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City of Santa Clara
City Clerk's Office
1500 Warburton Avenue
Santa Clara, California 95050

SPACE ABOVE THIS LINE FOR RECORDER'S USE ONLY

DEVELOPMENT AGREEMENT

(GATEWAY CROSSINGS)

BETWEEN

THE CITY OF SANTA CLARA,

a chartered California municipal corporation,

AND

TOD BROKAW, LLC,

a California limited liability company.

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DEVELOPMENT AGREEMENT
(GATEWAY CROSSINGS)

This DEVELOPMENT AGREEMENT ("Agreement") is entered into by and between CITY OF SANTA CLARA ("City"), a chartered California municipal corporation, and TOD Brokaw, LLC, a California limited liability company ("Developer"), (collectively the "Parties") and is effective on the date set forth in Recital L.

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 two separate assessor's parcels (APNs 230-46-069, 230-46-070) totaling *approximately 24 acres, as further described in Exhibit A, attached hereto and incorporated by this reference.
- D. Developer has submitted the application(s) to the City (General Plan amendment, Zoning Code amendments, Vesting Tentative Parcel Map, and architectural approval [File Nos. PLN2016-12318, PLN2016-12321, PLN2017-12481, and CEQ2016-01025]) for development of the Property. The application(s) request that Developer be allowed to develop the Property with a transit-oriented mixed-use development consisting of up to 1,600 residential dwelling units and up to 215,000 square feet of hotel and retail uses (collectively, the "Project").
- E. The Project, including but not limited to the buildings, access and parking facilities, landscaping, and infrastructure improvements, are all more particularly shown on the development plan consisting of * _____ sheets of plans submitted by * _____ Architects dated * _____ ("Development Plan"). Sheets * _____ of the Development Plan are attached hereto as Exhibit B and incorporated by this reference.
- F. Through this Agreement, the Parties intend to preserve the size and density of development as set forth in the Development Plan. 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 the Project can be developed and used in accordance with the terms and conditions set forth herein and the

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existing rules governing development of the Property will benefit both Developer and City.

- G. City is willing to enter this Agreement for the reasons enumerated in SCCC 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; (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.
- H. Developer acknowledges and recognizes that material inducements for the City to enter into this Agreement are (i) an opportunity to create a transit-oriented, high-density residential mixed-use development within the Santa Clara Station Focus Area; (ii) the promotion of long-term sustainability with an array of complementary uses that achieve LEED certification, minimize vehicle miles traveled, capitalize on efficient public infrastructure and provide convenient amenities for occupants; (iii) the maximization of housing unit yield on a site with minimal impact on existing neighborhoods; (iv) the provision of an affordable housing component, as set forth in Section 4.5; (v) the inclusion of a significant hotel component and retail services supporting the business travel market, enhancing the tax base and contributing other revenues to support City services that serve the development; and (vi) the contributions by Developer set forth in Sections 4.6 through 4.13, including but not limited to fees for bicycle and pedestrian improvements, improvements along Brokaw Road, and regional and local traffic improvements. 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.
- I. Developer requested City enter into a development agreement, and proceedings have been taken in accordance with State law, as set forth below.
- J. On *_____, City's Planning Commission held a duly noticed public hearing on this Agreement and (i) determined that consideration of this Agreement based on the Environmental Impact Report ("EIR") complies in all respects with the California Environmental Quality Act ("CEQA"); (ii) determined that this Agreement is consistent with the City's General Plan; and (iii) recommended that the City Council approve this Agreement.
- K. On *_____, the City Council held a duly noticed public hearing on this Agreement and (i) determined that consideration of this Agreement based on the EIR complies in all respects with CEQA; (ii) determined that this Agreement is consistent with the City's

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General Plan; and (iii) introduced Ordinance No. * _____, approving this Agreement.

- L. On * _____, the City Council adopted Ordinance No. * _____, enacting this Agreement, and the Ordinance became effective thirty (30) days later on * _____ (“Effective Date”).
- M. Certain improvements as set forth in the conditions of approval (“Conditions of Approval”) which are attached hereto as Exhibit C and incorporated herein by this reference, are necessary to provide infrastructure support for the Project.
- N. Developer plans to develop the Project in approximately five phases, which are outlined in more detail in the Development Plan and Conditions of Approval. Any modification to the content and/or sequencing of the Phases must comply with Section 1, Paragraph 1.8 of this Agreement.

AGREEMENT

NOW, THEREFORE, pursuant to the authority contained in California Government Code section 65864 and following, and SCCC 17.10.010 and following, and in consideration of the mutual representations, covenants and promises of the Parties, the Parties hereto agree as follows:

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 five (5) years, unless sooner terminated or extended as hereinafter provided. The Term shall automatically be extended by an additional five (5) years if the Developer physically commences construction of at least one building in accordance with the Development Plan prior to the expiration of the initial 5-year period. For purposes of this section, construction has commenced when all of the following have occurred: (1) issuance of a building permit; (2) installation of the on-site and off-site improvements for the building, as detailed in Exhibit B, attached hereto; including grading and certification of the building pad by the Building Division; and (3) one or more of the following: (a) excavation of the footings and foundations for the dwelling units or (b) installation of water or sewer laterals to the relevant units.
- 1.2 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.

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.

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- 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, including but not limited to certification of the EIR, adoption of the General Plan Amendment, approval of a Resolution or Ordinance to rezone the Property to a Planned Development zoning district, approval of this Development Agreement via the Development Agreement Ordinance, approval of a Vesting Tentative Parcel Map, and architectural approval of the Project (collectively, "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. Subject to the limitations set forth in Section 2.15 below, 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, 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 and shall also be considered Vested Elements:
- 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 of the Property from Light Industrial (ML) to Very High Density Mixed Use (VHDMU) ("Rezoning");
 - c. The VHDMU Zoning District and the Conditions of Approval imposed thereon;
 - d. The Development Plan, defined in Recital E, herein;
 - e. 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");
 - f. 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 necessary for the development of the Project, that are sought by Developer, and that are granted by City in accordance with the terms of this

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Agreement (collectively, "Subsequent Approvals"). Upon approval, such Subsequent Approvals shall be incorporated into this Agreement and vested hereby; and,

- g. In the event this Project includes a subdivision as defined by Government Code § 66473.7, the tentative map for this Project will comply with the provisions of § 66473.7, as it may be amended from time to time.
- 2.5 Permitted Uses. The permitted uses for the Property are as follows: residential, retail, and hotel uses, all of which must be implemented in accordance with the Development Plan and the Conditions of Approval.
- 2.6 Present Right to Develop. Subject to Developer's fulfillment of the provisions of this Agreement, the Development Plan and the Conditions of Approval, 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, including in particular the terms of the Development Plan and the Approvals. 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 Development Plan or Conditions of Approval or pursuant to this Agreement, shall apply to the Property; provided, however, that nothing in this Agreement shall prevent or preclude City from adopting fees or land use regulations or amendments thereto, as provided in Section 3.2.
- 2.7 Timing of Improvements. Developer may implement the Development Plan in phases, as described herein or as outlined in the Development Plan, or as otherwise approved by the City. The phasing set forth in the Development Plan is the approved phasing as of the Effective Date; however, Developer may request alternate phasing in writing based on business constraints or considerations. Commencement of the hotel construction is not required prior to commencement of the other phases of the Project. Prior to implementation, alternate phasing must be approved in writing by the City's Director of Community Development ("Director"), whose approval shall not be unreasonably withheld taking into consideration whether the terms and conditions of this Agreement, the Development Plan, the Conditions of Approval and the Mitigation Monitoring or Reporting Program are met and that the revised phasing will not unduly burden, hamper or constrain prior or future phases of the Project. It is the Parties' specific intent that this Agreement shall prevail over any later-adopted initiative or moratorium that might otherwise have the effect of restricting or limiting the timing of development of the Project and that Developer shall have the right to develop the Project at such time as Developer deems appropriate within the exercise of its subjective business judgment and no annual (or other) limit, moratoria, or other limitation upon the number of, or phasing or pacing of, buildings which may be constructed, or Building Permits which may be obtained, or the like shall apply to the Project.

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- 2.8 Agreement and Comprehensive Development Plan. The Parties acknowledge that, except as specifically set forth herein, this Agreement, the Development Plan, the Mitigation Monitoring or Reporting Program and the Conditions of Approval 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 Property as defined in the Development Plan. 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 and only if the Parties agree to extend this Agreement for an additional five (5) years pursuant to Section 1.1.
- 2.9 Design of On-Site and Off-Site Improvements. Development of the Property shall be subject to final architectural and design review by City pursuant to the policies, regulations and ordinances in effect as of the Effective Date, and subject to the Development Plan, the Conditions of Approval, Mitigation Monitoring or Reporting Program, and this Agreement. No such architectural and design review shall, without Developer's consent, require development of the Property inconsistent with the Development Plan, the Conditions of Approval, the Mitigation Monitoring or Reporting Program, and this Agreement, unless City determines it is necessary to protect against conditions which create a risk to the physical health or safety of residents or users of the Project or the affected surrounding region. The Development Plan, Mitigation Monitoring or Reporting Program, and Conditions of Approval, 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 final architectural and design approval by City be conditioned on or require any change in the Development Plan, Mitigation Monitoring or Reporting Program or Conditions of Approval, 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 and the Development Plan, Mitigation Monitoring or Reporting Program, and Conditions of Approval.
- 2.11 Single Integrated Development. City and Developer acknowledge that the Project is, and shall be considered, a single, 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 the Development Plan. However, nothing in this Agreement is intended: (i) to prevent Developer from individually commencing and completing development of any portion or phase of the Project, even if development on other portions or phases thereof has not been commenced and/or completed; (ii) to prevent Developer from independently marketing, selling, renting 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 or phase of the Project (even if development on another

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portion of phase of the Project has been commenced and/or completed). Nothing in this Section, however, shall be construed as permitting Developer to develop later phases of the Project before earlier phases, unless the phasing plan has been amended in accordance with Section 2.8.

- 2.12 Building Standards. Developer hereby agrees to employ all reasonable efforts such that the Project will be built to meet high sustainability and green building standards by designing the Project to achieve USGBC LEED silver standards or their equivalent for each phase of development.
- 2.13 Electric Services. Pursuant to a Special Facilities Agreement dated June 6, 2017, the City (d/b/a Silicon Valley Power) will provide electric services for the Property and Developer's adjacent parcels located within the City of San Jose (defined in the Special Facilities Agreement as the Owned TOD SJ Parcel, the Owned SJ Parcels, and the Future SJ Parcel), by providing service to the Property via new utility connection points, which will be distributed through private lines for delivery to the adjacent parcels.
- 2.14 Minimum Hotel and Retail Square Footage. The hotel and retail square footage shall be proposed in the Development Plan with a minimum 0.2 Floor Area Ratio (FAR), as that term is defined in the General Plan, over the area of the Project Site, calculated after the Developer has completed any required dedication(s). A proposal by the Developer to reduce the square footage of the proposed hotel shall be considered a "minor modification" subject to Director approval under Section 11.2.c, provided that the Minimum Commercial Square Footage is maintained by increasing the proposed commercial development elsewhere on the Project Site. A proposal to reduce the Minimum Square Footage below 0.2 FAR would not constitute a minor modification and would require City Council approval and a formal amendment to this Agreement.

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 required by changes in 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

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Vested Elements and the terms and conditions for development of the Property established by this Agreement. 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 or requires significant changes in the development of the Property from what is contemplated by the Approvals, including but not limited to: (i) limiting or reducing the density or intensity of all or any part of the Project; (ii) limiting or restricting the location of buildings, grading, or other improvements on the Property; (iii) limiting the provision of public utilities, services, or facilities for the Project; (iv) applying to the Project rent, vacancy, or conversion controls, regulations, and/or policies; (v) significantly delaying, rationing or imposing a moratorium on development of the Property; or (vi) requiring the issuance of discretionary or nondiscretionary permits or approvals by the City other than those required as of the Effective Date.

- b. Any new Development Fee, Exaction, or Dedication not listed in Section 4 below, or an increase in the amount of such Development Fee, Exaction, or Dedication shall be deemed to conflict with this Agreement. A change to a processing 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 4.2 below.
- c. 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. In the event Developer so consents, Developer shall provide notice to City of that election and thereafter such law or regulation shall be part of the Vested Elements.

- 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. In no event shall such further review by City revisit the Development Plan, Conditions of Approval, or the Approvals or be conditioned on or require any change in the Project except as contemplated by the Development Plan, Conditions of Approval 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 the Development Plan 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

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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, including the Approvals and Vested Elements; 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 Development Plan or this Agreement. Notwithstanding the foregoing, by approving the Project Approvals, City has made a policy decision that the Project, as currently reflected in the Project Approvals, is in the best interests of the City and promotes the public health, safety, and general welfare. Consequently, the City shall not prevent the development of the Project as set forth in the Project Approvals through the denial of Subsequent Approvals. Provided, however, that nothing herein is intended to limit the discretionary authority of the City Council to consider appeals of Subsequent Approvals related to subdivision maps pursuant to the provisions of the Subdivision Map Act.

3.6 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 in any applicable General Plan, Redevelopment Plan, Specific Plan, SCCC, Other Regulation or Local Rule adopted by City, with the exceptions listed in this Agreement.

4. DEVELOPMENT FEES, EXACTIONS AND DEDICATIONS.

4.1 Development Fees, Exactions and Dedications. The 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 Conditions of Approval and the Development Plan 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 after the

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Effective Date, the Fees set forth in this Agreement, Conditions of Approval and the Development Plan shall be the only fees, charges, special assessments, special taxes, dedications and exactions payable to City due to development of the Property.

- 4.2 Processing Fees. Processing fees, including without limitation Building Permit 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 a phase by phase basis, so that only those fees applying to the actual construction of each phase shall be paid upon the issuance of the appropriate permits for that phase. 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 permit plan checking, if applicable, above those normally charged by the City. 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 Dedications. Developer shall offer to dedicate to City, upon request by City, all portions of the Property designated in the Conditions of Approval for public easements, streets or public areas.
- 4.4 Mitigations. Developer agrees to contribute to the costs of public facilities and services in the amounts set forth in the Development Plan, Mitigation Monitoring or Reporting Program and Conditions of Approval, 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.
- 4.5 Affordable Housing. Developer agrees to provide onsite residential units at affordable rents or to pay a fee in an amount equivalent to the cost of providing such affordable residential units, as set forth below. As used in this Agreement, the term “affordable” shall mean a rent level affordable to extremely low, very low, low, or moderate income households, as defined in California Code of Regulations, Title 25, sections 6910-6924, and the average income level of the affordable units shall not exceed 80% area median

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income. If the number of affordable units would result in a fractional unit, the Developer shall provide an additional unit to satisfy this requirement. Developer shall record a covenant on the property in a form acceptable to the City Attorney committing to maintain the affordability of the onsite units for a minimum of fifty-five (55) years. Developer shall provide the following combination of fees and/or actual unit construction for each Phase:

- a. During each Phase of development, Developer agrees to provide at least 10 percent of residential units at affordable rents or to pay a fee in an amount equivalent to the cost of providing such affordable residential units, based on \$6.67 per residential gross square foot. Not less than 50 percent of the affordable housing obligation set forth in this paragraph shall be satisfied by construction of the dwelling units onsite, and not more than 50 percent of the affordable housing obligation shall be satisfied by payment of a fee. Fees shall be paid prior to the issuance of building permits for each apartment building. This affordable housing commitment shall be memorialized in a separate Affordable Housing Agreement in a form acceptable to the City.
- 4.6 Bicycle and Pedestrian Improvements: Developer agrees to pay the sum of eight hundred twenty five thousand dollars (\$825,000.00) payable to the City prior to the issuance of Building Permits for the first building for improvements that may include, but not limited to bicycle lanes along De La Cruz Boulevard and Coleman Avenue, wide shoulders on the De La Cruz Tri-Level Structure, new bicycle trail construction, bicycle parking in the public rights of way, and enhanced pedestrian facilities. These improvements will be constructed by the City.
- 4.7 Regional Traffic Fee. Developer agrees to the sum of two dollars and fifty cents (\$2.50) per square foot of new commercial or retail uses; four hundred dollars (\$400.00) per hotel/motel room; and two hundred and fifty dollars (\$250.00) per each bedroom in a residential unit payable to the City prior to the issuance of Building Permits for that square footage. Developer shall receive a credit against the Regional Traffic Fee for the cost of completing the Additional Repaving, as set forth in Section 4.13.
- 4.8 Local Traffic Fee. Developer agrees to the sum of two hundred and fifty dollars (\$250.00) per each bedroom in a residential unit and two dollars and fifty cents (\$2.50) per foot of new commercial or retail uses payable to the City prior to the issuance of Building Permits for that square footage. Regional and Local Traffic Fees are non-refundable.
- 4.9 Fair Share Traffic Fees. Developer agrees to post a bond or letter of credit upon execution of this Agreement in the sum of one million, six hundred eighty thousand, one hundred ninety-four dollars (\$1,680,194.) payable to the City to be credited proportionally to the intersection improvements identified in the certified Environmental Impact Report and listed in Exhibit E, attached hereto and incorporated herein by this reference. The City may call the bond or letter of credit anytime following the approval of a contract associated with the construction of the identified improvements by the lead agency.

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- 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 Phase of the development if that Phase has a minimum of one year of ninety percent (90%) occupancy prior to receipt of the application by the City.
- 4.11 Transportation Services. Developer agrees to pay a proportional share of a local transit service study, anticipated to be about 1/10 of the cost, with a maximum payment by Developer of seventy-five thousand dollars (\$75,000), to be completed by a consultant selected by City, to assess the feasibility of creating a transit connection between the commercial job center north of the Caltrain tracks to the transit centers and residential areas south of the Caltrain tracks, in cooperation with the City, other public agencies, and other local business interests.
- 4.12 Dedication of 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, at discretion of the City, pursuant to Chapter 17.35 of the City Code. Said fees shall be assessed per Phase of the Project and shall be paid prior to issuance of a building permit for each apartment building. Developer agrees to execute a separate park maintenance agreement with the City, which commits Developer to maintaining the park improvements, including landscaping and park amenities, within the parkland dedication area; indemnifies the City with respect to such maintenance; and subject to standard City insurance requirements, for the life of the Project.
- 4.13 Brokaw Road Improvements. Developer commits to repaving Brokaw Road along the Project's street frontage, in accordance with City specifications (the "Frontage Repaving"). In addition, Developer commits to repaving the entirety of Brokaw Road from the southwesterly Brokaw Road property line to the terminus of Brokaw Road, in accordance with City specifications (the "Additional Repaving"). Developer commits to providing street lighting and sidewalks along the entirety of the southeast side of Brokaw Road from Coleman Avenue to the southwest terminus of Brokaw Road, in accordance with City specifications. Construction of all such repaving, lighting, and sidewalks shall be completed prior to issuance of the first Certificate of Occupancy. City agrees to credit Developer in the amount of three hundred and fifty thousand dollars (\$350,000) for the completion of these improvements.

5. STANDARD OF REVIEW OF PERMITS

- 5.1 Standard of Review of Permits. All ministerial permits ("Permits") required by Developer to develop the Property, including but not limited to (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

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- b. The application demonstrates that Developer has complied with this Agreement, the Development Plan, the Mitigation Monitoring or Reporting Program, the Conditions of Approval 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, (4) Mitigation Monitoring or Reporting Program, (5) the Approvals, and (6) SCCC, 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 Development Plan, 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 Development Plan, including the following actions:

- a. Scheduling all required public hearings by the 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 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. 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 17.10.220(a).

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- 8.2 Developer's Submittal. Within ninety (90) days before each anniversary of the Effective Date, and if requested by City, Developer shall submit a letter ("Compliance Letter") to the 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.
- 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 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 9.1. 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 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 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 any reimbursement for the construction of any private or public improvement required by this Agreement, unless explicitly provided by this Agreement or the Conditions of Approval.

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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 25 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

- 11.1 Amendments of Agreement.
- a. Subject to Section 22 regarding operating memoranda and Section 11.2 regarding future actions and Administrative Amendments, this Agreement may be amended from time to time in accordance with California Government Code section 65868 and SCCC Section 17.10.300, only upon the mutual written consent of City and

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Developer. Any amendment that substantially affects the term, permitted uses, density, intensity of use, height and size of proposed buildings, or provisions for reservation and dedication of land shall require a noticed public hearing before the City Council prior to the Parties executing any such amendment.

- b. No amendment of this Agreement shall be required in connection with the issuance of any Subsequent Approval or changes to the SCCC that Developer elects to be subject to pursuant to Section 3.2. City shall not amend or issue any Subsequent Approval unless Developer requests such an amendment or issuance from City.

11.2 Amendment of Vested Elements.

- a. City and Developer anticipate that the Project will be implemented in accordance with the Approvals, the Subsequent Approvals, the Development Plan, Mitigation Monitoring or Reporting Program, and the Conditions of Approval. The foregoing actions and other necessary or convenient implementation actions shall not require an amendment to this Agreement.
- b. The Vested Elements may, from time to time, be amended or modified, if so elected by Developer and approved by City, in compliance with procedural provisions of the zoning or other land use ordinances and regulations in effect on the date of application for amendment or modification.
- c. Upon the written request of Developer, the Director shall determine (i) whether the requested amendment or modification is minor; and (ii) whether the requested amendment or modification is consistent with this Agreement. Without limiting the generality of the foregoing, minor changes shall include lot line adjustments, reductions in the density, intensity, scale or scope of the Project, 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 configuration or location of structures or building heights that do not substantially alter the design concepts of the Project, variations in the location or installation of utilities and other infrastructure connections or facilities that do not substantially alter the design concepts of the Project, and minor adjustments to the Project Site diagram or Project Site legal description. If the Director finds, in his or her sole discretion, that the amendment is both minor and consistent with the Agreement, and will result in no new significant impacts not addressed and mitigated in the EIR, the amendment shall be determined to be an "Administrative Amendment," and the Director shall have the authority to approve the Administrative Amendment without notice and public hearing.
- d. Any request by Developer for an amendment that is determined by the Director, in his or her sole discretion, not to be an Administrative Amendment shall be processed in accordance with California Government Code section 65868 and SCCC Section 17.10.300 and subject to Section 11.1.

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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

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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 ninety (90) 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 satisfaction, that the proposed transferee has the capability to fulfill the rights and obligations of this Agreement. Within forty-five (45) 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. 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. The terms of this Agreement, the Rezoning, 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 Developer's affiliates or related entities, prior to the issuance of any Building Permits; (b) sale or lease of one or more buildings to Developer's affiliates or related entities, and (c) a loan or mortgage pertaining to the Property.
- 13.4 Release Upon Transfer. Upon the transfer, sale or assignment 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, sale or assignment; 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 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

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the vested rights provided by this Agreement for the duration of the Term hereof. Nothing in this Section shall exempt any property transferred to a non-assuming transferee from payment of applicable fees, taxes and assessments or compliance with applicable conditions of approval.

- 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. 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 Development Plan, Mitigation Monitoring or Reporting Program, and the Conditions of Approval, 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

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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 shall 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 third-party 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 approval 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.

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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, Conditions of Approval (including any environmental mitigation measures) 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:

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

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

Developer:
TOD Brokaw, LLC
c/o Edward Storm
10121 Miller Ave., Suite 200
Cupertino, CA 95014

With copy to:
David H. Blackwell, Esq.
Allen Matkins Leck Gamble Mallory & Natsis LLP
3 Embarcadero Center, 12th Floor
San Francisco, CA 94111-4074

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

- a. 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

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similar catastrophes; wars, riots or similar hostilities; strikes and other labor difficulties beyond the Party's reasonable control; 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. 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 or whether the requested clarification is of such a character to require an amendment of the Agreement pursuant to Section 25 hereof. The City Manager may execute any operating memoranda without City Council action.

23. LEGAL ACTIONS

23.1 In the event of any administrative, legal or equitable action or other proceeding instituted by any person, entity or organization (that is not a Party to this Agreement) challenging the validity of this Agreement, any Subsequent Approvals, or the sufficiency of any environmental review under CEQA ("Third Party Challenge"), the Parties shall agree to mutually cooperate with each other in the defense of any such challenge.

23.2 City shall tender the complete defense of any such Third Party Challenge to the Developer ("Tender"). Without limiting the defense and indemnification obligations contained in Section 15.8, Developer shall indemnify and hold harmless City against any and all third-party fees and costs arising out of such Third Party Challenge.

23.3 If City wishes to assist Developer when Developer has accepted the Tender, City may do so if City pays its own attorney fees and costs (including related court costs).

23.4 If any part of this Agreement (including, without limitation, any part of the Attachments thereto) or any Subsequent Approval is held by a court of competent jurisdiction to be invalid, the City shall: (1) use its best efforts to sustain and/or re-enact that part of this Agreement and/or Subsequent Approval; and (2) take all steps possible to cure any inadequacies or deficiencies identified by the court in a manner consistent with the express and implied intent of this Agreement, and then adopting or re-enacting such part

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of this Agreement and/or Subsequent Approval as necessary or desirable to permit execution of this Agreement and/or Subsequent Approval.

24. NO THIRD PARTY BENEFICIARY

- 24.1 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.

25. DISPUTE RESOLUTION

- 25.1 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.
- 25.2 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.
- 25.3 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.
- 25.4 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.

26. CONSENT

- 26.1 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.

27. COVENANT OF GOOD FAITH AND FAIR DEALING

- 27.1 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.

28. AUTHORITY TO EXECUTE

- 28.1 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.

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29. COUNTERPARTS

- 29.1 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 PAGE * _____
CITY OF SANTA CLARA, CALIFORNIA,
a chartered California municipal corporation

APPROVED AS TO FORM:

BRIAN DOYLE
City Attorney

ATTEST:

NADINE NADER
Acting City Clerk

DEANNA J. SANTANA
City Manager
1500 Warburton Avenue
Santa Clara, CA 95050
Telephone: (408) 615-2210
Fax: (408) 241-6771

“CITY”

*DEVELOPER

*CHOOSE ONE: CORPORATION/PARTNERSHIP/INDIVIDUAL

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

Name: * _____

Title: * _____

Local Address: * _____

Email Address: _____

Telephone: (*) * _____

Fax: (*) * _____

I:\PLANNING\2016\Project Files Active\PLN2016-12318 1205 Coleman Ave\DA\Development Agreement 10.10.18.doc

DEVELOPMENT AGREEMENT

**DEVELOPMENT AGREEMENT
(GATEWAY CROSSINGS)
BETWEEN
THE CITY OF SANTA CLARA,
a chartered California municipal corporation,
AND
TOD BROKAW, LLC**

EXHIBIT A

LEGAL PROPERTY DESCRIPTION

**LEGAL DESCRIPTION OF
BROKAW PARCEL
APN: 230-46-069 & 070 (2018-19)**

All that certain real property situate in the City of Santa Clara and in the City of San Jose, County of Santa Clara, State of California, being all of Lot A as described in that certain Grant Deed recorded January 19, 2011 as Document No. 21052359, Official Records of Santa Clara County, being more particularly described as follows:

Beginning at the most northerly corner of Area 1 as shown on said Grant Deed, said corner also being a point on the southwesterly line of Coleman Avenue;

Thence along said southwesterly line, North 57°34'50" West, 77.71 feet;

Thence leaving said southwesterly line, South 32°25'10" West, 1094.17 feet to a point on the southerly line of said Lot A;

Thence along said southerly line the following two (2) courses and distances:

1. North 77°23'05" West, 262.43 feet;
2. North 57°34'50" West, 660.00 feet to the southeasterly line of Brokaw Road as shown on that certain Record of Survey filed for record on January 25, 1960 in Book 116 of Maps at Page 18, Santa Clara County Records;

Thence along said southeasterly line, North 36°48'20" East, 871.45 feet to a point on the southerly line of that land as described in that certain Grant Deed recorded April 04, 1995 in Book N810, Page 1762 of Official Records of Santa Clara County;

Thence along the southerly, easterly and northerly lines of said Grant Deed the following ten (10) courses and distances:

1. Along a curve to the right having a radius of 42.00 feet, through a central angle of 55°36'50" for an arc distance of 40.77 feet;
2. South 87°34'50" East, 109.90 feet;
3. North 86°08'26" East, 18.29 feet;
4. South 87°34'50" East, 197.10 feet;
5. Along a curve to the right having a radius of 789.00 feet, through a central angle of 30°00'00" for an arc distance of 413.12 feet;
6. South 57°34'50" East, 25.65 feet;
7. North 00°05'35" West, 13.04 feet;
8. North 57°34'50" West, 18.64 feet;
9. Along a curve to the left having a radius of 800.00 feet, through a central angle of 30°00'00" for an arc distance of 418.88 feet;
10. North 87°34'50" West, 338.43 feet to a point on the westerly line of said Lot A, said point also being the most northerly corner of that land as described in that

S.C. 18,439

certain Grant Deed recorded May 09, 1968 in Book 8117, Page 389, Official
Records of Santa Clara County;

Thence along the westerly, northerly and easterly lines of said Lot A the following five
(5) courses and distances:

1. North 36°48'20" East, 121.18 feet;
2. South 87°34'50" East, 269.99 feet;
3. Along a curve to the right having a radius of 900.00 feet, through a central angle
of 30°00'00" for an arc distance of 471.24 feet;
4. South 57°34'50" East, 279.35 feet;
5. South 00°40'47" East, 119.37 feet to a point on said southwesterly line of
Coleman Avenue;


Thence along said southwesterly line, North 57°34'50" West, 122.56 feet to the Point of
Beginning.

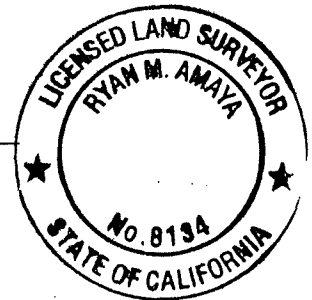
Said Parcel contains 23.836 ± Acres.

As shown on Plat Attached hereto and by this reference made a part hereof.

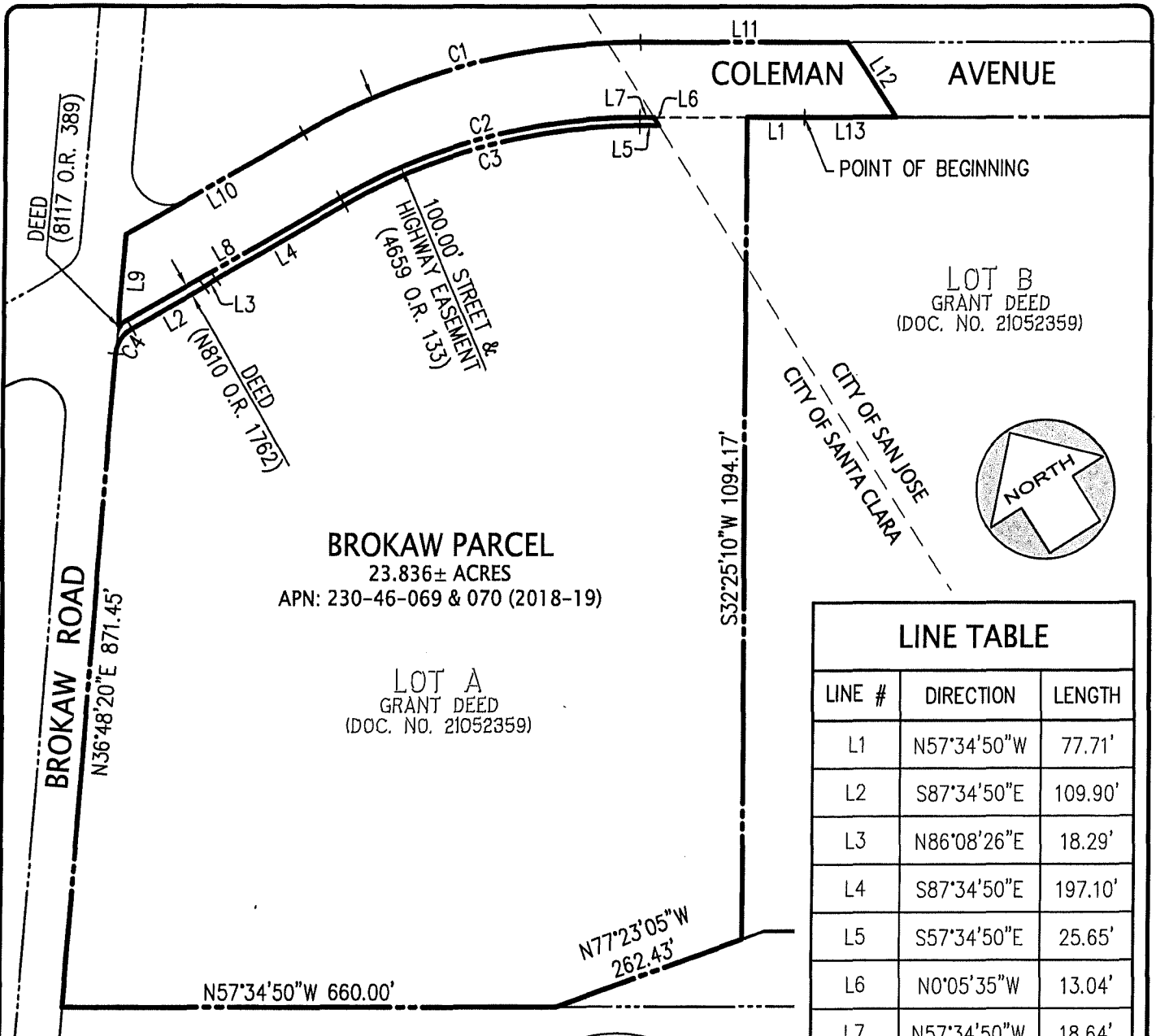
Legal Description prepared by Kier & Wright Civil Engineers and Surveyors, Inc.

8-31-18
Date


Ryan M. Amaya, L.S. 8134



S.C. 18,439

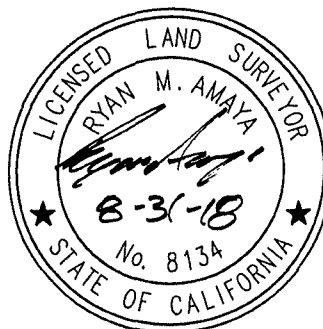


LINE TABLE

LINE #	DIRECTION	LENGTH
L1	N57°34'50"W	77.71'
L2	S87°34'50"E	109.90'
L3	N86°08'26"E	18.29'
L4	S87°34'50"E	197.10'
L5	S57°34'50"E	25.65'
L6	N0°05'35"W	13.04'
L7	N57°34'50"W	18.64'
L8	N87°34'50"W	338.43'
L9	N36°48'20"E	121.18'
L10	S87°34'50"E	269.99'
L11	S57°34'50"E	279.35'
L12	S0°40'47"E	119.37'
L13	N57°34'50"W	122.56'

CURVE TABLE

CURVE #	RADIUS	DELTA	LENGTH
C1	900.00'	30°00'00"	471.24'
C2	800.00'	30°00'00"	418.88'
C3	789.00'	30°00'00"	413.12'
C4	42.00'	55°36'50"	40.77'



0 100' 200' 400'

Scale 1" = 200'

S.C. 18,439



KIER & WRIGHT

CIVIL ENGINEERS & SURVEYORS, INC.

3350 Scott Boulevard, Building 22
Santa Clara, California 95054

Phone (408) 727-6665
Fax (408) 727-5641

www.kierwright.com

**PLAT TO ACCOMPANY
LEGAL DESCRIPTION**

**SANTA CLARA
& SAN JOSE**

CALIFORNIA

DATE 8/30/18

SCALE 1" = 200'

BY EK

JOB NO. A18034-3

SHEET 1 OF 1




DEVELOPMENT AGREEMENT

**DEVELOPMENT AGREEMENT
(GATEWAY CROSSINGS)
BETWEEN
THE CITY OF SANTA CLARA,
a chartered California municipal corporation,
AND
TOD BROKAW, LLC**

EXHIBIT B

SELECTED PAGES OF DEVELOPMENT PLAN



-  PHASE 1
-  PHASE 2
-  PHASE TBD

HUNTER STORM

10121 Miller Ave, Suite 200, Cupertino, CA 95014
 Phone: (408) 255-4100 Fax: (408) 996-8425

GATEWAY CROSSINGS

DATE: 2-16-2018
 PROJECT #: 18-001
 SCALE: 1" = 80'-0"
 0 50 100



SHEET TITLE
**PHASING
 PLAN**

SHEET NUMBER
XX

MVE
 + PARTNERS
 1000 Main Street, Suite 400
 Irvine, California 92614
 949.260.1338
 1000 Main Street, Suite 400
 Irvine, California 92614

-VTA TUNNEL

PHASE 1

PHASE 2

HUNTER STORM

10121 Miller Ave. Suite 200, Cupertino, CA 95014
Phone: (408) 255-4100 Fax: (408) 996-8425

GATEWAY CROSSINGS

DATE:	6-18-2018	
PROJECT #:		
SCALE:	1" = 50'-0"	
0	50	100
		
NORTH		

SHEET TITLE
PHASING
PLAN -
INFRASTRUCTURE

SHEET NUMBER
SP3.03

MVE
+ PARTNERS

1700 Main Street, Suite 600
Irvine, California 92614
949.807.3388
www.mye-architects.com

DEVELOPMENT AGREEMENT

**DEVELOPMENT AGREEMENT
(GATEWAY CROSSINGS)
BETWEEN
THE CITY OF SANTA CLARA,
a chartered California municipal corporation,
AND
TOD BROKAW, LLC
EXHIBIT C
CONDITIONS OF APPROVAL**

CONDITIONS OF REZONING APPROVAL

In addition to complying with all applicable codes, regulations, ordinances and resolutions, the following **conditions of approval** are recommended:

GENERAL

- G1. If relocation of an existing public facility becomes necessary due to a conflict with the Developer's new improvements, then the cost of said relocation shall be borne by the Developer.
- G2. Comply with all applicable codes, regulations, ordinances and resolutions.

ATTORNEY'S OFFICE

- A1. The Developer agrees to defend and indemnify and hold City, its officers, agents, employees, officials and representatives free and harmless from and against any and all claims, losses, damages, attorneys' fees, injuries, costs, and liabilities arising from any suit for damages or for equitable or injunctive relief which is filed by a third party against the City by reason of its approval of Developer's project.

COMMUNITY DEVELOPMENT

- C1. All development, construction and uses shall comply with all applicable codes, regulations, ordinances and resolutions that are not otherwise altered by the specific development entitlements for the Gateway Crossings Project.
- C2. It shall be the Developer's responsibility through his engineer to provide written certification that the drainage design for the subject property will prevent flood water intrusion in the event of a storm of 100-year return period. The Developer's engineer shall verify that the site will be protected from off-site water intrusion by designing the on-site grading and stormwater collection system using the 100-year hydraulic grade line elevation provided by the City's Engineering Department or the Federal Flood Insurance Rate Map, whichever is more restrictive. Said certification shall be submitted to the City Building Inspection Division prior to issuance of building permits.
- C3. The project site is located in Seismic Hazard Zone as identified by the State Geologist for potential hazards associated with liquefaction, pursuant to the Seismic Hazard Mapping Act (Div.2 Ch7.8 PRC), and the Developer shall prepare and submit a geotechnical hazards investigation report acceptable to the City of Santa Clara Building Official prior to issuance of permits.
- C4. Prior to issuance of a demolition permit, Developer shall have an asbestos survey of the proposed site performed by a certified individual. Survey results and notice of the proposed demolition are to be sent to the Bay Area Air Quality Management District (BAAQMD). No demolition shall be performed without a demolition permit and BAAQMD approval and, if necessary, proper asbestos removal.
- C5. The Developer shall submit a truck hauling route for demolition, soil, debris and material removal, and construction to the Director of Community Development for review and approval prior to the issuance of demolition and building permits.
- C6. Submit plans for final architectural review to the Planning Division for Architectural Committee review and approval prior to issuance of building permits. Said plans to include, but not be limited to: site plans, floor plans, elevations, landscaping, lighting, signage, and stormwater management plan. The Developer must provide third party verification of the stormwater management plan for conformance with C3 requirements as part of the architectural submittal.

- C7. Provide trash enclosure, the location and design of which shall be approved by the Director of Community Development prior to issuance of any building permits. Roofed enclosures with masonry walls and solid gates are the preferred design. All trash enclosures should be constructed to drain to the sanitary sewer.
- C8. Submit complete landscape plans, including irrigation plan and composite utility and tree layout overlay plan, for Planning Division review and approval with installation of required landscaping prior to the issuance of occupancy and or final building permits. The landscape plan shall include type and size of proposed trees. Trees are required to be 10 feet from public water, storm and sewer facilities unless a City approved Tree Root Barrier (TRB) is used and may require the addition of super-soil where electric, water, and sewer utilities are in proximity. If a City approved TRB is used the TRB must be a minimum of 5 feet from the public water, storm and sewer facility with the tree behind the TRB, and specified on the plan.
- C9. Landscaping installation shall meet City water conservation criteria in a manner acceptable to the Director of Community Development.
- C10. Obtain a Site Development Permit from the City of San Jose Planning Department for the portion of the project site located in the City of San Jose for landscape improvements as part of the landscape plan for the Gateway Crossings Project, prior to issuance of building permits.
- C11. Obtain required permits and inspections from the Building Official and comply with the conditions thereof. As this project involves land area of one acre or more, the Developer shall file a Notice of Intent (NOI) with the State Water Resources Control Board prior to issuance of any building permit for grading, or construction; a copy of the NOI shall be sent to the City Building Inspection Division. A stormwater pollution prevention plan is also required with the NOI.
- C12. Submit as-built on-site plans prepared by a registered civil engineer showing all utilities serving the subject property.
- C13. Project site landscaping shall be maintained in good condition throughout the life of the Project and no trees shall be removed without City review and approval. Trees permitted by the City for removal shall be replaced at a 2:1 ratio with 24-inch box specimen tree, or equal alternative and shall require Planning Division review and approval.
- C14. Developer is responsible for collection and pick-up of all trash and debris on-site and adjacent public right-of-way.
- C15. Construction activity not confined within a building shall be limited to the hours of 7:00 a.m. to 6:00 p.m. weekdays and not permitted on Saturdays, Sundays and State and federal holidays for projects within 500 feet of a residential use. Construction activity confined within a building shall be limited to the hours of 7:00 a.m. to 6:00 p.m. weekdays and 9:00 a.m. to 6:00 p.m. Saturdays for projects within 500 feet of a residential use, and prohibited on Sundays and State and federal holidays.
- C16. The project shall comply with the conditions set forth in the Development Agreement in effect between the City of Santa Clara and TOD Brokaw, LLC.
- C17. The project shall comply with the mitigation measures identified in the Environmental Impact Report and Mitigation Monitoring or Reporting Program for the Gateway Crossings Project.
- C18. The Developer shall comply with disability accessibility requirements of applicable State and Federal Fair Housing regulations.
- C19. Permitted uses within the commercial space of the project shall be consistent with the Community Commercial (CC), Neighborhood Commercial (CN), and General Office (OG), with the exception of auto service uses, landscaping nurseries, mortuaries, lodges or clubs which shall be prohibited.

- C20. The Developer is required to prepare, institute, and monitor a Transportation Demand Management (TDM) Plan to reduce vehicle miles travelled by 20 percent of which 10 percent is achieved through TDM measures. TDM measures are to include, but are not limited to providing ongoing transit passes (i.e. annual Eco Pass and/or Clipper Card) for all interested tenants of the rental units at no additional cost to the residents for transit use.
- C21. The initial TDM plan shall be completed by a qualified (as determined by the Director of Community Development) third-party consultant prior to the issuance of an occupancy permit. Said plan shall be reviewed and approved by the Director of Community Development. Each calendar year, an annual review of the TDM plan shall be completed by a qualified third-party consultant, and the third-party consultant shall submit the TDM annual report covering the prior calendar year to the Planning Division for review and approval on or before February 28th of each year, to the satisfaction of the Director of Community Development. The Director of Community Development shall have the authority and discretion to require modification of the TDM measures as a means to achieve the identified overall trip reduction targets.

ENGINEERING

- E1. Obtain site clearance through Engineering Department prior to issuance of Building Permit. Site clearance will require payment of applicable development fees. Other requirements may be identified for compliance during the site clearance process. Contact Engineering Department at (408) 615-3000 for further information.
- E2. All work within the public right-of-way and/or public easement, which is to be performed by the Developer/Owner, the general contractor, and all subcontractors shall be included within a Single Encroachment Permit issued by the City Engineering Department.
- E3. All work within City of San Jose Limit will require an encroachment permit from City of San Jose.
- E4. Submit public improvement plans prepared in accordance with City Engineering Department procedures which provide for the installation of public improvements. Plans shall be prepared by a Registered Civil Engineer and approved by the City Engineer prior to approval and recordation of subdivision map and/or issuance of building permits.
- E5. Developer is responsible for cost of relocation or modification of any public facility necessary to accommodate subject development.
- E6. Dedicate lots A, B, C, D, E, and F as public access easements.
- E7. Dedicate emergency vehicle access easement over neighboring property (future Champions Way) prior to issuance of building permits.
- E8. Additional public street dedication required for the widening of Coleman Avenue shall be dedicated on the Subdivision Map.
- E9. File and record Subdivision Map for proposed development and pay all appropriate fees prior to Building Permit issuance.
- E10. Obtain Council approval of a resolution ordering vacation of the portion of existing easement(s) proposed to be abandoned through Engineering Department, and pay all appropriate processing fees.
- E11. Developer shall provide a complete storm drain study for the 10-year and 100-year storm events. The grading plans shall include the overland release for the 100-year storm event and any localized flooding areas. System improvements, if needed, will be at Developer's expense.
- E12. Show limits of water ponding and water daylighting for the 100-year storm event.
- E13. Provide root barriers when the drip line of the mature trees covers the sidewalk. Root barriers for sidewalk protection shall be 16' long or extend to drip line of the mature tree,

- whichever is greater, and be 1.5' deep, and centered on trees. Root barriers for curb and gutter protection shall be 16' long or extend to drip line of the mature tree, whichever is greater, and be 2' deep, and centered on trees.
- E14. Sanitary sewer and storm drain mains and laterals shall be outside the drip line of mature trees or 10' clear of the tree trunk whichever is greater.
 - E15. Damaged curb, gutter, and sidewalk within the public right-of-way along property's frontage shall be repaired or replaced (to the nearest score mark) in a manner acceptable to the City Engineer or his designee. The extents of said repair or replacement within the property frontage shall be at the discretion of the City Engineer or his designee.
 - E16. Existing non-standard or non-ADA compliant frontage improvements shall be replaced with current City standard frontage improvements as directed by the City Engineer or his designee.
 - E17. All proposed sidewalk, walkway, and driveways shall be ADA compliant per City Standard.
 - E18. Slurry seal with digouts full width of Coleman Avenue along property frontage.
 - E19. Reconstruct full width of Brokaw Road, from Coleman Avenue to the southern terminus of Brokaw Road, with 6" AC over 16" AB or 12" Full Depth AC.
 - E20. Provide ADA walkway connecting the proposed building to the public sidewalk.
 - E21. Show and comply City's driveway Triangle of Safety (sight distance) requirement at proposed driveways and City's Intersection Visibility Obstruction Clearance (sight distance) at the southeast corner of the Brokaw Road/Coleman Avenue intersection. No trees and/or structures obstructing drivers' view are allowed in the Triangle of Safety and Corner Visibility Obstruction areas.
 - E22. Public parking cannot be counted towards on-site parking requirements.
 - E23. All proposed driveways shall be City Standard ST-8 driveways with the exception of driveways at intersections which may be City Standard ST-10.
 - E24. The driveway on Coleman Avenue south of the Brokaw Road intersection can be designed as a flared driveway to accommodate trucks.
 - E25. Brokaw Road typical midblock cross-section shall include minimum 6' wide bicycle lanes and 12' through lanes both eastbound and westbound to accommodate future shuttles/bus to the planned future BART station. Gutter pan shall not be included in the width of the bicycle lane.
 - E26. Provide a left turn lane, a shared through and left and a separate right turn lane on the eastbound and westbound Brokaw Road approaches at the intersection with Coleman Avenue. On the eastbound Brokaw Road approach provide minimum 10' wide left turn lane, 10' wide shared through and left turn lane and a 14' wide shared bicycle and right turn only lane. Provide 15' receiving lane on Brokaw Road west of Coleman Avenue. On the westbound Brokaw Road approach provide minimum 10' wide left turn lane, 10' wide shared through and left turn lane, and a minimum 11' wide right turn only lane.
 - E27. Remove existing curb ramp at southwest corner of Brokaw Road/Coleman Avenue along project frontage and install 2 curb ramps per City Standard ST-14.
 - E28. Provide a right-out only driveway approximately 200' west of Coleman Avenue.
 - E29. Provide a new traffic signal at the intersection of Brokaw Road/Costco Driveway/Project driveway. At this intersection, provide 6' wide bicycle lanes in both directions, minimum 12' wide eastbound and westbound through lanes and minimum 11' eastbound and westbound left turn lanes.
 - E30. Provide minimum 11' wide westbound left turn lane at driveway on the western edge of the property.

- E31. The first un-signalized driveway on Coleman Avenue approximately 500' south of Brokaw shall be signed for right out only at exit. This driveway can be designed as a flared driveway to accommodate trucks.
- E32. Provide a second signalized full access driveway at the south edge of the project site on Coleman Avenue/Champions Way (Future Public Street). Provide a north-south on-site connection between the two Coleman Avenue driveways to allow traffic entering/exiting from the two driveways to circulate on-site.
- E33. Dedicate right-of-way along southbound Coleman Avenue to construct third southbound through lane and a bike lane. Widen Coleman Avenue along the property frontage to provide three 11' minimum wide through lanes, 12' wide center two-way left turn lane and a minimum 6' wide bicycle lane.
- E34. Provide traffic signal interconnect between the Brokaw Road/Coleman Avenue intersection and the new proposed traffic signal at the south edge of the Project site. Provide traffic signal interconnect to the new traffic signal at the Brokaw Road/Costco Driveway intersection.
- E35. Provide minimum 8' wide sidewalk along Brokaw Road with 5' landscape strip along Brokaw Road.
- E36. Provide minimum 8' wide sidewalk plus 6' wide landscape strip along Coleman Avenue property frontage.
- E37. Coordinate with cities of Santa Clara and San Jose on the design and construction of proposed Champions Way (new Public Street) on the eastern perimeter of the project. Provide 8' wide sidewalk and 6' wide planter strip on the new public street.
- E38. Remove existing crosswalks and restripe new crosswalks to align with the new curb ramps at the southeast corner of the intersection of Brokaw Road/Coleman Avenue.
- E39. All traffic striping, messages and symbols shall be thermoplastic.
- E40. The existing bus stop south of the intersection of Coleman Avenue/Brokaw Road shall be reconstructed just west of its current location due to the widening of Coleman Avenue. Include bus duck out, bus pad, bus shelter and bench per VTA requirements.
- E41. Reconstruct traffic signal at northwest and southwest corner of the Brokaw Road/Coleman Avenue intersection to bring signal, poles, and underground infrastructure to current ADA and City standards.
- E42. Provide move in/out loading zone on site for residents and business clients.
- E43. Provide trash loading zone on site.
- E44. The Developer shall comply with the mitigations in the EIR/TIA.
- E45. Install "No Parking at Any Time" signs along the project frontage on the south side of Brokaw Road.
- E46. For the current proposed units and retail area, provide the following minimum bicycle parking spaces at the main entrance and/or high visible areas:
- 1,600 Units: 533 Class I Bicycle spaces and 107 Class II Bicycle spaces
 - 182,000 SF/225 room Hotel: 8 Class I Bicycle spaces
 - 15,000 SF Retail area: 1 Class I Bicycle spaces and 4 Class II bicycle spaces

ELECTRICAL

- EL1. Prior to submitting any project for Electric Department review, Developer shall provide a site plan showing all existing utilities, structures, easements and trees. Developer shall also include a "Load Survey" form showing all current and proposed electric loads. A new customer with a load of 500KVA or greater or 100 residential units will have to fill out a "Service Investigation Form" and submit this form to the Electric Planning

- Department for review by the Electric Planning Engineer. Silicon Valley Power (SVP) will do exact design of required substructures after plans are submitted for building permits.
- EL2. The Developer shall provide and install electric facilities per Santa Clara City Code Chapter 17.15.210.
 - EL3. Electric service shall be underground. See Electric Department Rules and Regulations for available services.
 - EL4. Installation of underground facilities shall be in accordance with City of Santa Clara Electric Department standard UG-1000, latest version, and Santa Clara City Code Chapter 17.15.050.
 - EL5. Underground service entrance conduits and conductors shall be "privately" owned, maintained, and installed per City Building Inspection Division Codes. Electric meters and main disconnects shall be installed per SVP Standard MS-G7, Rev. 2.
 - EL6. The Developer shall grant to the City, without cost, all easements and/or right-of-way necessary for serving the property of the Developer and for the installation of utilities (Santa Clara City Code Chapter 17.15.110).
 - EL7. If the "legal description" (not "marketing description") of the units is condominium or apartment, then all electric meters and services disconnects shall be grouped at one location, outside of the building or in a utility room accessible directly from the outside. A double hasp locking arrangement shall be provided on the main switchboard door(s). Utility room door(s) shall have a double hasp locking arrangement or a lock box shall be provided. Utility room door(s) shall not be alarmed.
 - EL8. Transformer pads are required and must be installed in accordance to standard document UG1000.
 - EL9. All trees, existing and proposed, shall be a minimum of 5' from any existing or proposed Electric Department facilities. Existing trees in conflict will have to be removed. Trees shall not be planted in public utility easements (PUE) or electric easements.
 - EL10. Electric Load Increase fees may be applicable.
 - EL11. The Developer shall provide the City, in accordance with current City standards and specifications, all trenching, backfill, resurfacing, landscaping, conduit, junction boxes, vaults, street light foundations, equipment pads and subsurface housings required for power distribution, street lighting, and signal communication systems, as required by the City in the development of frontage and on-site property. Upon completion of improvements satisfactory to the City, the City shall accept the work. Developer shall further install at his cost the service facilities, consisting of service wires, cables, conductors, and associated equipment necessary to connect a customer to the electrical supply system of and by the City. After completion of the facilities installed by Developer, the City shall furnish and install all cable, switches, street lighting poles, luminaries, transformers, meters, and other equipment that it deems necessary for the betterment of the system (Santa Clara City Code Chapter 17.15.210 (2)).
 - EL12. Electrical improvements (including underground electrical conduits along frontage of properties) may be required if any single non-residential private improvement valued at \$200,000 or more or any series of non-residential private improvements made within a three-year period valued at \$200,000 or more (Santa Clara City Code Title 17 Appendix A, Table III).
 - EL13. Non-Utility Generator equipment shall not operate in parallel with the electric utility, unless approved and reviewed by the Electric Engineering Division. All switching operations shall be "Open-Transition-Mode", unless specifically authorized by SVP Electric Engineering Division. A Generating Facility Interconnection Application must be submitted with building permit plans. Review process may take several months

- depending on size and type of generator. No interconnection of a generation facility with SVP is allowed without written authorization from SVP Electric Engineering Division.
- EL14. Encroachment permits will not be signed off by SVP until developers Work substructure construction drawing has been completed.
 - EL15. All SVP owned equipment is to be covered by an Underground Electric Easement (UGEE). This is different than a PUE. Only publically-owned dry utilities can be in a UGEE. Other facilities can be in a joint trench configuration with SVP, separated by a 1' clearance, providing that they are constructed simultaneously with SVP facilities. See UG 1000 for details.
 - EL16. Proper clearance must be maintained from all SVP facilities, including a 5' clearance from the outer wall of all conduits. This is in addition to any UGEE specified for the facilities. Contact SVP before making assumptions on any clearances for electric facilities.
 - EL17. Transformers and switch devices can only be located outdoors. These devices may be placed 5' from an outside building wall, provided that the building wall in that area meets specific requirements (see UG 1000 document for specifics). Example: If there are any doors, windows, vents, overhangs or other wall openings within 5' of the transformer, on either side, then the transformer must be 10' or more away from the building. These clearances are to be assumed to be clear horizontally 5' in either direction and vertically to the sky.
 - EL18. All existing SVP facilities, on-site or off-site, are to remain unless specifically addressed by SVP personnel by separate document. It is the Developers responsibility to maintain all clearances from equipment and easements. Any relocation will be at Developers expense.
 - EL19. SVP does not utilize any sub-surface (below grade) devices in its system. This includes transformers, switches, etc.
 - EL20. All interior meter rooms are to have direct, outside access through only one door. Interior electric rooms must be enclosed in a dedicated electric room and cannot be in an open warehouse or office space.
 - EL21. In the case of podium-style construction, all SVP facilities and conduit systems must be located on solid ground (aka "real dirt"), and cannot be supported on parking garage ceilings or placed on top of structures.
 - EL22. Developer is advised to contact SVP to obtain specific design and utility requirements that are required for building permit review/approval submittal. Please provide a site plan to Leonard Buttitta at 408-615-6620 to facilitate plan review.
 - EL23. The SVP design for this project will need to be coordinated and in sync with the Coleman Highline project which involves office buildings around Avaya Stadium but electric service point inside the City of Santa Clara right-of-way. Applicant responsible for coordinating with all other developers to resolve conflicts.
 - EL24. The tree landscape area at southwest end of Building 3 will require coordination with Coleman Highline project design. The initial design of SVP system with Developers shows as being the location of customer 12 KV switchgears and SVP vaults.

WATER

- W1. The Developer shall coordinate with Mike Vasquez at (408)-615-2006 for water compliance and recycled water inquiries. The City recommends the Developer to explore using the recycled water, instead of potable water for the neighborhood park.
- W2. The Developer shall submit plans showing proposed water service and sanitary sewer for each building connected separately to a public main in the public right-of-way to the satisfaction of the Director of Water & Sewer Utilities. Additionally, different types of

- water use (domestic, irrigation, fire) should be served by separate water services each separately tapped at the water main.
- W3. Developer shall submit plans and profiles for the existing 10" water main abandonment and replacement with a new 12" ductile iron pipe, on Coleman Avenue east of Brokaw Road and at the intersection of Coleman Avenue and Brokaw Road, to the satisfaction of the Director of Water & Sewer Utilities. Water main shall be abandoned and replaced at Developer's expense after obtaining approval from the City's Water & Sewer Utilities Department.
 - W4. If fire flow information is needed, Developer shall coordinate with Water Department at (408) 615-2000.
 - W5. Upon completion of construction and prior to the City's issuance of a Certificate of Occupancy, the Developer shall provide "as built" drawings to the satisfaction of the Director of Water and Sewer Utilities.
 - W6. Approved reduced pressure detector assembly device is required for the proposed fire service. The Developer shall submit plans showing existing fire service upgrade with reduced pressure detector assembly device, as per city standard 17, to the satisfaction of the Director of Water & Sewer Utilities. Note that the city standard details can be obtained from the City of Santa Clara website under Water and Sewer Utilities Technical Documents.
 - W7. Fire hydrant shall be located within the landscaping area per City standard detail No. 18
 - W8. Developer shall coordinate with Fire Department to submit hydraulic calculations for the sprinkler design and obtain an underground fire permit for the proposed fire service.
 - W9. The Developer shall show the location of all easements. Developer shall note that a water utility easement is required for public water appurtenances installed on private property. Water easement shall not be overlapping with SVP easement. The Water easement for the water services and all other public water appurtenances shall be minimum 15' wide and be adjacent to the public right of way.
 - W10. Developer shall adhere to and provide a note indicating all horizontal and vertical clearances. The Developer shall maintain a minimum 12" of vertical clearance at water service crossing with other utilities, and all required minimum horizontal clearances from water services: 10' from sanitary sewer utilities, 10' from recycled water utilities, 8' from storm drain utilities, 5' from fire and other water utilities, 3' from abandoned water services, 5' from gas utilities, and 5' from the edge of the propose or existing driveway. For sanitary sewer, water, and recycled water utilities, the Developer shall maintain a minimum horizontal clearance (edge to edge) of 10' from existing and proposed trees. If Developer installs tree root barriers, clearance from tree reduces to 5' (clearance must be from the edge of tree root barrier to edge of water facilities).
 - W11. Proposed 12" of fire/water service connected to existing 12" water main is not permitted. The Developer shall redesign and revise the drawing to show the proposed water and fire service with approved size.
 - W12. Prior to the issuance of Building Permits, the Developer shall provide fixture unit counts for any water services greater than 2".
 - W13. The City recommends the Developer to install sewer clean out or/and manhole at the property line.
 - W14. The Developer must indicate the correct pipe material and the size of existing water and sewer main(s) on the plans.
 - W15. Prior to issuance of Building Permits, the Developer shall provide the profile section details for utilities crossing water, sewer, or recycled water mains to ensure a 12" minimum vertical clearance is maintained.

- W16. Prior to issuance of Building permits, the Developer shall submit plan details for all water features, (including but not limited to fountains and ponds) designed to include provisions for operating the system without City potable water supply and capable of being conservation periods, to the satisfaction of the Director of the Water & Sewer Utilities. Decorative water features may be permanently connected to the City's recycle water supply.
- W17. Approved backflow prevention device is required on all irrigation services. Dedicated irrigation service shall be installed for irrigation purpose.

POLICE

- PD1. The property should be fenced off during demolition and construction as a safety barrier to the public and deterrent to theft and other crime.
- PD2. Address numbers of the individual residential buildings shall be clearly visible from the street and shall be a minimum of 6" in height and a color contrasting with the background material. Numbers shall be illuminated during hours of darkness. Individual apartment numbers shall be a minimum of 6" in height and a color contrasting to the background material, and either visible from the street or from the center area of the project. Where multiple units/buildings occupy the same property, unit/building addresses shall be clearly visible. A monument sign, preferably at all dedicated entrances to the property, shall be prominently displayed, showing all unit/building numbers, addresses, etc. A map is recommended for large complexes with multiple streets or walkways.
- PD3. Address numbers should be a minimum of 12" inches in height for commercial or industrial buildings. Consider illuminated numbers during the hours of darkness, and in a color that is contrasting to the background material. They shall be clearly visible from the street. Where multiple units or buildings occupy the same property, each unit/building address shall be clearly visible. A monument sign, preferably at all entrances to the property, should be prominently displayed showing all unit/building numbers, addresses, etc. A map is recommended for large complexes with multiple streets or walkways.
- PD4. In a development where there is an alley, driveway, etc. providing a rear entrance or access, the address shall be displayed to both the front and rear of the individual buildings. Where an alley, driveway, etc. provided vehicular access, address numbers shall be clearly visible from that access.
- PD5. Each distinct unit within the building shall have its address displayed on or directly above both front and rear doors.
- PD6. Landscaping should follow the National Institute of Crime Prevention standards. That standard describes bushes/shrubs not exceeding 2' in height at maturity, or maintained at that height, and the canopies of trees should not be lower than 6' in height. Hostile vegetation is encouraged along the fence and property lines and under vulnerable windows.
- PD7. Lighting for the project to be at the IES (Illuminating Engineering Society of North America) standards and include the features listed below:
- White light source
 - Full cut-off or shoebox design
 - Tamperproof Housings
- Pedestrian Scale
Unbreakable exterior
Wall mounted lights/10' high
- These features increase natural surveillance, support and/or enhance security camera capabilities, and increase Police Patrol effectiveness.
- PD8. Any required enclosure fencing (trash area, utility equipment, etc.) would preferably be see-thru. If for aesthetic reasons prohibit that, the fencing should have a 6" opening

- along the bottom for clear visibility. Any gates or access doors to these enclosures should be locked.
- PD9. If there is outdoor seating associated with a restaurant or similar business which is near vehicle parking stalls, the outdoor space will be designed to ensure the safety of the public from possible vehicular related incidents.
- PD10. If the development includes any benches, these benches should not be longer than 5' in length, and should have arm rests at both ends. If the benches are longer than 5' in length, there should be a divider (arm rest or similar) in the middle of the bench in addition to the arm rests on both ends. This helps prevent unlawful lodging and/or skateboarding. Another option to benches could be cubes, knee walls, or other creative types of seating possibilities.
- PD11. The Developer should install skate stoppers on any low clearance wall of 36" in height or lower to prevent vandalism/damage to the wall from skateboarding or similar activities.
- PD12. All exterior doors should be adequately illuminated at all hours with their own light source.
- PD13. All construction of dwelling units shall conform to the requirements of the Uniform Building Security Code as adopted by the City of Santa Clara City Council.
- PD14. Consider convex mirrors for elevator cabs and at stairwell landings in order to enhance natural surveillance for the user of the elevator.
- PD15. Other line of sight obstructions (including recessed doorways, alcoves, etc.) should be avoided on building exterior walls and interior hallways.
- PD16. The Developer shall meet the City of Santa Clara's guidelines established for radio signal penetration, detailed in the Communications Department's Public Safety Radio System Building Penetration Guidelines. The intended use of telecommunications sites shall be clearly and accurately stated in the use permit. The signal, of whatever nature, of any communications facility or system, shall in no way whatsoever interfere with or affect any police communication or police communication system.
- PD17. Public Safety Radio Systems Penetration Guidelines have been established by the city of Santa Clara Communications Department for radio signal penetration during emergencies. The Developer is advised that the project may be required to install equipment for adequate radio coverage for the City Of Santa Clara Radio communications System, including but not limited to Police & Fire emergency services. The Developer should contact the director of communications at (408) 615-5571 for high rises.
- PD18. When in the opinion of the fire code official, a new structure obstructs the line of sight of emergency radio communications to existing buildings or to any other locations, the Developer of the structure shall provide and install the radio retransmission equipment necessary to restore communications capabilities. The equipment shall be located in an approved space or area within the new structure.
- PD19. The parking structure/site should be equipped with a centrally located emergency panic alarm system that reports to a central office. If more than one button/call station is installed, the emergency system should always be in visual distance from another emergency call station. There should not be more than 300' separating each call station, which is the current industry standard.
- PD20. "White" light meeting the IES standard should be considered. There should be no "dark" areas inside the structure.
- PD21. The interior of the parking structure should be painted a light, highly reflective color. This increases the natural lighting available and can help prevent dark areas that attract criminal activity.

- PD22. All entrances to the parking areas (structure, surface, subterranean, etc.) shall be posted with appropriate signage to discourage trespassing, unauthorized parking, etc. (See California Vehicle Code section 22658(a) for guidance).
- PD23. Alcoves and other visual obstructions that might constitute a hiding place should be eliminated whenever structurally possible. Pillars, columns, and other open construction should be considered over a solid wall design.
- PD24. Consider storage, maintenance, and trash rooms within the parking garage having doors which cannot be locked from the inside and that close and lock quickly and automatically upon exit.
- PD25. A Coded Entry System is required for police access to enclosed parking lots and gated communities. This can be accomplished with a coded key pad system or the Police Department Knox Box key system. We understand security is a prime concern for the tenants of the project, which necessitates some sort of secure building and admittance process. By having either of these secure access systems for law enforcement, it will allow us to better respond to emergency situations should they arise in the development. Examples of these systems can be reviewed at the following projects:
 2585 El Camino Real (Coded key pad access)
 3555 Monroe Street (Knox box key access)
- The following sections are in reference for the proposed hotel on this site:
- PD26. Developer shall contact the Santa Clara Police Department 'Intelligence' unit (408-615-4849) for Alcohol Beverage Control (ABC) licensing review.
- PD27. The business shall undergo a 6 month and 1 year review, including a check for ABC violations and police service calls.
- PD28. All business or commercial establishments, of whatever nature, should have a comprehensive internal security plan, tailored to the specific use. This should include, but not limited to, employee security during working hours, after hours security, disaster preparation, etc. For retail uses, especially where there is cash on hand, robbery and cash security protocols should be established. Developers are encouraged to contact the Santa Clara Police Department's Community Services Unit (408-615-4859) for assistance.
- PD29. All business or commercial establishments, of whatever nature, should have an electronic intruder alarm system installed. The system should cover the interior and perimeter of structures determined to be a value target. Also, consideration should be given to exterior areas that are or contain value targets, such as a product display lot, company vehicle parking area, etc.
- PD30. The installation and use of interior and exterior security cameras and recording devices is highly encouraged.

FIRE

- F1. Prior to Building Permit issuance, the Alternative Materials and Methods (AM&M) application committing to the following shall be submitted and approved:
- Firefighter air replenishment systems installed within the high-rise hotel.
 - A security system workstation shall be installed within the Fire Command Center serving the hotel.
 - Standpipe connection spacing in the parking garage shall be reduced to 100' to 130' maximum depending on final design for the hotel.
 - Fire service elevators shall be installed within all building (entire project).
 - An additional rated stairwell to the roof with penthouse (entire project).

- f. Fire sprinkler density increased .05-gpm per square foot above base NFPA base design (entire project). The fire sprinkler design shall utilize the Density/Area method outlined in NFPA 13 for the entire project.
 - g. All buildings shall be equipped with emergency voice evacuation alarm system without egress width reduction.
 - h. Fire-flow reduction for fire sprinklers is reduced to 50% maximum (entire project).
- F2. Prior to Building Permit issuance, written documentation that the minimum required fire-flow for the largest building onsite based on the construction type and square footage in accordance with the California Fire Code is required to be submitted. As noted above, a maximum reduction of 50% in fire-flow is allowed with the installation of automatic fire sprinkler systems.
- F3. Prior to Building Permit Issuance, construction documents for the proposed underground fire protection infrastructure, hydraulic calculations, material data submittal, number, location and distribution of fire hydrants for the building(s) based on the California Fire Code. The required number of fire hydrants shall be based on the fire-flow before the 50% reduction.
- F4. Prior to Building Permit Issuance, construction documents for proposed fire apparatus access shall be submitted addressing the following, unless adequately addressed under an AM&M:
 - a. Fire apparatus access roadways shall be provided so the exterior walls of the first story of the building(s) are located no more than 150' from fire apparatus access as measured by an approved route around the exterior.
 - b. Fire apparatus access roadways shall have a "minimum" width of a fire apparatus access roadway for Engines is 20'. The "minimum" width of roadways for aerial apparatus is 26'.
 - c. Aerial access roadways shall be located a minimum of 15' and a maximum of 30' from the protected building, and positioned parallel to one entire sides of the building. The side of the building shall be approved.
 - d. Fire access roadways shall have a "minimum" unobstructed vertical clearance of not less than 13'6" inches. Aerial apparatus access roads may require additional vertical clearance.
 - e. Fire apparatus access roadways shall support a gross vehicle weight of 75,000-pounds.
 - f. Fire apparatus access roadways shall have a "minimum" inside turning radius of 36' or greater.
 - g. Dead-end fire apparatus access roadways in excess of 150' in length shall be provided with "approved" turning around(s).
 - h. Two separate and approved fire apparatus access roadways to the site are required. Roadways shall be placed a distance apart equal to not less than one half of the length of the maximum overall diagonal dimension of the property or area to be served, measured in a straight line between accesses.
 - i. Traffic calming devices are not permitted on any designated fire access roadway, unless approved.
- F5. Prior to Building Permit issuance, the infrastructure necessary for the installation of an emergency responder's radio system is required to be incorporated into the design documents, including, but not limited to rated rooms, shafts, etc.).
- F6. Prior to the Start of Construction, fire protection water supplies shall be installed and made serviceable prior to combustible materials being moved onsite.

- F7. During the course of construction, safety protocols, standard operating procedures, and guidelines outlined within the Environmental Impact Report shall be followed, unless deviations are approved by the oversight agency.

STREETS

- ST1. Prior to City's issuance of Building or Grading Permits, the Developer shall develop a Final Stormwater Management Plan and update the SCVURPPP C.3 Data Form.
- ST2. The Final Stormwater Management Plan and all associated calculations shall be reviewed and certified by a qualified third party consultant from the SCVURPPP List of Qualified Consultants, and a third party review letter shall be submitted with the Plan.
- ST3. For projects that disturb a land area of one acre or more, the Developer shall file a Notice of Intent (NOI) with the State Water Resources Control Board for coverage under the State Construction General Permit (Order No. 2009-0009-DWQ) prior to issuance of any building permit for grading or construction. A copy of the NOI shall be submitted to the City Building Inspection Division, along with a stormwater pollution prevention plan (SWPPP). Active projects covered under the Construction General Permit will be inspected by the City once per month during the wet season (October – April).
- ST4. The Developer shall incorporate Best Management Practices (BMPs) into construction plans and incorporate post-construction water runoff measures into project plans in accordance with the City's Urban Runoff Pollution Prevention Program standards prior to the issuance of Building or Grading Permits. Proposed BMPs shall be submitted to and thereafter reviewed by the Planning Division and the Building Inspection Division for incorporation into construction drawings and specifications.
- ST5. During the construction phase, all stormwater control measures shall be inspected for conformance to approved plans by a qualified third party consultant from the SCVURPPP List of Qualified Consultants, and a third party inspection letter shall be submitted to the Public Works Department, Street Maintenance Division. Building occupancy will not be issued until all stormwater treatment measures have been adequately inspected. For more information contact Street Maintenance at (408) 615-3080.
- ST6. The property owner shall enter into an Inspection and Maintenance (I&M) Agreement with the City for all installed stormwater treatment measures in perpetuity. Developers should contact Karin Hickey at (408) 615-3097 or KaHickey@santaclaraca.gov for assistance completing the Agreement. For more information and to download the most recent version of the I&M Agreement, visit the City's stormwater resources website at <http://santaclaraca.gov/government/departments/public-works/environmental-programs/urban-runoff-pollution-prevention/stormwater-resources>.
- ST7. Developer shall install an appropriate stormwater pollution prevention message such as "No Dumping – Flows to Bay" on any storm drains located on private property.
- ST8. Interior floor drains shall be plumbed to the sanitary sewer system and not connected to the City's storm drain system.
- ST9. Floor drains within trash enclosures shall be plumbed to the sanitary sewer system and not connected to the City's storm drain system.
- ST10. All outdoor equipment and materials storage areas shall be covered and/or bermed, or otherwise designed to limit the potential for runoff to contact pollutants.
- ST11. Any site design measures used to reduce the size of stormwater treatment measures shall not be removed from the project without the corresponding resizing of the stormwater treatment measures and an amendment of the property's I&M Agreement.
- ST12. Decorative and recreational water features such as fountains, pools, and ponds shall be designed and constructed to drain to the sanitary sewer system only.

- ST13. For projects that involve construction, demolition or renovation of 5,000 square feet or more, the Developer shall comply with City Code Section 8.25.285 and recycle or divert at least fifty percent (50%) of materials generated for discard by the project during demolition and construction activities. No building, demolition, or site development permit shall be issued unless and until Developer has submitted a construction and demolition debris materials check-off list. Developer shall create a Waste Management Plan and submit a Construction and Demolition Debris Recycling Report through the City's online tracking tool at <http://santaclara.wastetracking.com/>.
- ST14. For projects that involve a Rezoning, the Developer shall contact the Public Works Department, Street Maintenance Division at (408) 615-3080 to verify if the property falls within the City's exclusive franchise hauling area. If so, the Developer may be required to use the City's exclusive franchise hauler and rate structure for solid waste services.
- ST15. The Developer shall provide a site plan showing all proposed locations of solid waste containers, enclosure locations, and street/alley widths to the Public Works Department, Street Maintenance Division. All plans shall comply with the City's Development Guidelines for Solid Waste Services as specified by development type. Contact the Street Maintenance Division at (408) 615-3080 for more information.
- ST16. Pre-treatment devices and tallow bins shall be installed at all food establishments. Tallow bins shall be placed within a trash enclosure when possible. If enclosure is not sized to accommodate the tallow bin(s), a separate dedicated enclosure with drainage to the sanitary sewer system shall be provided.

PARKS AND RECREATION

- PR1. The project will generate an estimated 3,584 residents. Based on the Mitigation Fee Act standard of 2.53 acres/1,000 residents, the amount of public parkland required for this project to mitigate the impact of the new resident demand is 9.0675 acres. The equivalent fee due in lieu of parkland dedication is \$33,610,661. Developer shall be obligated to provide parkland, pay a fee in lieu thereof, or a combination of such dedication and fee, at the discretion of the City, pursuant to Chapter 17.35 of the City Code.
- PR2. Any parkland dedicated to the City shall be dedicated or otherwise conveyed (i) free and clear of any liens unacceptable to the City, and (ii) in a condition free of any toxic materials.
- PR3. Developer shall execute a separate park maintenance agreement with the City, which commits Developer to maintaining the park improvements, including landscaping and park amenities, within the parkland dedication area; indemnifies the City with respect to such maintenance; and subject to standard City insurance requirements, for the life of the Project.
- PR4. A public access easement shall be required on all private streets to provide public access to the public park.
- PR5. Any in lieu fees imposed under Chapter 17.35 shall be due and payable to the City prior to issuance of a building permit for each dwelling unit. Park acreage to be recalculated by Developer and private, on-site recreational areas have not been validated to verify acreage and in-lieu fees.
- PR6. A dwelling unit tax (DUT) is also due based on the number of units and additional bedrooms per City Code Chapter 3.15. The Project mix includes 230 studio units, 633 one-bedroom units, 127 one-bedroom plus den units, 562 two-bedroom units and 48 two-bedroom plus den units for a total DUT of \$27,050.
- PR7. Calculations may change if the number of units changes, if any areas do not conform to the Ordinance and City Code Chapter 17.35, if the fee schedule for new residential
- Gateway Crossings Project Conditions of Rezoning Approval

development fees due in lieu of parkland dedication changes before this Project is deemed complete by Planning, and/or if City Council makes any changes.

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CONDITIONS OF VESTING TENTATIVE SUBDIVISION MAP APPROVAL

In addition to complying with all applicable codes, regulations, ordinances and resolutions, the following **conditions of approval** are recommended:

GENERAL

- G1. If relocation of an existing public facility becomes necessary due to a conflict with the Developer's new improvements, then the cost of said relocation shall be borne by the Developer.
- G2. Comply with all applicable codes, regulations, ordinances and resolutions.

ATTORNEY'S OFFICE

- A1. The Developer agrees to defend and indemnify and hold City, its officers, agents, employees, officials and representatives free and harmless from and against any and all claims, losses, damages, attorneys' fees, injuries, costs, and liabilities arising from any suit for damages or for equitable or injunctive relief which is filed by a third party against the City by reason of its approval of Developer's project.

COMMUNITY DEVELOPMENT

- C1. The project shall comply with the conditions set forth in the Development Agreement in effect between the City of Santa Clara and TOD Brokaw, LLC.
- C2. The project shall comply with the mitigation measures identified in the Environmental Impact Report and Mitigation Monitoring or Reporting Program for the Gateway Crossings Project.
- C3. Obtain a Site Development Permit from the City of San Jose Planning Department for the portion of the project site located in the City of San Jose for landscape improvements as part of the landscape plan for the Gateway Crossings Project, prior to issuance of building permits.
- C4. Obtain City approval for name of private street(s) prior to Final Map approval.
- C5. Developer shall submit to the City Covenants, Conditions and Restrictions (CC&Rs) or equivalent instrument assigning and governing perpetual maintenance of the private street in good condition for the life of the Project, prior to issuance of building permits. Said document shall be recorded along with the Title for each property with the Santa Clara County Recorder's Office.

ENGINEERING

- E1. Obtain site clearance through Engineering Department prior to issuance of Building Permit. Site clearance will require payment of applicable development fees. Other requirements may be identified for compliance during the site clearance process. Contact Engineering Department at (408) 615-3000 for further information.
- E2. All work within the public right-of-way and/or public easement, which is to be performed by the Developer/Owner, the general contractor, and all subcontractors shall be included within a Single Encroachment Permit issued by the City Engineering Department.
- E3. All work within City of San Jose Limit will require an encroachment permit from City of San Jose.
- E4. Submit public improvement plans prepared in accordance with City Engineering Department procedures which provide for the installation of public improvements. Plans shall be prepared by a Registered Civil Engineer and approved by the City Engineer prior to approval and recordation of subdivision map and/or issuance of building permits.

- E5. Developer is responsible for cost of relocation or modification of any public facility necessary to accommodate subject development.
- E6. Dedicate lots A, B, C, D, E, and F as public access easements.
- E7. Dedicate emergency vehicle access easement over neighboring property (future Champions Way) prior to issuance of building permits.
- E8. Existing Coleman Avenue public street easement shall be dedicated to the City in fee title by separate instrument.
- E9. Additional public street dedication required for the widening of Coleman Avenue shall be dedicated on the Subdivision Map.
- E10. File and record Subdivision Map for proposed development and pay all appropriate fees prior to Building Permit issuance.
- E11. Obtain Council approval of a resolution ordering vacation of the portion of existing easement(s) proposed to be abandoned through Engineering Department, and pay all appropriate processing fees.
- E12. Show limits of water ponding and water daylighting for the 100-year storm event.
- E13. Provide root barriers when the drip line of the mature trees covers the sidewalk. Root barriers for sidewalk protection shall be 16' long or extend to drip line of the mature tree, whichever is greater, and be 1.5' deep, and centered on trees. Root barriers for curb and gutter protection shall be 16' long or extend to drip line of the mature tree, whichever is greater, and be 2' deep, and centered on trees.
- E14. Sanitary sewer and storm drain mains and laterals shall be outside the drip line of mature trees or 10' clear of the tree trunk whichever is greater.
- E15. Damaged curb, gutter, and sidewalk within the public right-of-way along property's frontage shall be repaired or replaced (to the nearest score mark) in a manner acceptable to the City Engineer or his designee. The extents of said repair or replacement within the property frontage shall be at the discretion of the City Engineer or his designee.
- E16. Existing non-standard or non-ADA compliant frontage improvements shall be replaced with current City standard frontage improvements as directed by the City Engineer or his designee.
- E17. All proposed sidewalk, walkway, and driveways shall be ADA compliant per City Standard.
- E18. Slurry seal with digouts full width of Coleman Avenue along property frontage.
- E19. Reconstruct full width of Brokaw Road, from Coleman Avenue to the southern terminus of Brokaw Road, with 6" AC over 16" AB or 12" Full Depth AC.
- E20. Show and comply City's driveway Triangle of Safety (sight distance) requirement at proposed driveways and City's Intersection Visibility Obstruction Clearance (sight distance) at the southeast corner of the Brokaw Road/Coleman Avenue intersection. No trees and/or structures obstructing drivers' view are allowed in the Triangle of Safety and Corner Visibility Obstruction areas.
- E21. Public parking cannot be counted towards on-site parking requirements.
- E22. All proposed driveways shall be City Standard ST-8 driveways with the exception of driveways at intersections which may be City Standard ST-10.
- E23. The driveway on Coleman south of the Brokaw Road intersection can be designed as a flared driveway to accommodate trucks.
- E24. Brokaw Road typical midblock cross-section shall include minimum 6' wide bicycle lanes and 12' through lanes both eastbound and westbound to accommodate future shuttles/bus to the planned future BART station. Gutter pan shall not be included in the width of the bicycle lane.
- E25. Provide a left turn lane, a shared through and left and a separate right turn lane on the eastbound and westbound Brokaw Road approaches at the intersection with Coleman

- Avenue. On the eastbound Brokaw Road approach provide minimum 10' wide left turn lane, 10' wide shared through and left turn lane and a 14' wide shared bicycle and right turn only lane. Provide 15' receiving lane on Brokaw Road west of Coleman Avenue. On the westbound Brokaw Road approach provide minimum 10' wide left turn lane, 10' wide shared through and left turn lane, and a minimum 11' wide right turn only lane.
- E26. Remove existing curb ramp at southwest corner of Brokaw/Coleman along project frontage and install 2 curb ramps per City Standard ST-14.
 - E27. Provide a right-out only driveway approximately 200' west of Coleman Avenue.
 - E28. Provide a new traffic signal at the intersection of Brokaw Road/Costco Driveway/Project driveway. At this intersection, provide 6' wide bicycle lanes in both directions, minimum 12' wide eastbound and westbound through lanes and minimum 11' eastbound and westbound left turn lanes.
 - E29. Provide minimum 11' wide westbound left turn lane at driveway on the western edge of the property.
 - E30. The first un-signalized driveway on Coleman approximately 500' south of Brokaw should be signed for right out only at exit. This driveway can be designed as a flared driveway to accommodate trucks.
 - E31. Provide a second signalized full access driveway at the south edge of the project site on Coleman Avenue/Champions Way (Future Public Street). Provide a north-south on-site connection between the two Coleman Avenue driveways to allow traffic entering/exiting from the two driveways to circulate on-site.
 - E32. Dedicate right-of-way along southbound Coleman Avenue to construct third southbound through lane and a bike lane. Widen Coleman Avenue along the property frontage to provide three 11' minimum wide through lanes, 12' wide center two-way left turn lane and a minimum 6' wide bicycle lane.
 - E33. Provide traffic signal interconnect between the Brokaw Road/Coleman Avenue intersection and the new proposed traffic signal at the south edge of the Project site. Provide traffic signal interconnect to the new traffic signal at the Brokaw Road/Costco Driveway intersection.
 - E34. Provide minimum 8' wide sidewalk along Brokaw Road with 5' landscape strip along Brokaw Road.
 - E35. Provide minimum 8' wide sidewalk plus 6' wide landscape strip along Coleman Avenue property frontage.
 - E36. Coordinate with cities of Santa Clara and San Jose on the design and construction of proposed Champions Way (new Public Street) on the eastern perimeter of the project. Provide 8' wide sidewalk and 6' wide planter strip on the new public street.
 - E37. Remove existing crosswalks and restripe new crosswalks to align with the new curb ramps at the southeast corner of the intersection of Brokaw Road/Coleman Avenue.
 - E38. All traffic striping, messages and symbols shall be thermoplastic.
 - E39. The existing bus stop south of the intersection of Coleman Avenue/Brokaw Road shall be reconstructed just west of its current location due to the widening of Coleman Avenue. Include bus duck out, bus pad, bus shelter and bench per VTA requirements.
 - E40. Reconstruct traffic signal at northwest and southwest corner of the Brokaw Road/Coleman Avenue intersection to bring signal, poles, and underground infrastructure to current ADA and City standards.
 - E41. The developer shall comply with the mitigations in the EIR/TIA.
 - E42. Install "No Parking at Any Time" signs along the project frontage on the south side of Brokaw Road.

DEVELOPMENT AGREEMENT

**DEVELOPMENT AGREEMENT
(GATEWAY CROSSINGS)
BETWEEN
THE CITY OF SANTA CLARA,
a chartered California municipal corporation,
AND
TOD BROKAW, LLC**

EXHIBIT D

MITIGATION MONITORING OR REPORTING PROGRAM

DRAFT
MITIGATION MONITORING OR REPORTING PROGRAM

Gateway Crossings

CITY OF SANTA CLARA

September 2018

P R E F A C E

Section 21081 of the California Environmental Quality Act (CEQA) requires a Lead Agency to adopt a Mitigation Monitoring or Reporting Program whenever it approves a project for which measures have been required to mitigate or avoid significant effects on the environment. The purpose of the monitoring or reporting program is to ensure compliance with the mitigation measures during project implementation.

On x, the City Council certified the Environmental Impact Report (EIR) for the Gateway Crossings project. The Final EIR concluded that the implementation of the project could result in significant effects on the environment and mitigation measures were incorporated into the proposed project or are required as a condition of project approval. This Mitigation Monitoring or Reporting Program addresses those measures in terms of how and when they will be implemented.

This document does *not* discuss those subjects for which the EIR concluded that mitigation measures would not be required to reduce significant impacts.

MITIGATION MONITORING OR REPORTING PROGRAM GATEWAY CROSSINGS				
Impacts	Mitigation	Timeframe for Implementation	Responsibility for Implementation	Oversight of Implementation
Air Quality				
Impact AIR-1: The project (under either option) would result in significant construction air pollutant emissions without the implementation of BAAQMD's standard construction BMPs.	MM AIR-1.1: During any construction period ground disturbance, the applicant shall ensure that the project contractor implements the following BAAQMD BMPs: <ul style="list-style-type: none"> • All exposed surfaces (e.g., parking areas, staging areas, soil piles, graded areas, and unpaved access roads) shall be watered two times per day. • All haul trucks transporting soil, sand, or other loose material off-site shall be covered. • All visible mud or dirt track-out onto adjacent public roads shall be removed using wet power vacuum street sweepers at least once per day. The use of dry power sweeping is prohibited. • All vehicle speeds on unpaved roads shall be limited to 15 miles per hour. • All roadways, driveways, and sidewalks to be paved shall be completed as soon as possible. Building pads shall be laid as soon as possible after grading unless seeding or soil binders are used. • Idling times shall be minimized either by shutting equipment off when not in use or reducing the maximum idling time to five minutes. Clear signage shall be provided for construction workers at all access points. • All construction equipment shall be maintained and properly tuned in accordance with manufacturer's specifications. All equipment shall be checked by a certified mechanic and determined to be running in proper condition prior to operation. • Post a publicly visible sign with the telephone number and person to contact at the construction firm regarding dust 	During all phases of construction period	Project applicant and contractors	Director of Community Development

**MITIGATION MONITORING OR REPORTING PROGRAM
GATEWAY CROSSINGS**

Impacts	Mitigation	Timeframe for Implementation	Responsibility for Implementation	Oversight of Implementation
	<p>complaints. This person shall respond and take corrective action within 48 hours. The Air District's phone number shall also be visible to ensure compliance with applicable regulations.</p> <p>MM AIR-1.2: The project shall develop a plan demonstrating that the off-road equipment used on-site to construct the project would achieve a fleet-wide average 92 percent reduction in PM₁₀ exhaust emissions or more. The plan shall include, but is not limited to, one or more of the following:</p> <ul style="list-style-type: none"> • All mobile diesel-powered off-road equipment larger than 25 horsepower and operating on the site for more than two days continuously shall meet, at a minimum, USEPA particulate matter emissions standards for Tier 4 engines or equivalent and include the use of equipment that includes CARB-certified Level 3 Diesel Particulate Filters. • Use of alternatively-fueled equipment (i.e., non-diesel), such as electric, biodiesel, or liquefied petroleum gas for example, would meet this requirement. <p>Other measures may be the use of added exhaust devices, or a combination of measures, provided that these measures are approved by the City and demonstrated to reduce community risk impacts to less than significant.</p>			
<p>Impact AIR-2: The operation of the project (Option 2 only) would result in significant operational ROG emissions.</p>	<p>MM AIR-2.1: The project (Option 2 only) shall develop and implement a Transportation Demand Management (TDM) plan that would reduce vehicle trips by 20 percent, half of which (a 10 percent reduction) shall be achieved with TDM measures.</p>	<p>Develop the TDM plan prior to issuance of occupancy permits; implement the TDM plan during project operations</p>	<p>Project applicant</p>	<p>Director of Community Development</p>

**MITIGATION MONITORING OR REPORTING PROGRAM
GATEWAY CROSSINGS**

Impacts	Mitigation	Timeframe for Implementation	Responsibility for Implementation	Oversight of Implementation
	<p>MM AIR-2.2: The project (Option 2 only) shall use low volatile organic compound or VOC (i.e., ROG) coating, that are below current BAAQMD requirements (i.e., Regulation 8, Rule 3: Architectural Coatings), for at least 50 percent of all residential and nonresidential interior and exterior paints. This includes all architectural coatings applied during both construction and reapplications throughout the project's operational lifetime. At least 50 percent of coatings applied must meet a "super-compliant" VOC standard of less than 10 grams of VOC per liter of paint. For reapplication of coatings during the project's operational lifetime, the Declaration of Covenants, Conditions, and Restrictions shall contain a stipulation for low VOC coatings to be used.</p>	During all phases of construction	Project applicant and contractors	Director of Community Development
Biology				
<p>Impact BIO-1: Project construction (under either option) could impact nesting birds on or adjacent to the site, if present.</p>	<p>MM BIO-1.1: Construction shall be scheduled to avoid the nesting season to the extent feasible. The nesting season for most birds, including most raptors, in the San Francisco Bay Area extends from February 1 through August 31.</p> <p>If it is not possible to schedule construction and tree removal between September and January, then pre-construction surveys for nesting birds shall be completed by a qualified ornithologist to ensure that no nests shall be disturbed during project implementation. This survey shall be completed no more than 14 days prior to the initiation of grading, tree removal, or other demolition or construction activities during the early part of the breeding season (February through April) and no more than 30 days prior to the initiation of these activities during the late part of the breeding season (May through August).</p> <p>During this survey, the ornithologist shall inspect all trees and other possible nesting habitats within and immediately adjacent to</p>	<p>During construction, if feasible.</p> <p>If construction activities are initiated between February and April, conduct the pre-construction survey no more than 14 days prior to construction activities. If construction activities are initiated between</p>	<p>Project applicant</p> <p>Project applicant</p>	<p>Director of Community Development</p> <p>Director of Community Development</p>

**MITIGATION MONITORING OR REPORTING PROGRAM
GATEWAY CROSSINGS**

Impacts	Mitigation	Timeframe for Implementation	Responsibility for Implementation	Oversight of Implementation
	the construction area for nests. If an active nest is found sufficiently close to work areas to be disturbed by construction, the ornithologist, in consultation with CDFW, shall determine the extent of a construction-free buffer zone to be established around the nest to ensure that nests of bird species protected by the MBTA or Fish and Game code shall not be disturbed during project construction.	May and August, conduct preconstruction surveys no more than 30 days prior to construction activities.		
	A final report of nesting birds, including any protection measures, shall be submitted to the Director of Community Development prior to the start of grading or tree removal.	Prior to start of grading or tree removal	Project applicant	Director of Community Development
Cultural Resources				
Impact CUL-1: Unknown buried archaeological resources could be impacted during project construction (under either option).	MM CUL-1.1: Archaeological monitoring by a qualified prehistoric archaeologist shall be completed during soil remediation and presence/absence exploration with a backhoe shall be completed where safe, undisturbed, and possible prior to construction activities. If any potentially CRHR eligible resources are identified, they should be briefly documented, photographed, mapped, and tarped before the area is backfilled. If resources are identified, a research design and treatment plan shall be completed and implemented by the archaeologist and shall include hand excavating the feature(s) or deposits prior to building construction.	During soil remediation	Project applicant	Director of Community Development
	MM CUL-1.2: As part of the safety meeting on the first day of construction/ground disturbing activities, the Archaeological Monitor shall brief construction workers on the role and responsibility of the Archaeological Monitor and procedures to follow in the event cultural resources are discovered. The prime construction contractor and any other subcontractors shall be informed of the legal and/or regulatory implications of knowingly destroying cultural resources or removing artifacts, human remains, and other cultural materials from the study area. The	Prior to start of construction activities	Project applicant	Director of Community Development

**MITIGATION MONITORING OR REPORTING PROGRAM
GATEWAY CROSSINGS**

Impacts	Mitigation	Timeframe for Implementation	Responsibility for Implementation	Oversight of Implementation
	<p>archaeological monitor has the authority to stop or redirect construction/remediation work to other locations to explore for potential features.</p> <p>MM CUL-1.3: In the event that human remains are discovered during excavation and/or grading of the site, all activity within a 50-foot radius of the find shall be stopped. The Santa Clara County Coroner shall be notified and shall make a determination as to whether the remains are of Native American origin or whether an investigation into the cause of death is required. If the remains are determined to be Native American, the Coroner shall notify the Native American Heritage Commission (NAHC) immediately. Once NAHC identifies the most likely descendants, the descendants will make recommendations regarding proper burial, which will be implemented in accordance with Section 15064.5(e) of the CEQA Guidelines.</p>	At the time a discovery is made	Project applicant	Director of Community Development
Greenhouse Gas Emissions				
<p>Impact GHG-1: The proposed project (Option 1 only) would generate significant GHG emissions.</p>	<p>MM GHG-1.1: Under Option 1 only, the project proponent shall prepare and implement a GHG Reduction Plan to offset the project-related incremental increase of greenhouse gas emissions resulting in the exceedance of the significance threshold of 2.6 MTCO₂e/year/service population. Refinement of the estimated GHG emissions from project Option 1 shall be completed as part of the GHG Reduction Plan in order to reflect the most current and accurate data available regarding the project's estimated emissions (including emission rates). The GHG Reduction Plan shall include the implementation of a qualifying TDM program to reduce mobile GHG emissions. Additional offsets and reductions may include, but are not limited to, the following:</p> <ul style="list-style-type: none"> Construct on-site or fund off-site carbon sequestration projects (such as a forestry or wetlands projects for which 	Develop the GHG Reduction Plan prior to issuance of occupancy permits; implement the GHG Reduction Plan during project operations	Project applicant	Director of Community Development

**MITIGATION MONITORING OR REPORTING PROGRAM
GATEWAY CROSSINGS**

Impacts	Mitigation	Timeframe for Implementation	Responsibility for Implementation	Oversight of Implementation
	<p>inventory and reporting protocols have been adopted). If project Option 1 develops an off-site project, it must be registered with the Climate Action Reserve or otherwise approved by BAAQMD in order to be used to offset project Option 1 emissions; and/or</p> <ul style="list-style-type: none"> • Purchase of carbon credits to offset project Option 1 annual emissions. Carbon offset credits shall be verified and registered with The Climate Registry, the Climate Action Reserve, or another source approved by CARB or BAAQMD. The preference for offset carbon credit purchases include those that can be achieved as follows: 1) within the City; 2) within the San Francisco Bay Area Air Basin; 3) within the State of California; then 4) elsewhere in the United States. Provisions of evidence of payments, and funding of an escrow-type account or endowment fund would be overseen by the City. <p>MM AIR-2.1 (see MM AIR-2.1 above)</p>	See MM AIR-2.1	See MM AIR-2.1	See MM AIR-2.1
<p>Impact GHG-2: The proposed project (Option 2 only) after implementation of mitigation measures MM AIR-2.1, would result in less than significant GHG emissions.</p>	<p>MM AIR-2.1 (see MM AIR-2.1 above)</p>	See MM AIR-2.1	See MM AIR-2.1	See MM AIR-2.1

MITIGATION MONITORING OR REPORTING PROGRAM GATEWAY CROSSINGS				
Impacts	Mitigation	Timeframe for Implementation	Responsibility for Implementation	Oversight of Implementation
Hazards and Hazardous Materials				
Impact HAZ-1: Construction workers, future occupants, and the surrounding environment could be exposed to contaminated soils and subject to soil vapor intrusion.	MM HAZ-1.1: The project shall develop and implement a Site Management Plan (SMP) that outlines the measures required to mitigate potential risks (including soil vapor intrusion) to construction workers, future occupants, and the environment from potential exposure to hazardous substances that may be encountered during soil intrusive or construction activities on-site. As part of the SMP, the requirements of a worker health and safety plan shall be outlined to address potential hazards to construction workers and off-site receptors that may result from construction activities. Each contractor shall be required to develop their own site-specific health and safety plan to protect their workers. The SMP prepared as stipulated above was submitted and approved by RWQCB in May 2016. This approved SMP was submitted to the City and a copy is included in Appendix E of this EIR.	Develop the SMP prior to the start of construction activities and submit the SMP to the City and RWQCB for approval prior to the start of construction activities. Implement the SMP during construction activities	Project applicant and contractors	Director of Community Development, Regional Water Quality Control Board, and Santa Clara Valley Water District
Noise and Vibration				
Impact NOI-1: Future residents would be exposed to exterior noises from aircraft above the City's exterior land use compatibility goal of 55 dBA CNEL.	MM NOI-1.1: Potential residents and buyers shall be provided with a real estate disclosure statement and buyer deed notices which would offer comprehensive information about the noise environment of the project site.	At the time of sale/lease of the residential units	Project applicant	Director of Community Development
Impact NOI-2: Existing land uses in the project vicinity would be exposed to an increase in ambient noise levels due to project construction activities	In addition to adhering to the City Code for construction hours, the project proposes to implement the following standard construction noise control measures: MM NOI-2-1: Develop a construction noise control plan, including, but not limited to, the following available controls:	Develop a construction noise control plan prior to issuance of grading permits. Implement the construction	Project applicant and contractors	Director of Community Development

**MITIGATION MONITORING OR REPORTING PROGRAM
GATEWAY CROSSINGS**

Impacts	Mitigation	Timeframe for Implementation	Responsibility for Implementation	Oversight of Implementation
(under either option).	<ul style="list-style-type: none"> Construct temporary noise barriers, where feasible, to screen stationary noise-generating equipment. Temporary noise barrier fences would provide a five dBA noise reduction if the noise barrier interrupts the line-of-sight between the noise source and receiver and if the barrier is constructed in a manner that eliminates any cracks or gaps. Equip all internal combustion engine-driven equipment with intake and exhaust mufflers that are in good condition and appropriate for the equipment. Unnecessary idling of internal combustion engines shall be strictly prohibited (i.e., no more than two minutes in duration) Locate stationary noise-generating equipment, such as air compressors or portable power generators, as far as possible from sensitive receptors as feasible. If they must be located near receptors, adequate muffling (with enclosures where feasible and appropriate) shall be used to reduce noise levels at the adjacent sensitive receptors. Any enclosure openings or venting shall face away from sensitive receptors. Utilize “quiet” air compressors and other stationary noise sources where technology exists. Construction staging areas shall be established at locations that would create the greatest distance between the construction-related noise sources and noise-sensitive receptors nearest the project site during all project construction. Locate material stockpiles, as well as maintenance/equipment staging and parking areas, as far as feasible from commercial (and proposed residential) receptors. Control noise from construction workers’ radios to a point where they are not audible at land uses bordering the project site. The contractor shall prepare a detailed construction schedule for major noise-generating construction activities. The 	noise control plan during construction activities.		

**MITIGATION MONITORING OR REPORTING PROGRAM
GATEWAY CROSSINGS**

Impacts	Mitigation	Timeframe for Implementation	Responsibility for Implementation	Oversight of Implementation
	<p>construction plan shall identify a procedure for coordination with adjacent land uses so that construction activities can be scheduled to minimize noise disturbance.</p> <ul style="list-style-type: none"> Designate a “disturbance coordinator” who would be responsible for responding to any complaints about construction noise. The disturbance coordinator shall determine the cause of the noise complaint (e.g., bad muffler, etc.) and require that reasonable measures be implemented to correct the problem. Conspicuously post a telephone number for the disturbance coordinator at the construction site and include in it the notice sent to neighbors regarding the construction schedule. 			
<p>Impact NOI-3: On-site mechanical equipment (including the backup generator) would exceed on and off-site noise limits identified in the City Code.</p>	<p>MM NOI-3.1: Mechanical equipment shall be selected and designed to meet the City’s noise level requirements. A qualified acoustical consultant shall be retained to review mechanical noise as these systems are selected to determine specific noise reduction measures necessary to reduce noise to comply with the City’s noise level requirements. Noise reduction measures could include, but are not limited to, selection of equipment that emits low noise levels, installation of muffles or sound attenuators, and/or installation of noise barriers such as enclosures and parapet walls to block the line-of-sight between the noise source and the nearest receptors. Alternate measures may include locating equipment in less noise-sensitive areas, where feasible.</p>	<p>During the final design phase</p>	<p>Project applicant</p>	<p>Director of Community Development</p>
Transportation/Traffic				
<p>Impact TRAN-1: The project (under either option) would have a significant impact under existing plus project conditions at the following two</p>	<p>MM TRAN-1.1: 1. Coleman Avenue/Brokaw Road (City of Santa Clara) – This intersection is under the jurisdiction of the City of Santa Clara. The improvement includes changing the signal for Brokaw Road (the east and west legs of this intersection) from protected left-turn phasing to split phase, adding a shared through/left turn lane to the east and west approaches within the existing right-of-way, changing the existing shared</p>	<p>Prior to issuance of occupancy permits</p>	<p>Project applicant</p>	<p>Director of Community Development</p>

**MITIGATION MONITORING OR REPORTING PROGRAM
GATEWAY CROSSINGS**

Impacts	Mitigation	Timeframe for Implementation	Responsibility for Implementation	Oversight of Implementation
<p>intersections: 1. Coleman Avenue/Brokaw Road (City of Santa Clara) and 6. De La Cruz Boulevard/Central Expressway (City of Santa Clara/CMP).</p>	<p>through/right-turn lanes to right-turn only lanes on the east and west approaches, changing the eastbound right-turn coding from “include” to “overlap” indicating that eastbound right turns would be able to turn right on red, prohibiting U-turns on northbound Coleman Avenue, and adding a third southbound through lane on Coleman Avenue, and restriping to provide exclusive southbound through and right turn lanes.</p> <p>MM TRAN-1.2: 6. De La Cruz Boulevard/Central Expressway (City of Santa Clara/CMP) – This intersection is located in the City of Santa Clara and under the jurisdiction of Santa Clara County. The Comprehensive County Expressway Planning Study identifies the conversion of the single HOV lane in each direction to mixed-flow lanes on Central Expressway as a Tier 1A project. The approved City Place development also identifies adding a second southbound right-turn lane and a third northbound left-turn lane as a mitigation measure. The project shall make a fair-share contribution towards the HOV lane conversion and additional lane geometry improvements identified as mitigation for the City Place project.</p>			
<p>Impact TRAN-2: The project (under either option) would result in a significant impact to mixed-flow lanes on 21 directional freeway segments during at least one peak hour.</p>	<p>MM TRAN-2.1: The project shall pay a fair-share contribution towards the VTA’s Valley Transportation Plan (VTP) 2040 express lane program along US 101.</p>	<p>Prior to Issuance of occupancy permits</p>	<p>Project applicant and contractors</p>	<p>Director of Community Development</p>
<p>Impact TRAN-3: The project (under either</p>	<p>The project proposes to implement MM TRAN-1.1 and -1.2 and the following mitigation measures:</p>	<p>Prior to issuance of occupancy</p>	<p>Project applicant</p>	<p>Director of Community</p>

**MITIGATION MONITORING OR REPORTING PROGRAM
GATEWAY CROSSINGS**

Impacts	Mitigation	Timeframe for Implementation	Responsibility for Implementation	Oversight of Implementation
<p>option) would have a significant impact under background plus project conditions at the following five intersections: 1. Coleman Avenue/Brokaw Road (City of Santa Clara); 6. De La Cruz Boulevard/Central Expressway (City of Santa Clara/CMP); 7. Lafayette Street/Central Expressway (City of Santa Clara/CMP); 13. Coleman Avenue/I-880 (S) (City of San José/CMP); and 15. Coleman Avenue/Taylor Street (City of San José)</p>	<p>MM TRAN-3.1: 7. Lafayette Street/Central Expressway (City of Santa Clara/CMP) – This intersection is located in the City of Santa Clara and under the jurisdiction of Santa Clara County. The Comprehensive County Expressway Planning Study identifies the conversion of the single HOV lane in each direction to mixed-flow lanes on Central Expressway as a Tier 1A project. The project shall make a fair-share contribution towards this improvement.</p> <p>MM TRAN-3.2: 13. Coleman Avenue/I-880 (S) (City of San José/CMP) – This intersection is located in the City of San José and under the jurisdiction of the City of San José. This improvement includes restriping one of the left-turn lanes to a shared left- and right-turn lane, effectively creating three right-turn lanes. Three receiving lanes currently exist on the north leg of Coleman Avenue.</p> <p>MM TRAN-3.3: 15. Coleman Avenue/Taylor Street (City of San José) – This intersection is located in and under the jurisdiction of the City of San José. The widening of Coleman Avenue to six-lanes has been identified as a Downtown Strategy 2000 improvement by the City of San José and is an approved project that will be implemented in the near-term. The project shall make a fair-share contribution towards this improvement.</p>	permits		Development
<p>Impact C-TRAN-1: The project would have a cumulatively considerable contribution to significant cumulative impacts at the following intersections: 1.</p>	<p>The project proposes to implement MM TRAN-1.1, -1.2, and -3.1 through -3.3 and the following two mitigation measures:</p> <p>MM C-TRAN-1.1: 8. Scott Boulevard/Central Expressway – This intersection is located in the City of Santa Clara and under the jurisdiction of the County of Santa Clara. The Comprehensive County Expressway Planning Study identifies the conversion of HOV to mixed-flow lanes on Central Expressway as a Tier 1A</p>	Prior to issuance of occupancy permits	Project applicant	Director of Community Development

**MITIGATION MONITORING OR REPORTING PROGRAM
GATEWAY CROSSINGS**

Impacts	Mitigation	Timeframe for Implementation	Responsibility for Implementation	Oversight of Implementation
<p>Coleman Avenue/Brokaw Road (City of Santa Clara); 6. De La Cruz Boulevard/Central Expressway (City of Santa Clara/CMP); 7. Lafayette Street/Central Expressway (City of Santa Clara/CMP); 8. Scott Boulevard/Central Expressway (City of Santa Clara/CMP); 12. Coleman Avenue/I-880 (N) (City of San José/CMP); 13. Coleman Avenue/I-880 (S) (City of San José/CMP); and 15. Coleman Avenue/Taylor Street (City of San José).</p>	<p>project. The project shall make a fair-share contribution to this improvement. With implementation of this improvement, the intersection of Scott Boulevard/Central Expressway would operate at an unacceptable LOS F during the PM peak hour, but the average delay would be better than under cumulative conditions.</p> <p>MM C-TRAN-1.2: 12. Coleman Avenue/I-880 (N) – This intersection is located in the City of San José and under the jurisdiction of the City of San José. This improvement would include restriping one of the left-turn lanes to a shared left- and right-turn lane, effectively creating two right-turn lanes. Three receiving lanes currently exist on the north leg of Coleman Avenue. With implementation of this improvement, the intersection would operate at an acceptable LOS C during the AM peak hour.</p>			

In addition to mitigation measures listed above, there are also other conditions of approval the project shall implement, including the following:

**CONDITIONS OF APPROVAL
GATEWAY CROSSINGS**

Health Risks to Onsite Residences

- The final site layout shall locate operable windows and air intakes as far as possible and feasible from TAC sources.
- Install air filtration at all residential units. Air filtration devices shall be rated MERV13 or higher. To ensure adequate health protection to sensitive receptors, a ventilation system shall meet the following minimal design standards:
 - a. A MERV13 or higher rating;
 - b. At least one air exchange(s) per hour of fresh outside filtered air; and
 - c. At least four air exchange(s) per hour recirculation.Alternately, at the approval of the City, equivalent control technology may be used if it is shown by a qualified air quality consultant or heating, ventilation, and air conditioning (HVAC) engineer that it would reduce risk below significance thresholds.
- Implement an ongoing maintenance plan for the building's HVAC air filtration system. Recognizing that emissions from air pollution sources are decreasing, the maintenance period shall last as long as significant excess cancer risk or annual PM_{2.5} exposures are predicted. Subsequent studies could be conducted by an air quality expert approved by the City to identify the ongoing need for the filtered ventilation systems as future information becomes available.
- Ensure that the lease agreement and other property documents (1) require cleaning, maintenance, and monitoring of the affected units for air flow leaks; (2) include information on the ventilation system to new owners and tenants; and (3) include provisions that fees associated with owning or leasing a unit(s) in the building include funds for cleaning, maintenance, monitoring, and replacements of the filters, as needed.
- Prior to building occupancy, an authorized air pollutant consultant or HVAC engineer shall verify the installation of all necessary measures to reduce TAC exposure.

Bird Strikes

- The project shall prepare and submit a plan to implement bird-safe design standards into project buildings and lighting design to minimize hazards to birds. These specific standards shall include the following to minimize hazards to birds:
 - Reduce large areas of transparent or reflective glass.
 - Locate water features and other bird habitat away from building exteriors to reduce reflection.
 - Reduce or eliminate the visibility of landscaped areas behind glass.
 - To the extent consistent with the normal and expected operations of the residential and commercial uses of the project, take appropriate measures to avoid use of unnecessary lighting at night, especially during bird migration season (February through May and August through November) through the installation of motion-sensor lighting, automatic light shut-off mechanisms, downward-facing exterior light fixtures, or other effective measures to the extent possible.

Interior Noise Levels

- Incorporate the following noise insulation features shall be incorporated into the proposed project to reduce interior noise levels to 45 dBA CNEL or less:
 - Provide a suitable form of forced-air mechanical ventilation, as determined by the local building official, so that windows can be kept closed to control noise.

<p style="text-align: center;">CONDITIONS OF APPROVAL GATEWAY CROSSINGS</p>

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| <ul style="list-style-type: none">– A qualified acoustical specialist shall prepare a detailed analysis of interior residential noise levels resulting from all exterior sources during the design phase pursuant to requirements set forth in the State Building Code. The study will also establish appropriate criteria for noise levels inside the commercial spaces affected by environmental noise. The study will review the final site plan, building elevations, and floor plans prior to construction and recommend building treatments to reduce residential interior noise levels to 45 dBA CNEL or lower. Treatments would include, but are not limited to, STC sound-rated windows and doors, sound-rated wall and window constructions, acoustical caulking, protected ventilation openings, etc. The specific determination of what noise insulation treatments are necessary shall be conducted on a unit-by-unit basis during final design of the project. Results of the analysis, including the description of the necessary noise control treatments, shall be submitted to the City, along with the building plans and approved design, prior to issuance of a building permit. |
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<p style="text-align: center;">Design Hazards and Emergency Access</p>

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| <ul style="list-style-type: none">• Restrict Driveway 1 to right-in and -out access only;• Restrict Driveway 2 to right turns only;• Signalize the intersection of Costco/project Driveway 3 and Brokaw Road;• Striped median left-turn lane for Driveway 4; and• Assign all tandem parking. |
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<p style="text-align: center;">Construction Traffic</p>
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| <ul style="list-style-type: none">• Prepare a Construction Management Plan which would include, but is not limited to the following conditions, subject to City's approval:<ul style="list-style-type: none">– Truck haul routes for construction trucks.– Signs shall be posed along roads identifying construction traffic access or flow limitations due to lane restrictions during periods of truck traffic. |
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Source: City of Santa Clara. *Final Environmental Impact Report for the Gateway Crossings Project*. September 2018.

DEVELOPMENT AGREEMENT

**DEVELOPMENT AGREEMENT
(GATEWAY CROSSINGS)
BETWEEN
THE CITY OF SANTA CLARA,
a chartered California municipal corporation,
AND
TOD BROKAW, LLC
EXHIBIT E
FAIR SHARE TRAFFIC FEES**

Gateway Crossings Mitigation Measures Fair Share Cost

Intersection	Mitigation Measure	Mitigation Measure Cost	Fair Share %	Fair Share Cost
Coleman Ave./Brokaw Rd.	Traffic Signal Modifications including lane configuration modifications. Restripe EB and WB approaches of Brokaw Rd. to include an exclusive left-turn lane, a shared left/through lane, and an exclusive right turn lane. Convert the phasing on Brokaw Rd. from protective left-turn phasing to split phase. The EB right-turn lane on Brokaw needs to be overlap. The SB approach on Coleman needs to include an exclusive left-turn lane, three southbound through lanes, and an exclusive right-turn lane. The porkchop island at the SB approach on Coleman needs to be removed and the corner needs to be squared off. No u-turns would be allowed on the NB approach of Coleman Ave.	N/A	N/A	N/A
De La Cruz Blvd. / Central Expy	Convert HOV lane to mixed flow lane, add an exclusive SB right-turn lane creating dual right-turn lanes, add an exclusive NB left-turn lane creating triple left-turn lanes	\$793,500	16.4%	\$130,134
Lafayette St. / Central Expy	Convert HOV lane to mixed flow lane	\$100,000	2.7%	\$2,700
Scott Blvd. / Central Expy	Convert HOV lane to mixed flow lane and add an exclusive SB left-turn lane creating triple left-turn lanes	\$1,100,000	2.7%	\$29,700
Coleman Ave. / I-880 (N)	Convert and restripe one of the existing off-ramp left-turn lanes into a shared left/right-turn lane	\$10,000	7.6%	\$760
Coleman Ave. / I-880 (S)	Convert and restripe one of the existing off-ramp left-turn lanes into a shared left/right-turn lane	\$10,000	7.5%	\$750
Coleman Ave./Taylor St.	Widen Coleman Ave. from four to six lanes	\$3,750,000	7.1%	\$266,250
Freeway				
US 101 from De La Cruz Blvd. to SR 237 and I-880 from Stevens Creek Blvd. to US 101	Convert existing HOV lane to express lane and add an additional express lane to create two express lanes	\$431,000,000	0.3%	\$1,249,900
Total				\$1,680,194

Notes:

N/A = Applicant is required to build entire improvement

DEVELOPMENT AGREEMENT

**DEVELOPMENT AGREEMENT
(GATEWAY CROSSINGS)
BETWEEN
THE CITY OF SANTA CLARA,
a chartered California municipal corporation,
AND
TOD BROKAW, LLC**

EXHIBIT F

**ETHICAL STANDARDS FOR CONTRACTORS SEEKING TO ENTER INTO
AN AGREEMENT WITH THE CITY OF SANTA CLARA, CALIFORNIA**

Termination of Agreement for Certain Acts.

A. THE CITY MAY, AT ITS SOLE DISCRETION, TERMINATE THIS AGREEMENT IN THE EVENT ANY ONE OR MORE OF THE FOLLOWING OCCURS:

1. If a Contractor¹ does any of the following:
 - a. Is convicted² of operating a business in violation of any Federal, State or local law or regulation;
 - b. Is convicted of a crime punishable as a felony involving dishonesty³;
 - c. Is convicted of an offense involving dishonesty or is convicted of fraud or a criminal offense in connection with: (1) obtaining; (2) attempting to obtain; or, (3) performing a public contract or subcontract;
 - d. Is convicted of any offense which indicates a lack of business integrity or business honesty which seriously and directly affects the present responsibility of a City contractor or subcontractor; and/or,
 - e. Made (or makes) any false statement(s) or representation(s) with respect to this Agreement.

¹ For purposes of this Agreement, the word "Consultant" (whether a person or a legal entity) also refers to "Contractor" and means any of the following: an owner or co-owner of a sole proprietorship; a person who controls or who has the power to control a business entity; a general partner of a partnership; a principal in a joint venture; or a primary corporate stockholder [i.e., a person who owns more than ten percent (10%) of the outstanding stock of a corporation] and who is active in the day to day operations of that corporation.

² For purposes of this Agreement, the words "convicted" or "conviction" mean a judgment or conviction of a criminal offense by any court of competent jurisdiction, whether entered upon a verdict or a plea, and includes a conviction entered upon a plea of nolo contendere within the past five (5) years.

³ As used herein, "dishonesty" includes, but is not limited to, embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, failure to pay tax obligations, receiving stolen property, collusion or conspiracy.

DEVELOPMENT AGREEMENT

2. If fraudulent, criminal or other seriously improper conduct of any officer, director, shareholder, partner, employee or other individual associated with the Contractor can be imputed to the Contractor when the conduct occurred in connection with the individual's performance of duties for or on behalf of the Contractor, with the Contractor's knowledge, approval or acquiescence, the Contractor's acceptance of the benefits derived from the conduct shall be evidence of such knowledge, approval or acquiescence.
- B. THE CITY MAY ALSO TERMINATE THIS AGREEMENT IN THE EVENT ANY ONE OR MORE OF THE FOLLOWING OCCURS:
1. The City determines that Contractor no longer has the financial capability⁴ or business experience⁵ to perform the terms of, or operate under, this Agreement; or,
 2. If City determines that the Contractor fails to submit information, or submits false information, which is required to perform or be awarded a contract with City, including, but not limited to, Contractor's failure to maintain a required State issued license, failure to obtain a City business license (if applicable) or failure to purchase and maintain bonds and/or insurance policies required under this Agreement.
- C. In the event a prospective Contractor (or bidder) is ruled ineligible (debarred) to participate in a contract award process or a contract is terminated pursuant to these provisions, Contractor may appeal the city's action to the City Council by filing a written request with the City Clerk within ten (10) days of the notice given by City to have the matter heard. The matter will be heard within thirty (30) days of the filing of the appeal request with the City Clerk. The Contractor will have the burden of proof on the appeal. The Contractor shall have the opportunity to present evidence, both oral and documentary, and argument.

⁴ Contractor becomes insolvent, transfers assets in fraud of creditors, makes an assignment for the benefit of creditors, files a petition under any section or chapter of the federal Bankruptcy Code (11 U.S.C.), as amended, or under any similar law or statute of the United States or any state thereof, is adjudged bankrupt or insolvent in proceedings under such laws, or a receiver or trustee is appointed for all or substantially all of the assets of Contractor.

⁵ Loss of personnel deemed essential by the City for the successful performance of the obligations of the Contractor to the City.