approved by City and Developer, which, after execution, shall be attached hereto ("Operating Memoranda"). No such Operating Memoranda shall constitute an Amendment to this Agreement requiring public notice or hearing. The City Attorney shall be authorized in his/her sole discretion to determine whether a requested clarification may be effectuated pursuant to this Section 22 or whether the requested clarification is of such a character to require an amendment of the Agreement pursuant to Section 24 hereof. The City Manager or Director, depending on the context, may execute any Operating Memoranda without City Council action.

23. THIRD PARTIES

23.1 Third Parties. If any person or entity not a party to this Agreement initiates an action at law or in equity to challenge the validity of any provision of this Agreement or the Approvals, the Parties shall reasonably cooperate in defending such action. Developer shall bear its own costs of defense as a real party in interest in any such action, and shall reimburse City for all reasonable costs and attorneys' fees expended by City in defense of any such action or other proceedings.

24. Amendments

24.1 Amendments. No alterations or changes to the terms of this Agreement shall be valid, unless made in writing and signed by both Parties, and completed in compliance with the procedures listed in SCCC and/or the Government Code for Development Agreement Amendments.

25. NO THIRD PARTY BENEFICIARY

25.1 No Third Party Beneficiary. This Agreement shall not be construed or deemed to be an Agreement for the benefit of any third party or parties, and no third party or parties shall have any claim or right of action hereunder for any cause whatsoever.

26. DISPUTE RESOLUTION

26.1 Mediation. Any controversies between Developer and City regarding the construction or application of this Agreement, and claims arising out of this Agreement or its breach, shall be submitted to mediation within thirty (30) days of the written request of one Party after the service of that request on the other Party.

The Parties may agree on one mediator. If they cannot agree on one mediator, the Party demanding mediation shall request the Superior Court of Santa Clara County to appoint a mediator. The mediation meeting shall not exceed one day (eight (8) hours). The Parties may agree to extend the time allowed for mediation under this Agreement.

The costs of the mediator shall be borne by the Parties equally; however, each Party shall bear its own attorney, consultant, staff and miscellaneous fees and costs.

Mediation under this Section is a condition precedent to filing an action in any court, but it is not a condition precedent to the City's refusal to issue a Building Permit or any other entitlement under Section 5.

27. CONSENT

27.1 Consent. Where consent or approval of a Party is required or necessary under this Agreement, the consent or Agreement shall not be unreasonably withheld or delayed.

28. COVENANT OF GOOD FAITH AND FAIR DEALING

28.1 Covenant of Good Faith and Fair Dealing. Neither Party to this Agreement shall do anything which shall have the effect of harming or injuring the right of the other Party to receive benefits of this Agreement; each Party shall refrain from doing anything which would render its performance under this Agreement impossible; and, each Party shall do everything which this Agreement contemplates to accomplish the objectives and purpose of this Agreement.

29. AUTHORITY TO EXECUTE

29.1 Authority to Execute. The person or persons executing this Agreement on behalf of Developer warrant and represent that they have the authority to execute this Agreement on behalf of Developer, and further represent that they have the authority to bind Developer to the performance of its obligations in this Agreement.

30. COUNTERPARTS

30.1 Counterparts. This Agreement may be executed in multiple originals, each of which is deemed an original, and may be signed in Counterparts. The Parties acknowledge and accept the terms and conditions of this Agreement as evidenced by the following signatures of their duly authorized representatives. It is the intent of the Parties that this Agreement shall become operative on the Effective Date.

SIGNATURES FOLLOW ON NEXT PAGE

CITY OF SANTA CLARA, CALIFORNIA,
a chartered California municipal corporation

APPROVED AS TO FORM:

GLEN R. GOOGINS
City Attorney

JŌVAN D. GROGAN
City Manager
1500 Warburton Avenue
Santa Clara, CA 95050
Telephone: (408) 615-2210
Fax: (408) 241-6771

"CITY"

DEVELOPER
INNOVATION COMMONS OWNER LLC,
A DELAWARE LIMITED LIABILITY COMPANY

By: _____
Signature of Person executing the Agreement on behalf of Developer

Name: _____

Title: _____

Local Address: _____

Email Address: _____

Telephone: ( ) _____

Fax: ( ) _____

EXHIBIT A

LEGAL PROPERTY DESCRIPTION & PLAT

TRACT ONE:
ALL OF PARCELS 7 AND 8, AS SHOWN UPON THAT CERTAIN MAP ENTITLED, "PARCEL MAP BEING A SUBDIVISION OF ALL OF PARCEL 3, BOOK 368 PM 31, 32, 33 AND A PORTION OF THE LANDS FORMERLY OF FESPAR ENTERPRISES, INC., DESCRIBED IN PARCEL ONE OF 0426 OFFICIAL RECORDS 659", WHICH MAP WAS FILED FOR RECORD IN THE OFFICE OF THE RECORDER OF THE COUNTY OF SANTA CLARA, STATE OF CALIFORNIA, ON MARCH 16, 1976 IN BOOK 368 OF MAPS, PAGES 36 AND 37.

TRACT TWO:
ALL OF PARCELS 35, 36 AND 37, AS SHOWN ON THAT CERTAIN MAP ENTITLED, "PARCEL MAP BEING A RESUBDIVISION OF PARCEL 6 AS SHOWN ON PARCEL MAP 3399 RECORDED IN BOOK 368 OF MAPS, PAGES 36 AND 37 AND ALSO BEING A RESUBDIVISION OF PARCELS 26, 30 AND 31 AS SHOWN ON PARCEL MAP RECORDED IN BOOK 386 OF MAPS, PAGES 4 AND 5, SANTA CLARA COUNTY RECORDS", WHICH MAP WAS FILED FOR RECORD IN THE OFFICE OF THE RECORDER OF THE COUNTY OF SANTA CLARA, STATE OF CALIFORNIA ON JANUARY 25, 1977 IN BOOK 387 OF MAPS, PAGE 44.

TRACT THREE:
PARCEL 2, AS SHOWN ON PARCEL MAP FILED AUGUST 07, 1978 IN BOOK 424 OF MAPS, PAGE(S) 24, SANTA CLARA COUNTY RECORDS.
EXCEPTING THEREFROM THAT PORTION GRANTED IN THE DEED TO THE CITY OF SANTA CLARA, A CALIFORNIA MUNICIPAL CORPORATION, RECORDED SEPTEMBER 09, 1987 IN BOOK K287, PAGE 1136, OFFICIAL RECORDS, AS FOLLOWS:
BEGINNING AT THAT CERTAIN POINT OF INTERSECTION OF THE SOUTHERLY LINE OF TASMAN DRIVE (55.00 FEET HALF STREET) WITH THE COMMON LINE BETWEEN PARCEL 2 AND PARCEL 3, AS SAID SOUTHERLY LINE OF TASMAN DRIVE AND SAID COMMON LINE ARE SHOWN UPON SAID PARCEL MAP; THENCE WESTERLY ALONG SAID SOUTHERLY LINE OF TASMAN DRIVE NORTH 89° 28' 06" WEST 42.75 FEET; THENCE LEAVING SAID SOUTHERLY LINE OF TASMAN DRIVE AND PROCEEDING SOUTH 86° 28' 04" EAST 42.81 FEET TO A POINT ON SAID COMMON LINE BETWEEN PARCELS 2 AND 3; THENCE NORTHERLY ALONG SAID COMMON LINE NORTH 00° 31' 54" EAST 2.24 FEET TO THE POINT OF BEGINNING.

TRACT FOUR:
ALL OF PARCEL 3, AS SHOWN UPON THAT CERTAIN MAP ENTITLED, "PARCEL MAP BEING ALL OF PARCELS 41 AND 42, AS SHOWN ON THAT CERTAIN "PARCEL MAP" RECORDED IN BOOK 405 OF MAPS, PAGE 3, SANTA CLARA COUNTY RECORDS", WHICH MAP WAS FILED FOR RECORD IN THE OFFICE OF THE RECORDER OF THE COUNTY OF SANTA CLARA, STATE OF CALIFORNIA ON AUGUST 07, 1978 IN BOOK 424, OF MAPS, PAGE 24.
EXCEPTING THEREFROM THAT PORTION CONVEYED TO THE CITY OF SANTA CLARA, A MUNICIPAL CORPORATION BY GRANT DEED RECORDED SEPTEMBER 09, 1987 IN BOOK K287, PAGE 1123, OFFICIAL RECORDS, DESCRIBED AS FOLLOWS:
BEGINNING AT THAT CERTAIN POINT OF INTERSECTION OF THE SOUTHERLY LINE OF TASMAN DRIVE (55.00 FEET HALF STREET) WITH THE EASTERLY LINE OF SAID PARCEL 3, AS SAID DRIVE AND PARCEL ARE SHOWN UPON THE MAP ABOVE REFERRED TO, SAID EASTERLY LINE OF PARCEL 3 ALSO BEING THE WESTERLY LINE OF PARCEL 40, AS SAID LINE AND PARCEL 40 ARE SHOWN UPON THAT CERTAIN PARCEL MAP FILED IN BOOK 405 OF MAPS, PAGE 3, RECORDS OF SANTA CLARA COUNTY, CALIFORNIA; THENCE PROCEEDING WESTERLY ALONG SAID SOUTHERLY LINE OF TASMAN DRIVE NORTH 89° 28' 06" WEST 200.00 FEET TO THE COMMON LINE BETWEEN SAID PARCEL 3 AND PARCEL 2, AS SAID PARCELS ARE SHOWN UPON THE FIRST PARCEL MAP ABOVE REFERRED TO; THENCE PROCEEDING

SOUTHERLY ALONG SAID COMMON LINE, SOUTH 00° 31' 54" WEST 2.24 FEET; THENCE SOUTH 86° 28' 04" EAST 200.27 FEET TO SAID COMMON LINE BETWEEN PARCEL 3 AND PARCEL 40; THENCE NORTHERLY ALONG SAID COMMON LINE NORTH 00° 31' 54" EAST 12.72 FEET TO THE POINT OF BEGINNING.

TRACT FIVE:
ALL OF PARCEL 1, AS SHOWN UPON THAT CERTAIN MAP ENTITLED, "PARCEL MAP BEING ALL OF PARCEL 41 AND 42, AS SHOWN ON THAT CERTAIN PARCEL MAP, RECORDED IN BOOK 405 OF MAPS, PAGE 3 SANTA CLARA COUNTY RECORDS", WHICH MAP WAS FILED FOR RECORD IN THE OFFICE OF THE RECORDER OF THE COUNTY OF SANTA CLARA, STATE OF CALIFORNIA ON AUGUST 07, 1978 IN BOOK 424 OF MAPS, PAGE 24.
EXCEPTING THEREFROM THAT PORTION DESCRIBED IN THE DEED TO THE SANTA CLARA COUNTY TRANSIT DISTRICT RECORDED MAY 15, 1998 AS INSTRUMENT NO. 14185766, AS FOLLOWS:
ALL OF THAT CERTAIN PROPERTY SITUATED IN THE CITY OF SANTA CLARA, COUNTY OF SANTA CLARA, STATE OF CALIFORNIA, AND BEING A PORTION OF PARCEL 1, AS SAID PARCEL 1 IS SHOWN ON THAT CERTAIN PARCEL MAP FILED IN BOOK 424 OF MAPS, PAGE 24, RECORDS OF SANTA CLARA COUNTY, CALIFORNIA AND MORE PARTICULARLY DESCRIBED AS FOLLOWS:
BEGINNING AT THE POINT OF INTERSECTION OF THE CENTERLINES OF TASMAN DRIVE AND PATRICK HENRY DRIVE AS SAID DRIVES ARE SHOWN ON SAID PARCEL MAP, THENCE EASTERLY ALONG THE CENTERLINE OF SAID TASMAN DRIVE SOUTH 82° 00' 43" EAST 159.80 FEET TO A CURVE; THENCE CONTINUING EASTERLY ALONG SAID CENTERLINE OF TASMAN DRIVE ALONG SAID CURVE CONCAVE NORTHERLY WITH A RADIUS OF 2864.84 FEET THROUGH A CENTRAL ANGLE OF 1° 31' 41" AND AN ARC LENGTH OF 76.41 FEET; THENCE SOUTH 6° 27' 35" WEST 55.00 FEET TO THE SOUTHERLY LINE OF TASMAN DRIVE AND TO THE TRUE POINT OF BEGINNING OF THIS DESCRIPTION; THENCE NORTH 88° 21' 09" WEST 32.18 FEET; THENCE SOUTH 7° 09' 18" WEST 3.43 FEET; THENCE FROM A TANGENT BEARING OF NORTH 82° 56' 21" WEST ALONG A CURVE CONCAVE NORTHERLY WITH A RADIUS OF **30.2** FEET THROUGH A CENTRAL ANGLE OF 0° 56' 35" AND AN ARC LENGTH OF 50.19 FEET;

THENCE NORTH 7° 54' 36" EAST 3.00 FEET; THENCE WESTERLY ALONG A LINE PARALLEL WITH THE SOUTHERLY LINE OF TASMAN DRIVE NORTH 82° 00' 43" WEST 65.02 FEET TO A CURVE; THENCE LEAVING SAID PARALLEL LINE AND PROCEEDING SOUTHWESTERLY ALONG SAID CURVE CONCAVE SOUTHEASTERLY WITH A RADIUS OF 50.00 FEET THROUGH A CENTRAL ANGLE OF 63° 26' 29" AND AN ARC LENGTH OF 55.36 FEET; THENCE NORTH 51° 02' 20" WEST 1.32 FEET TO THE EASTERLY LINE OF PATRICK HENRY DRIVE; THENCE NORTHEASTERLY ALONG SAID EASTERLY LINE FROM A TANGENT BEARING OF NORTH 31° 10' 39" EAST ALONG A CURVE CONCAVE SOUTHEASTERLY WITH A RADIUS OF 50.00 FEET THROUGH A CENTRAL ANGLE OF 66° 48' 38" AND AN ARC LENGTH OF 58.30 FEET TO THE SOUTHERLY LINE OF TASMAN DRIVE; THENCE CONTINUING EASTERLY ALONG SAID SOUTHERLY LINE SOUTH 82° 00' 43" EAST 69.18 FEET TO A CURVE; THENCE CONTINUING ALONG SAID SOUTHERLY LINE OF TASMAN DRIVE FROM A TANGENT BEARING OF SOUTH 82° 00' 44" EAST ALONG A CURVE CONCAVE NORTHERLY WITH A RADIUS OF 2919.84 FEET THROUGH A CENTRAL ANGLE OF 1° 31' 41" AND AN ARC LENGTH OF 77.87 FEET TO THE TRUE POINT OF BEGINNING.

TRACT SIX:
ALL OF PARCEL 40, AS SAID PARCEL IS SHOWN UPON THAT CERTAIN MAP ENTITLED, "PARCEL MAP, BEING A RESUBDIVISION OF PARCELS 22 AND 23 ON PARCEL MAP RECORDED IN BOOK 386 OF MAPS, PAGES 4 AND 5...", WHICH MAP WAS FILED FOR RECORD IN THE OFFICE OF THE RECORDER OF THE COUNTY OF SANTA CLARA, STATE OF CALIFORNIA ON SEPTEMBER 29, 1977 IN BOOK 405 OF MAPS, PAGE 3.
EXCEPTING THEREFROM THAT PORTION THEREOF CONVEYED TO THE CITY OF SANTA CLARA, A MUNICIPAL CORPORATION BY THAT CERTAIN GRANT DEED RECORDED JANUARY 26, 1988 IN BOOK K428, PAGE 465, OFFICIAL RECORDS.
ALSO EXCEPTING THEREFROM THAT PORTION THEREOF CONVEYED TO THE SANTA CLARA COUNTY

TRANSIT DISTRICT BY THAT CERTAIN GRANT DEED RECORDED MAY 08, 1998 AS INSTRUMENT NO. 14176548, OFFICIAL RECORDS.

TRACT SEVEN:
ALL THAT PORTION OF DEMOCRACY WAY LYING WESTERLY OF THE WESTERLY LINE OF OLD IRONSIDES DRIVE AND EASTERLY OF THE EASTERLY LINE OF PATRICK HENRY DRIVE, AS SHOWN ON THAT CERTAIN PARCEL MAP FILED MARCH 12, 1976 IN BOOK 368 OF MAPS, PAGES 36 AND 37, SANTA CLARA COUNTY RECORDS.
TRACT EIGHT:
EASEMENT RESERVED IN THAT CERTAIN DEED RECORDED NOVEMBER 3, 1950 IN BOOK 2089, PAGE 315, OFFICIAL RECORDS

[Insert Plat]

EXHIBIT B

ALLOCATION OF FAIR SHARE TRAFFIC FEES

	Kylli Traffic Infrastructure and Fair Share Fee						
						Development Trigger	
Row	#	Intersection Name	Improvement Description	Fair Share %	Fair Share Costs	%	non-resid ksf[1]
Project-Specific Fair Share[1]							
0	*60*	McCarthy Blvd/O'Toole Av and Montague Expwy (CMP)	Construct a partial grade separated interchange	0.0%[3]	$0	0%	N/A
1	*20*	Great America Parkway and Great America Way	Extend WBL lane striping	13.8%	$14,017	5%	184
2	*53*	Lick Mill Boulevard and Montague Expressway	Extend SBL pocket	1.6%	$1,657	5%	184
3	*25*	Great America Parkway and Patrick Henry Drive	Class IV separated bikeway on Great America Pkwy/ Bowers Ave (between Bay Trail & Old Glory Lane and between US 101 & Chromite Dr.)	15.1%	$394,782[4]	7%	245
4	*25*	Great America Parkway and Patrick Henry Drive	Hetch Hetchy trail (between Guadalupe River Pkwy & Great America Pkwy & between Patrick Henry Dr & Calabazas Creek Trail)	15.1%	$1,490,909[4]	7%	245
6	*20*	Great America Parkway and Great America Way	Extend SBL pocket	13.8%	$43,781	11%	388
7	*3*	Lawrence Expwy and Sandia Av/Lakehaven Dr	New signalized intersection at Lawrence Expressway and Bridgewood Way/Lakewood Dr (VTP 2040)	5.8%	$30,523	14%	489

	Kylli Traffic Infrastructure and Fair Share Fee						
						Development Trigger	
Row	#	Intersection Name	Improvement Description	Fair Share %	Fair Share Costs	%	non-resid ksf[1]
8	*51*	Lafayette Street and Agnew Road	Class IV separated bikeway on Lafayette (between SR 237 & Agnew)	7.3%	$128,886	20%	699
9	*40*	Mission College Blvd and Montague Expwy (CMP)	Add 3rd EBL lane and reconfigure the north leg to include 3 receiving lanes	4.3%	$18,878	24%	839
10	*41*	San Tomas Expressway and Scott Boulevard (CMP)	Reconfigure EB approach to include 3 LT lanes, 1 TH lane, and 1 shared TH/RT lane, remove triangular islands, reduce RT radii, signal modifications.	1.2%	$27,180	40%	1,398
11	*54*	N. 1st Street and Montague Expressway (CMP)	Construct a grade separated interchange	1.5%	$388,103	46%	1,608
12	*2*	Lawrence Expressway and Tasman Drive	Extend SBL pocket	1.6%	$3,616	50%	1,747
13	*23*	Great America Parkway and Tasman Drive	Extend NBL pocket	1.4%	$3,300	50%	1,747
14	*23*	Great America Parkway and Tasman Drive	Extend WBL pocket	1.4%	$3,300	50%	1,747
15	*31*	Bowers Avenue and Central Expressway (CMP)	Class IV separated bikeway on Great America Pkwy/ Bowers Ave (between Bay Trail & Old Glory Lane and between US 101 & Chromite Dr.)	4.6%	$120,436	50%	1,747
16	*48*	De la Cruz Boulevard and Central Expressway (CMP)	Class IV separated bikeway on De La Cruz Boulevard (between Central & Reed)	1.6%	$14,338	58%	2,027
17	*48*	De la Cruz Boulevard and Central Expressway (CMP)	Install crosswalk motion sensors, accessible pedestrian signals, upgraded safety lighting, travel time data collection systems, traffic monitoring cameras, and periodic retiming of	1.6%	$18,287	58%	2,027

	Kylli Traffic Infrastructure and Fair Share Fee						
						Development Trigger	
Row	#	Intersection Name	Improvement Description	Fair Share %	Fair Share Costs	%	non-resid ksf[1]
			signal coordination at intersections along De La Cruz Boulevard (Multimodal Improvement Plan).				
18	*52*	Agnew Rd/De La Cruz Blvd and Montague Expwy (CMP)	Install crosswalk motion sensors, accessible pedestrian signals, upgraded safety lighting, travel time data collection systems, traffic monitoring cameras, and periodic retiming of signal coordination at intersections along Agnew Road/De La Cruz Boulevard (Multimodal Improvement Plan).	2.5%	$81,629	58%	2,027
19	*44*	San Tomas Expressway and El Camino Real (CMP)	Class IV separated bikeway on El Camino Real (from city limit to city limit)	2.0%	$ 85,576	74%	2,586
20	*44*	San Tomas Expressway and El Camino Real (CMP)	VTA TSP improvement at this intersection	2.0%	$ 1,818	74%	2,586
21	*24*	Great America Parkway and Old Glory Lane	Class IV separated bikeway on Great America Pkwy/ Bowers Ave (between Bay Trail & Old Glory Lane and between US 101 & Chromite Dr.)	20.4%	$533,471	76%	2,656
22	*45*	Scott Boulevard and Central Expressway	Reconfigure southbound approach on Scott Ave. to include 2 LT lanes, 2 TH lanes, and 1 exclusive RT lane, signal modifications, remove triangular island, reduce RT radii, construct ADA curb ramps	3.1%	$ 40,730	85%	2,970
23	*47*	Lafayette Street and Central Expressway	Class IV separated bikeway on Lafayette St (between Laurelwood & Reed)	2.7%	$39,839	94%	3,285
24	*47*	Lafayette Street and Central Expressway	Remove triangular islands, reduce corner radii, realign crosswalks, and install ADA curb ramps.	2.7%	$62,930	94%	3,285

	Kylli Traffic Infrastructure and Fair Share Fee						
						Development Trigger	
Row	#	Intersection Name	Improvement Description	Fair Share %	Fair Share Costs	%	non-resid ksf[1]
Cumulative Fair Share Contributions[2]							
	6	Lawrence Expressway and E. Arques Ave.	Construct grade separated interchange	1.8%	$291,694	Cumulative[2]	
	7	Lawrence Expressway and Kifer Road	Construct grade separated interchange	1.0%	$164,006	Cumulative[2]	
	8	Lawrence Expressway and Reed Ave/Monroe St	Construct grade separated interchange	1.4%	$170,924	Cumulative[2]	
	14	Old Ironsides Drive and Tasman Drive	Extend WBL pocket	28.7%	$62,888	Cumulative[4]	
	14	Old Ironsides Drive and Tasman Drive	Spot improvements (tighten turning radii on northeast corner)	28.7%	$56,913	Cumulative[2]	
	16	Old Ironsides Drive and Old Glory Lane	Add NB RT lane	52.2%	$198,522	Cumulative[2]	
	20	Great America Parkway and Great America Way	Class IV separated bikeway on Great America Pkwy/ Bowers Ave (between Bay Trail & Old Glory and between US 101 & Chromite)	13.8%	$358,959	Cumulative[2]	
	26	Great America Pkwy and Mission College Blvd	Class IV separated bikeway on Great America Pkwy/ Bowers Ave (between Bay Trail & Old Glory and between US 101 & Chromite)	10.0%	$261,136	Cumulative[2]	
	26	Great America Pkwy and Mission College Blvd	Install transit signal priority, trail crossing improvements, crosswalk motion sensors, upgraded safety lighting, enhance crosswalks, travel time data collection systems, adaptive traffic signals and periodic retiming of signal	10.0%	$311,418	Cumulative[2]	

	Kylli Traffic Infrastructure and Fair Share Fee						
						Development Trigger	
Row	#	Intersection Name	Improvement Description	Fair Share %	Fair Share Costs	%	non-resid ksf[1]
			coordination at intersections along Mission College Boulevard (Multimodal Improvement Plan).				
	37	Agnew/Freedom Circle E & Mission College Blvd	Class IV bikeway on Mission College Boulevard (between Great America & Montague)	3.3%	$29,485	Cumulative[2]	
	40	Mission College Blvd and Montague Expwy (CMP)	Class IV bikeway on Mission College Boulevard (between Great America & Montague)	2.4%	$21,543	Cumulative[2]	
	42	San Tomas Expressway and Walsh Avenue	Class IV Separated Bikeway on Walsh Ave (between city limit & Lafayette)	3.2%	$104,623	Cumulative[2]	
	42	San Tomas Expressway and Walsh Avenue	Spot improvements (protected intersection consistent with VTA Bike Plan)	3.2%	$63,280	Cumulative[2]	
	45	Scott Boulevard and Central Expressway	Class II buffered bicycle lane on Scott Blvd (between city limit & Monroe)	3.1%	$45,397	Cumulative[2]	
	45	Scott Boulevard and Central Expressway	Implement bus duckouts and pedestrian pads, crosswalk motion sensors, accessible pedestrian signals, upgraded safety lighting, and periodic retiming of signal coordination at intersections along Scott Boulevard (Multimodal Improvement Plan).	3.1%	$80,296	Cumulative[2]	
	46	Scott Boulevard and Walsh Avenue	Class IV Separated Bikeway on Walsh Ave (between city limit & Lafayette)	4.2%	$137,854	Cumulative[2]	
	50	Lick Mill Boulevard and Tasman Drive	Class IV separated bikeway on Lick Mill Blvd (between Tasman & Montague)	5.7%	$83,387	Cumulative[2]	

	Kylli Traffic Infrastructure and Fair Share Fee						
						Development Trigger	
Row	#	Intersection Name	Improvement Description	Fair Share %	Fair Share Costs	%	non-resid ksf[1]
	53	Lick Mill Boulevard and Montague Expressway	Class IV separated bikeway on Lick Mill Blvd (between Tasman & Montague)	1.1%	$15,477	Cumulative[2]	
	55	Zanker Road and Montague Expressway (CMP)	HOV-type signal improvements that could support future Bus Rapid Transit facilities (North San José Deficiency Plan)	0.7%	$146,419	Cumulative[2]	
	56	De la Cruz Boulevard and W Trimble Road	Class IV separated bikeway on De La Cruz (between Montague Park & Trimble)	1.6%	$10,187	Cumulative[2]	
					Cumulative Subtotal: **$2,614,408**		

Grand Total: $6,162,396

[1]**Project-Specific Fair Share Contributions**. The development level triggering need for improvement is shown only for intersection improvements that were identified under the background plus project scenario. For the purpose of this sensitivity analysis, residential development should be converted to non-residential floor area at a rate of 212 square feet (0.212 ksf) per dwelling unit.

The amount listed under "Fair Share Costs" column shall be paid at issuance of building permit(s) that meet or exceed the square footage total under the "Development Trigger" column. Note, certain development may trigger more than one Fair Share Costs payment depending on the development size.

For illustrative example only, if 500 residential units were submitted for building permit, first the units would be converted (0.212 ksf per dwelling unit) or 500 units x 0.212 ksf = 106 ksf. At 106,000 sf, no project specific Fair Share Costs would be due. However, under footnote 2, below, $79,500 would be due. For another example, if a 500,000 sf office/R&D project were submitted for building permit (500 ksf), the following project-specific Fair Share Costs would be due: Rows 1-7, plus the cumulative contribution of $375,000 under Footnote 2, below.

[2] **Cumulative Fair Share Contributions**. The need for this improvement would only arise under cumulative plus project conditions. Thus, a sensitivity analysis was not conducted because the Project alone would not trigger the need for this improvement. Fair share payments towards this improvement will be collected at a rate of $0.75 per sf of non-residential development with each phase of development in proportion to the development size using the same non-residential equivalency ratio (0.212 ksf per dwelling unit).

The cumulative contribution rate has been set by adding all the cumulative fair share contributions ($2,614,408) divided by the total maximum development square footage using the residential conversion (3,100 ksf non-residential plus 1,800 x .212 ksf or 382 ksf = 3,392 ksf) or 2,614,408/3,482,000= $0.75 per square foot of non-residential development (subject to the re-conversion for residential of 0.212 ksf per unit). Note that if residential is developed on Area C, there would be sf reduction in maximum non-residential and the overall cumulative fair share contribution would be correspondingly reduced because residential has a lower traffic rate than non-residential uses.

For illustrative example only, a 500 unit residential project (or 106 ksf non-residential) would pay 106 ksf x 0.75 = $79,500 toward cumulative fair share costs. For another example only, a 500,000 office/R&D project would pay, in addition to the project-specific amounts listed under footnote 1 above, 500,000 x 0.75 = $375,000 toward cumulative fair share costs.

[3] 100% funded by City of San Jose under the terms of the North San Jose Settlement.

[4] Subject to credits pursuant Public Works Conditions of Approval Nos. E43 and E44 in Resolution No. _____)

EXHIBIT C

DEFINITIONS

"Affiliate of Developer" as defined in Section 13.3 of this Agreement.

"Agreement" as defined on page 1 (first paragraph) of this Agreement.

"AHP" as defined in Recital D of this Agreement.

"Allocation of Fair Share Traffic Fees" as defined in Section 4.9 of this Agreement.

"Approvals" as defined in Section 2.3 of this Agreement.

"Approved Childcare Alternative" as defined in Section 4.17 of this Agreement.

"Approved Grocery Store Alternative" as defined in Section 4.16 of this Agreement.

"Building Permit" as defined in Section 1.2a(i) of this Agreement.

"CEQA" as defined in Recital L of this Agreement.

"Changes in the Law" as defined in Section 3.1 of this Agreement.

"Childcare Facility" as defined in Section 4.17 of this Agreement.

"Childcare Facility Marketing Period" as defined in Section 4.17 of this Agreement.

"Childcare Performance Milestone" as defined in Section 1.2a(i)(B) of this Agreement.

"City" as defined on page 1 (first paragraph) of this Agreement.

"COAs" as defined in Recital F of this Agreement.

"Compliance Letter" as defined in Section 8.2 of this Agreement.

"Conflicting City Law" as defined in Section 3.2a of this Agreement.

"Developer" as defined on page 1 (first paragraph) of this Agreement.

"Development Fee Vesting Locking Periods" as defined in Section 4.1 of this Agreement.

"Development Fee Vested Period" as defined in Section 4.1 of this Agreement.

"Development Plan" as defined in Recital D of this Agreement.

"Director" as defined in Section 8.2 of this Agreement.

"Effective Date" as defined in Recital N of this Agreement.

“EIR” as defined in Recital L of this Agreement.

“Existing Public Utilities” as defined in Section 4.11 of this Agreement.

“Fair Share Traffic Fees” as defined in Section 4.9 of this Agreement.

“Fees” as defined in Section 4.1 of this Agreement.

“FMV” as defined in Section 4.11 of this Agreement.

“General Plan Amendment” as defined in Recital D of this Agreement.

“Grocery Performance Milestone” as defined in Section 1.2a(i)(A) of this Agreement.

“Grocery Store” as defined in Section 4.16 of this Agreement.

“Grocery Store Marketing Period" as defined in Section 4.16 of this Agreement.

“gsf” as defined in Recital E of this Agreement.

“Indemnified Parties” as defined in Section 15.8 of this Agreement.

“Local Rules” as defined in Section 3.4 of this Agreement.

“Maintenance Period” as defined in Section 4.7b of this Agreement.

“Minor Change” as defined in Section 11.2b of this Agreement.

“Mitigations” as defined in Section 4.5 of this Agreement.

“MMRP” as defined in Recital L of this Agreement.

“Mortgage” as defined in Section 12.1 of this Agreement.

“Mortgagees” as defined in Section 12.1 of this Agreement.

“Operating Memoranda” as defined in Section 22.1 of this Agreement.

“Other Regulations” as defined in Section 2.4d of this Agreement.

“Parties” as defined on page 1 (first paragraph) of this Agreement.

“PD” as defined in Recital D of this Agreement.

“POSP” as defined in Recital D of this Agreement.

“Processing Fees” as defined in Section 4.2 of this Agreement.

“Project” as defined in Recital E of this Agreement.

"Project Approvals" as defined in Recital D of this Agreement.

"Property" as defined in Recital C of this Agreement.

"Public Art Funding" as defined in Section 4.8 of this Agreement.

"Public Arts/Cultural Features" as defined in Section 4.8 of this Agreement.

"Rezoning" as defined in Recital D of this Agreement.

"R&D" as defined in Recital E of this Agreement.

"Relocation Cost" as defined in Section 4.11 of this Agreement.

"Relocation Work" as defined in Section 4.11 of this Agreement.

"ROW Appraisal" as defined in Section 4.11 of this Agreement.

"SCCC" as defined in Recital B of this Agreement.

"SOC" as defined in Recital L of this Agreement.

"Street Easement Vacation" as defined in Section 4.11 of this Agreement.

"Subsequent Project Approval" as defined in Section 2.3 of this Agreement.

"SVP" as defined in Recital E of this Agreement.

"Target Maximum Maintenance Cost" as defined in Section 4.7a of this Agreement.

"TDMP" as defined in Recital D of this Agreement.

"Term" as defined in Section 1.1 of this Agreement.

"Transfer" as defined in Section 13.1 of this Agreement.

"Vested Elements" as defined in Section 2.4 of this Agreement.

"VTM" as defined in Recital D of this Agreement.