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MULTIMODAL IMPROVEMENT PLAN FUNDING AGREEMENT
(CITY PLACE SANTA CLARA)

by and between

THE CITY OF SANTA CLARA,
a public body, corporate and politic, of the State of California

and

RELATED SANTA CLARA, LLC,
a Delaware limited liability company

MULTIMODAL IMPROVEMENT PLAN FUNDING AGREEMENT
(CITY PLACE SANTA CLARA)

This MULTIMODAL IMPROVEMENT PLAN FUNDING AGREEMENT (CITY PLACE SANTA CLARA) (including all Exhibits and as amended from time to time, this “**Agreement**”) is made as of _____, 2019 (the “**Effective Date**”) by and between Related Santa Clara, LLC, a Delaware limited liability company (“**Related**” or “**Master Developer**”), and the City of Santa Clara, a chartered municipal corporation (“**City**”). City and Master Developer may also be referred to individually as a “**Party**” and collectively as the “**Parties**.”

RECITALS

A. City and Related entered into that certain Disposition and Development Agreement dated for reference purposes as of August 12, 2016, and recorded October 7, 2016, as Document No. 23456796 in the Official Records of Santa Clara County, California (the “**DDA**”), by which Related was designated Master Developer for the City Place project (the “**Project**”). The Project is proposed for property that presently is owned by City (the “**Project Site**”), as described in Exhibit A and shown in Exhibit B, each of which is attached hereto and incorporated herein by this reference, and the DDA provides for Master Developer to acquire long-term ground leases from City for portions of the Project Site in phases as it develops the Project (each, a “**Ground Lease**” and collectively, the “**Ground Leases**”).

B. City and Related entered into that certain Development Agreement dated for reference purposes as of August 12, 2016 and recorded October 7, 2016 as Document No. 23456797 in the Official Records of Santa Clara County, California (the “**DA**”), by which the Parties agreed to certain obligations and concessions regarding the Project. Among other things, the DA provided additional details of the Project development proposed by Related and approved by City.

C. The Santa Clara Valley Transportation Authority (“**VTa**”) has set standards for traffic levels of service intended to avoid excessive congestion and its adverse effects for certain Congestion Management Program (“**CMP**”) facilities in the City and Santa Clara County. Traffic studies determined that the Project would contribute to congestion deficiencies at certain CMP intersections. As a consequence, the VTA required preparation of a plan to identify measures to mitigate Project-related congestion effects. On September 18, 2018, the City Council of City approved the City of Santa Clara Multimodal Improvement Plan for the Project (as may be amended, the “**MIP**”), which the VTA Board of Directors approved on November 1, 2018.

D. Master Developer has tentatively identified seven conceptual phases for construction of the Project (each, a “**Phase**”), with types and amounts of development in each Phase, and City has estimated traffic generation for each Phase, all as shown in Chapter 5 of the MIP. The MIP identifies specific transportation-related improvements desired to serve the development Master Developer anticipates in each Phase for which funding is necessary, as shown in Tables 3 and 5 of the MIP (as may be amended, the “**MIP Improvements**”).

E. Pursuant to the DDA and the DA, Master Developer may rearrange the sequence of Phases from that shown in the MIP, change to some degree the land uses in each Phase, and change the timing of Phases from that shown in the MIP, in Developer's discretion but subject to City approving such changes as consistent with City land use regulations and subject to required environmental review. Master Developer also may divide one or more Phases into subphases (each, a "Subphase") for purposes of development timing. As a result, the rate, sequencing and location of traffic generation may change from that estimated in the MIP.

F. Under the MIP, City has the right to reassign MIP Improvements to different Phases based on the need for coordination of transportation planning and improvements, including as a consequence of Developer rearranging the sequence of Phases, which may change the funding required for the MIP Improvements needed to serve each Phase.

G. Master Developer must process and obtain City approval of a "Development Area Plan" or "DAP" for each Phase or Subphase before undertaking any development therein. The process for approval of a DAP is set forth in Appendix C to the Master Community Plan for the Project dated June 1, 2016 (the "**Master Community Plan**" or "**MCP**").

H. The MIP estimated the amount of Regional Traffic Fees ("**RTF**") and Traffic Impact Fees ("**TIF**") that the Project is expected to generate. The final aggregate amount of RTF and TIF to be paid by Master Developer is subject to change based on the actual amounts of land uses to be constructed in addition to potential changes in the City's TIF rates and subject to the limitations specified in the DA.

I. The MIP states that the developer's total funding responsibility for MIP projects will not be quantifiable until complete buildout of City Place, because funding amounts from impact fees are dependent upon the actual size of buildings and land use types (the maximums of which are limited by the Master Community Plan), the timing of the development, and local and regional fees established by the City at the time of Building Permit issuance (subject to Development Agreement limitations). Hypothetically, based on the Development Agreement and assuming full buildout of City Place, the lower range of Related's funding obligation from RTF and TIF alone would be \$13,430,800.00 (the "**Estimated Low-End Total Traffic Fees**"), as more particularly shown for each Phase of the Project in Exhibit C attached hereto and incorporated herein by this reference.

J. Section 4.6 of the DA specifies certain obligations of Master Developer and City to fund the MIP Improvements, and calls for City and Master Developer to enter into this Agreement to establish the mechanisms and timing of funding the MIP Improvements. As required by Section 4.6.3 of the DA, in addition to its other obligations, Master Developer is required to reimburse City for its costs to prepare the MIP and process its approval by City and the VTA, which requirement Master Developer has satisfied.

AGREEMENT

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

1. Definitions. Defined terms used herein shall have the meanings set forth below.

“Advance Fee Payment”: see Section 4(b).

“Advance Fee Notice”: see Section 4(b)(i).

“Agreement”: see the introductory preamble above.

“Building” means each physical structure that is intended for human occupancy or the conduct of a business, including but not limited to hotels, retail and office space, and residences.

“City”: see the introductory preamble above.

“City Match”: see Section 3(b)(iii).

“CMP”: see Recital C.

“Code” means the City of Santa Clara City Code.

“DA”: see Recital B.

“DDA”: see Recital A.

“DAP MIP Action Plan”: see Section 3(a).

“DAP Payment”: see Section 4(a)(ii).

“DAP Payment Notice”: see Section 4(a)(i).

“DAP Total Fee Estimate”: see Section 4(a)(i).

“Developer Match”: see Section 3(b)(iii).

“Development Area Plan” or **“DAP”**: see Recital G.

“Effective Date”: see the introductory preamble above.

“Estimated Low-End Total Traffic Fees”: see Recital I.

“Fee Overpayment”: see Section 4(a)(v).

“First DAP Payment”: see Section 4(a)(ii).

“Fourth DAP Payment”: see Section 4(a)(ii).

“Ground Lease” or **“Ground Leases”**: see Recital A.

“Master Community Plan” or **“MCP”**: see Recital G.

“Master Developer” means Related Santa Clara, LLC, a Delaware limited liability company, subject to assignment as to all or part of the Project as may be permitted under this Agreement.

“Match Payment”: see Section 4(d).

“Match Payment Notice”: see Section 4(d)(i).

“Matching Fund”: see Section 3.

“MMRP” means that certain Mitigation Monitoring and Reporting Program approved by Resolution No. 16-8337 adopted by the City Council of City on June 28, 2016 for the purpose of implementing environmental mitigation measures for development of the Project.

“MIP”: see Recital C.

“MIP Improvements”: see Recital D.

“MIP Payments”: see Section 3.

“Party” or “Parties”: see the introductory preamble above.

“Phase”: see Recital D; except that for purposes of this Agreement, “Phase” shall not include any Phase (or portion thereof) for which the City has terminated the DDA in accordance with Section 7.1 of the DDA except as provided in Section 3(b) hereof.

“Phase Minimum Traffic Fees”: see Recital I.

“Project”: see Recital A.

“Project Site”: see Recital A.

“Regional Traffic Fees” or “RTF”: see Recital H.

“Remaining Aggregate Traffic Fees” or “RATF”: see Section 4(b)(i).

“Second DAP Payment”: see Section 4(a)(ii).

“Subphase”: see Recital E; except that for purposes of this Agreement, “Subphase” shall not include any Phase (or portion thereof) for which the City has terminated the DDA in accordance with Section 7.1 of the DDA except as provided in Section 3(b) hereof.

“Term”: see Section 2.

“Third DAP Payment”: see Section 4(a)(ii).

“Traffic Fee Fund”: see Section 3.

“Traffic Impact Fees” or “TIF”: see Recital H.

“VTA”: see Recital C.

2. Term. The term of this Agreement (the “Term”) shall commence upon the Effective Date and, except with respect to those terms that expressly survive the termination of this Agreement, shall expire, unless earlier terminated as provided below, when (a) all MIP Payments and all Developer Match payments have been paid by Master Developer and received by City, and (b) all required City Match payments have been paid by City.

3. MIP Improvements and Master Developer Funding Obligation.

(a) MIP Improvements by Phase or Subphase. As required under Exhibit MMRP-1 of the MMRP (on page 67 of 73), each DAP application submitted by Master Developer must include (1) a calculation of the number of vehicle trips projected to result from development proposed in the DAP using the methods and trip generation rates in the Final EIR (adjusted as appropriate for the success of TDM measures), that accounts for the site design, density and diversity of proposed land uses of the current DAP application and previous DAP applications, (2) the vehicle trips allocated by building and summarized by land use, and (3) a site access analysis (including a simulation, if needed, as determined by the Director of Planning and Inspection or at the applicant’s discretion) to determine which site access improvements should be constructed to serve the development proposed in the DAP (the foregoing information, collectively, the “**MMRP-1 Report**”). Exhibit MMRP-1 of the MMRP then states that City (with the assistance of consultants) will peer review the data in the MMRP-1 Report and as part of DAP approval determine (1) the number of trips projected to result and the allocation of trips by building and/or uses, and (2) the site access improvements required and the trip thresholds or development stages at which those improvements must be constructed, which may affirm or revise the information and conclusions in the MMRP-1 Report. Table 5 of the MIP includes estimated PM Peak Hour Trips for each Phase of development, based on a conceptual development phasing, and Table 3 of the MIP identifies MIP Improvements by Phase. The MIP notes (on page 31) that the City has the ability to modify the MIP project implementation order from that assumed in the MIP as warranted, depending on the order, location, density and uses of development of City Place and the needs of each development phase.

Within 30 days after approval of each DAP and concurrently with delivery of the DAP Payment Notice pursuant to Section 4(a)(i), the City will confirm in writing the scope and timing of MIP Improvements to be constructed within the Phase or Subphase covered by the DAP (the “**DAP MIP Action Plan**”). If the City reasonably determines that a MIP Improvement from a subsequent Phase, as identified in the MIP, should be advanced into an earlier Phase due to either: (i) an increase in the estimated PM Peak Hour Trips for the Phase, (ii) an identified need for the MIP Improvement due to Phase-specific impacts on a specific CMP intersection(s) not previously identified, or (iii) a change in circumstances or conditions affecting the DAP, the Project Site or the City that would trigger the need for the MIP Improvement in the earlier Phase, as determined by City in its reasonable discretion, then the DAP MIP Action Plan may include changes from Table 3 of the MIP, so long as the City has provided Master Developer with an explanation in writing to support the change, accompanied by any supporting technical analysis (such as a traffic study that justifies the need for the MIP Improvement). Developer may object

to the change on reasonable grounds within thirty (30) days of the City's notice in accordance with Section 7 hereof. Once delivered by City, the DAP MIP Action Plan will be the basis for establishing the scope of MIP Improvements on which Matching Funds and Advance Fee Payments for development under that DAP may be collected by City.

(b) MIP Funding Obligations. Master Developer shall be responsible for 100% of the cost of each MIP Improvement for each Phase, subject to the funding limitations and other terms set forth in this Agreement. Notwithstanding the foregoing, in the event the City terminates Master Developer's rights with respect to a Phase, Subphase, or any portion thereof, pursuant to the Phase Termination Notice procedures of Section 7.1 of the DDA, Master Developer shall have no obligations to fund MIP Improvements for such terminated Phase(s), Subphase, or portion thereof, except to the extent expressly assumed by Master Developer pursuant to a cost reimbursement agreement entered into between Master Developer and City or a Person other than Master Developer or an Affiliate of Master Developer that is offered the applicable Phase as part of a Development Opportunity in accordance with Section 7.2.8, of the DDA, each in their sole discretion. Subject to the foregoing, Master Developer shall provide the following funds for MIP Improvements ("**MIP Payments**"), in the manner and sequence set forth in Section 4 below. City shall maintain two separate accounts in which all MIP Payments and City Match funds shall be deposited for City's use implementing the MIP Improvements: the "**Traffic Fee Fund**" for all RTF and TIF paid by Master Developer; and the "**Matching Fund**" for payments of the Developer Match and City Match.

(i) All Regional Traffic Fees owed for the Project, paid in the amounts specified in Section 3.5 of the DA as it may be amended from time to time.

(ii) All Traffic Impact Fees owed for the Project, paid in the amounts specified in Section 3.4 of the DA as it may be amended from time to time.

(iii) Up to \$4,000,000.00 (the "**Developer Match**") as necessary to fund MIP Improvements, to be matched by City on an equal basis (the "**City Match**") pursuant to Section 4(c) below.

4. Master Developer Payment Process. For each Phase or Subphase:

(a) For each Phase or Subphase, Master Developer must pay all of the RTF and TIF associated with that Phase or Subphase, as follows:

(i) Within 30 days after approval of the applicable DAP, City shall provide to Master Developer an accounting (the "**DAP Payment Notice**") showing the total projected amount of RTF and TIF associated with all approved development within the DAP area (the "**DAP Total Fee Estimate**"). The DAP Total Fee Estimate shall be based on the data chart required to be submitted as part of the DAP application that shows the program of uses and approximate aggregate square footage of uses within the DAP. If the data chart for the applicable DAP provides some flexibility and discretion for Master Developer to change the ultimate types or amounts of development, the DAP Total Fee Estimate shall be calculated based on the types and amounts of uses that would result in the largest payment.

(ii) The DAP Total Fee Estimate shall be paid to City in four (4) equal installments as described below (each a “**DAP Payment**”). Except for the First DAP Payment, density calculations used to determine when the next DAP Payment is due shall be based on the amount of traffic generated per building permit, applying the methodology used in Exhibit MMRP-1 of the MMRP (on page 67 of 73).

(A) Master Developer shall pay to City the first partial payment equal to twenty-five percent (25%) of the DAP Total Fee Estimate (the “**First DAP Payment**”) as a condition and prior to issuance of the first building permit for a Building within the applicable DAP area.

(B) Master Developer shall pay to the City the second partial payment equal to twenty-five percent (25%) of the DAP Total Fee Estimate (the “**Second DAP Payment**”) as a condition and prior to issuance of the building permit for a Building in the DAP that causes the aggregate of all such issued building permits to be greater than or equal to twenty-five percent (25%) of the total density within that DAP.

(C) Master Developer shall pay to the City the third partial payment equal to twenty-five percent (25%) of the DAP Total Fee Estimate (the “**Third DAP Payment**”) as a condition and prior to issuance of the building permit for a Building in the DAP that causes the aggregate of all such issued building permits to be greater than or equal to fifty percent (50%) of the total density within that DAP.

(D) Master Developer shall pay to the City the fourth partial payment equal to twenty-five percent (25%) of the DAP Total Fee Estimate (the “**Fourth DAP Payment**”) as a condition and prior to issuance of the building permit for a Building in the DAP that causes the aggregate of all such issued building permits to be greater than or equal to seventy-five percent (75%) of the total density within that DAP.

(iii) As building permits for Buildings are issued within an area covered by an approved DAP, for accounting purposes, City will keep track of the RTF and TIF that otherwise would have been paid if not for the DAP Payments (with TIF calculations based on the rate in effect at the time of the issuance of the building permit).

(iv) If Master Developer applies for any building permit in the area covered by a DAP that would cause the actual RTF and TIF to be higher than was accounted for in the DAP Payments, Master Developer shall pay the difference at the time that the relevant building permit is secured (with TIF being calculated at the then-applicable TIF rate consistent with the DA).

(v) Any amount by which the four DAP Payments paid by Master Developer total more than the RTF and TIF that City otherwise would have charged for the specific building permits issued to Master Developer within the applicable DAP shall be a “**Fee Overpayment**” eligible for credit to reduce future DAP Payments or RTF or TIF payments otherwise owed for a future DAP, pursuant to Section 4(c) below.

(b) City shall have the right at any time to require Master Developer to advance some or all of the RTF and TIF associated with future Phases or Subphases of the

Project (each, an “**Advance Fee Payment**”) if City determines in its reasonable discretion that the expected costs for MIP Improvements associated with the applicable Phase or Subphase will exceed the amount of RTF and TIF paid pursuant to Section 4(a) above, as follows:

(i) City shall send written notice to Master Developer requiring an Advance Fee Payment (each, an “**Advance Fee Notice**”). The Advance Fee Notice shall provide: (A) a description of each MIP Improvement to be funded with its estimated cost; (B) a bid, proposed contract, approved plan and schedule, or other documentation evidencing City’s intent to undertake the MIP Improvement; (C) an explanation for why the Advance Fee Payment is necessary; and (D) a statement of the amount of potential fees remaining for MIP Improvements (the “**Remaining Aggregate Traffic Fees**” or “**RATF**”). The RATF shall be calculated by subtracting all RTF and TIF payments made to date from the Estimated Low-End Total Traffic Fees. The RATF or the Estimated Low-End Total Traffic Fees may be modified from time to time as part of the annual accounting process described in Section 5 below.

(ii) If an Advance Fee Notice is sent prior to issuance of the first building permit within the applicable DAP area, the Advance Fee Payment shall be made at the time of such first building permit issuance together with the fees otherwise payable pursuant to the applicable DAP Payment Notice. At any other time, Master Developer shall provide the Advance Fee Payment within thirty (30) days after receipt of an Advance Fee Notice.

(c) In all phases of the Project except Phase 1, Master Developer may request to reduce the amount of a DAP Payment as described in Section 4(a)(ii) or a RTF or TIF payment as described in Section 4(a)(iv) by applying credit from a Fee Overpayment or an Advance Fee Payment from a previous DAP, with the credit calculated based on the RTF and TIF rates in effect at the time of the issuance of the building permit. City shall allow such credit unless in its reasonable discretion it determines that such otherwise forgone payment is required to ensure adequate funding for MIP Improvement expenditures approved in a MIP Phase Action Plan that is anticipated to occur within the next year, in which case City may defer such credit to later DAP Payments or RTF or TIF payments. Master Developer acknowledges that in no event shall it be entitled to a refund of RTF or TIF already paid; provided, however, if the Remaining Aggregate Traffic Fee balance is \$0.00 and there remains an outstanding Fee Overpayment balance, then the Fee Overpayment balance will be credited toward the Developer Match described in Section 4(d) below.

(d) City shall have the right to require Master Developer to pay some or all of the Developer Match (each, a “**Match Payment**”) if: (1) City reasonably determines that such amounts are then necessary to fund MIP Improvements set forth in an approved MIP Phase Action Plan for the then-current Phase(s) or Subphase(s); and (2) there is no RATF to draw on to complete the MIP Improvements, as follows:

(i) City shall send written notice to Master Developer requiring a Match Payment (each, a “**Match Payment Notice**”). Each Match Payment Notice shall provide (A) a description of each MIP Improvement for which such Match Payment is necessary; (B) a bid, proposed contract, approved plan and schedule, or other documentation evidencing City’s intent to undertake the MIP Improvement; (C) an explanation for why the Match Payment is

necessary; (D) the amount of the requested Match Payment; and (E) a statement of the amount of the Developer Match not yet paid.

(ii) If a Match Payment Notice is made prior to issuance of the first building permit within the applicable Phase or Subphase, payment shall be made at the time of such first building permit issuance. At any other time, Master Developer shall provide the Match Payment, up to the aggregate total Developer Match, within thirty (30) days after receipt of a Match Payment Notice.

(iii) Within thirty (30) days after receiving a Match Payment, City shall pay into the Matching Fund an equal amount of City Match funds, up to the total aggregate City Match.

5. Periodic Accounting.

(a) City shall provide an accounting with each DAP Payment Notice (except for the first DAP), and annually, beginning one year after the first MIP Payment, of: (i) total RTF and TIF paid; (ii) the MIP Improvements to which such RTF and TIF have been applied; (iii) the current RATF; (iv) any credit currently available due to Fee Overpayments or Advance Fee Payments of RTF and TIF as described above; and (v) any Developer Match and City Match payments made to date. An accounting submitted with a DAP Payment Notice shall substitute for the next annual accounting if the applicable DAP Payment Notice accounting occurs less than six months prior to the due date for the annual accounting.

(b) Within thirty (30) days of delivery of an accounting, either Party may request adjustment to the RATF and the Estimated Low-End Total Traffic Fees. Master Developer and City thereafter will cooperate to adjust the RATF and Estimated Low-End Total Traffic Fees as warranted (based on rates in effect and projected remaining development under the MCP). An adjustment to the RATF and Estimated Low-End Total Traffic Fees may be requested to reflect: (i) increased TIF rates charged by City that will be collected for future Phases or Subphases; (ii) different types or amounts of development proposed by Master Developer for future Phases or Subphases than were assumed by the MIP in determining the Estimated Low-End Total Traffic Fees, which may result in more or less RTF or TIF; (iii) different types or amounts of development having occurred and more or less RTF or TIF having been paid than assumed by the MIP in determining the Estimated Low-End Total Traffic Fees; or (iv) any amendment to the MCP or MIP. In the event that the Parties cannot agree on the RATF and Estimated Low-End Total Traffic Fees adjustment, the matter shall be submitted to Dispute Resolution pursuant to Section 7 below.

6. City Funding Obligation. At such point as City has determined that the amount of RATF and Developer Match Funds is zero, then City shall so notify Master Developer in writing. Thereafter, City shall be responsible for any additional funds required to finance completion of the MIP Improvements. Nothing in this Section shall relieve Master Developer from the obligation to pay any RTF and/or TIF funds in the future for additional square footage for which the fees were not previously paid.

7. Dispute Resolution.

(a) If a dispute arises with respect to any of the provisions above, the Parties must first attempt to resolve the dispute pursuant to the following process (“**Meet and Confer**”):

(i) Either Party may invoke Meet and Confer by written notice to the other. For thirty (30) days after such notice, the Parties shall attempt in good faith to resolve the dispute.

(ii) If unresolved, either Party by written notice may refer the dispute to the City Manager. For twenty-one (21) days after referral, Master Developer shall in good faith discuss the matter with the City Manager in an attempt to resolve the dispute. Other City staff involved in the subject matter of the dispute may participate in such discussions.

(iii) If still unresolved, either Party may pursue arbitration as described in Section 7(b) below.

(iv) Good faith participation by a Party in Meet and Confer to its completion is required before that Party may initiate arbitration, or an attempt to participate in Meet and Confer if the other Party fails to participate or ceases to participate before its completion.

(b) A Party satisfying the Meet and Confer requirements in Section 7(a) above shall have the right to pursue the expedited arbitration process described in Exhibit D attached hereto and incorporated herein by this reference (“**Expedited Arbitration**”).

(c) All disputes regarding this Agreement shall be resolved by Expedited Arbitration which shall be binding, and the Parties hereby waive their rights to pursue judicial remedies or appeal the arbitration decision (to the extent allowed by law).

(d) Any applicable timelines shall be extended by the amount of time necessary to undertake this dispute resolution process.

(e) Nothing in this Section 7 shall require a Party to postpone instituting any injunctive proceeding or to first pursue resolution under the Meet and Confer Process if it believes in good faith that such postponement will cause irreparable harm to such Party.

8. Participation by Related in Certain Studies.

(a) Great America Station Study. Transit Service Action Item 1.1 (Great America Station Study) in Table 3 of the MIP provides for a master plan study for the Santa Clara Great America Train Station. VTA will lead the study in partnership with the City, ACE, and Capitol Corridor Joint Powers Authority. City agrees to consult Master Developer if and when City participates in reviewing and commenting on the proposed scope of work or the choice of consultant, and will use good faith efforts to work with the VTA so that the scope of work gives Master Developer, as a primary stakeholder, an opportunity to provide direct input to the consultant team as the study is prepared. In addition, City shall give Master Developer notice of other opportunities to participate, such as public workshops and study sessions.

(b) Shuttle Program Study. Transit Service Action Item 1.4 (Shuttle Program Study) in Table 3 of the MIP provides for City to conduct a planning study to be scheduled in Phase 6 to develop and evaluate a shuttle program, based on the vision, goals and guidelines provided in the City's General Plan and Precise Plans. City agrees to consult Master Developer when City prepares the proposed scope of work and selects a consultant, and will include in the scope of work a provision that gives Master Developer, as a primary stakeholder, an opportunity to provide direct input to the consultant team as the study is prepared. In addition, City shall give Master Developer notice of other opportunities to participate, such as public workshops and study sessions.

(c) Pedestrian Overcrossing Study. Bicycle and Pedestrian Access and Facilities Action Item 2.8 (Pedestrian Overcrossing Study) in Table 3 of the MIP provides for City to conduct a study of a proposed grade-separated pedestrian crossing over Tasman Drive between Centennial and Great America Parkway, to be based on the vision, goals and guidelines provided in the City's General Plan and the final Tasman Complete Streets Study. Measure 2.8 states that the action should include collaboration with VTA and other stakeholders. City agrees to consult Master Developer when City prepares the proposed scope of work and selects a consultant, and will include in the scope of work a provision that gives Master Developer, as a primary stakeholder, an opportunity to provide direct input to the consultant team as the study is prepared. In addition, City shall give Master Developer notice of other opportunities to participate, such as public workshops and study sessions.

9. Miscellaneous Provisions. The Miscellaneous Provisions for MIP Funding Agreement attached hereto as Exhibit D, incorporated into this Agreement in full by this reference, set forth provisions for Expedited Arbitration; Event of Default/Remedies; Assignment; Representations and Warranties; and Miscellaneous Provisions.

10. Exhibits. The following Exhibits are hereby incorporated into and made a part of this Agreement:

Exhibit A: Project Site Legal Description

Exhibit B: Map of Project Site

Exhibit C: Illustration of Estimated Low-End Total Traffic Fees by Phase

Exhibit D: Miscellaneous Provisions for MIP Funding Agreement

[SIGNATURES BEGIN ON NEXT PAGE.]

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

CITY OF SANTA CLARA,
a California chartered municipal corporation

By: _____
Name: _____
Title: _____

ATTEST:

By: _____
City Clerk
Dated: _____

APPROVED AS TO FORM:

By: _____
City Attorney
Dated: _____

RELATED SANTA CLARA, LLC,
a Delaware limited liability company

By: _____
Name: _____
Title: _____

EXHIBIT A

LEGAL DESCRIPTION OF PROJECT SITE

EXHIBIT A
PROJECT SITE

All that real property situate in the City of Santa Clara, County of Santa Clara, State of California, described as follows

BEGINNING at the Southwest corner of that certain parcel designated as, "Remainder 1", on that certain Parcel Map recorded in Book 737 of Maps, at Pages 1 through 4, Santa Clara County Records; thence along the Southeasterly boundary of said Remainder 1, and Parcel 2 as shown on said map

1. North 70° 48' 54" East, 800.92 feet, to the common Southerly corner of Parcels 2 and 4 as shown on said map; thence along the Westerly and Northerly boundaries of said Parcel 4 the following eight courses
2. North 8° 10' 00" West, 1070.36 feet, to an angle point; thence
3. North 5° 35' 14" West, 191.73 feet, to the beginning of a tangent curve to the right; thence
4. Along said curve to the right, having a radius of 109.99 feet, through a central angle of 73° 36' 48", and an arc length of 141.32 feet to the end of said curve; thence
5. North 68° 01' 34" East, 247.17 feet, to the beginning of a tangent curve to the right; thence
6. Along said curve to the right, having a radius of 159.99 feet, through a central angle of 63° 38' 58", and an arc length of 177.73 feet to the end of said curve; thence
7. South 48° 19' 28" East, 120.04 feet, to the beginning of a tangent curve to the left; thence
8. Along said curve to the left, having a radius of 16.00 feet, through a central angle of 65° 46' 18", and an arc length of 18.37 feet to the end of said curve; thence
9. North 65° 54' 14" East, 452.69 feet, to the Northeast corner of said Parcel 4, at a point on the Westerly boundary of the lands of the Union Pacific Railroad Company (UPRR); thence
10. North 62° 36' 04" East, 50.00 feet, to the Easterly boundary of the lands of the UPRR, also being the Southwesterly sideline of Lafayette Street; thence along said common boundary
11. North 27° 23' 56" West, 383.89 feet, to the Southeasterly boundary of an abandoned portion of the former Santa Clara Alviso Road as said abandonment is shown on the Record of Survey filed in Book 613 of Maps, at Pages 16 through 19, Santa Clara County Records; thence along said Southeasterly boundary
12. North 62° 36' 04" East, 60.00 feet, to the Southeast corner of said abandonment as shown on said map, also being a Southerly corner of the lands of the State of California as shown in Parcel 6-First of the Final Order of Condemnation recorded in Book 4820, at Page 641, Santa Clara County Records; thence along the Southerly boundary of said Parcel 6-First the following five courses

13. North 18° 41' 34" West, 324.57 feet to an angle point; thence
14. North 4° 49' 01" West, 291.65 feet to an angle point; thence
15. North 76° 46' 00" East, 367.73 feet to the beginning of a tangent curve to the left; thence
16. Along said curve to the left, having a radius of 300.00 feet, through a central angle of 47° 19' 56", and an arc length of 247.83 feet to the end of said curve; thence
17. North 29° 26' 04" East, 115.92 feet to the Westerly most corner of the land granted to the State of California by Grant Deed recorded in Document No. 13607857, Official Records of Santa Clara County; thence along the Southerly boundary of said lands, along a non-tangent curve to the right, from a tangent that bears North 66° 06' 21" East
18. Along said curve to the right, having a radius of 987.00 feet, through a central angle of 0° 21' 48", and an arc length of 6.26 feet to a tangent compound curve to the right; thence
19. Along said curve to the right, having a radius of 1987.00 feet, through a central angle of 7° 36' 13", and an arc length of 263.69 feet to the end of said curve; thence
20. North 82° 36' 47" East, 359.94 feet to an angle point; thence
21. North 79° 54' 20" East, 63.77 feet to a point on the Southwesterly boundary of Parcel 1 of the lands conveyed to the Santa Clara County Flood Control and Water District by Grant Deed recorded in Book 0346, at Page 667, Santa Clara County Records; thence along the Southwesterly boundary of said lands
22. South 12° 32' 21" East, 124.61 feet, to the beginning of a tangent curve to the left; thence
23. Along said curve to the left, having a radius of 1204.94 feet, through a central angle of 22° 10' 15", and an arc length of 466.25 feet to the end of said curve; thence
24. South 34° 42' 36" East, 627.28 feet, more or less, to the general Westerly boundary of Parcel 1 of the deed recorded in Book 7888, at Page 224, Santa Clara County Records; thence along the Westerly boundary of said last-mentioned Parcel 1
25. South 38° 48' 48" West, 2.93 feet, more or less, to an angle point; thence
26. South 22° 11' 12" East, 158.39 feet, to an angle point; thence
27. South 54° 41' 12" East, 108.85 feet, more or less, to the Northerly most corner of Parcel 2 of the lands conveyed to the Santa Clara County Flood Control and Water District by Grant Deed recorded in Volume 0346, at Page 667, Official Records of Santa Clara County; thence along the Southwesterly boundary of said Parcel 2
28. South 34° 42' 36" East, 1676.65 feet, more or less, to the Southwest corner of said Parcel 2, also being the Northeast corner of Lot 19 of that certain Parcel Map recorded in Book 368 of Maps, at Pages 14 and 15, Santa Clara County Records; thence along the Northwesterly boundary of said Lot 19 and said Parcel Map the following four courses
29. North 84° 23' 47" West, 47.65 feet to an angle point; thence
30. South 23° 19' 21" East, 7.40 feet to an angle point; thence
31. North 84° 25' 47" West, 139.94 feet to an angle point; thence

32. South 68° 35' 42" West, 1603.17 feet to the Westerly most corner of said Parcel Map, at the Northeasterly sideline of Lafayette Street; thence perpendicularly across the Right of Way of Lafayette Street and the Union Pacific Railroad (UPRR)
33. South 62° 36' 04" West, 139.99 feet to the Westerly sideline of the UPRR; thence along said Westerly sideline
34. South 27° 23' 56" East, 1122.18' feet to the intersection of said Westerly sideline with the Northerly sideline of Tasman Drive as said intersection is shown on the Record of Survey map recorded in Book 345 of Maps, at Pages 1 through 8, Santa Clara County Records; thence leaving the Westerly sideline of the UPRR, and along said Northerly sideline the following five courses
35. South 62° 58' 45" West, 60.69 feet to an angle point; thence
36. South 49° 35' 12" West, 172.69 feet to an angle point; thence
37. South 55° 17' 27" West, 403.61 feet to an angle point; thence
38. South 62° 59' 29" West, 162.15 feet to the beginning of a tangent curve to the left; thence
39. Along said curve to the left, having a radius of 2920.84 feet, through a central angle of 1° 47' 48", and an arc length of 91.59 feet to the Easterly most corner of Parcel 2 of the Grant for Right of Way Purposes recorded in Document No. 21195719, Santa Clara County Records; thence along the Northerly boundary of said Parcel 2 the following five courses
40. South 63° 11' 39" West, 150.97 feet to an angle point; thence
41. South 63° 10' 24" West, 14.76 feet to an angle point; thence
42. South 60° 42' 14" West, 120.03 feet to an angle point; thence
43. South 46° 39' 25" West, 41.19 feet to an angle point; thence
44. South 60° 42' 14" West, 203.54 feet, more or less to the Southeast corner of the Easement for Parking Purposes as shown in Parcel Three of the lease agreement recorded in Document No. 18721549, Santa Clara County Records; thence along the Easterly sides of said Parcel Three the following three courses
45. North 26° 03' 52" West, 394.25 feet to an angle point; thence
46. South 63° 56' 08" West, 15.50 feet to an angle point; thence
47. North 26° 03' 52" West, 59.36 feet to the Northerly most corner of said Parcel Three; thence along the Northwesterly line of said Parcel Three
48. South 63° 56' 08" West, 382.83 feet to the Northeasterly boundary of the lands granted to the Santa Clara Valley Water District by Grant Deed recorded in Book I 288, at Page 241, Santa Clara County Records; thence along said Northeasterly boundary and along the Northeasterly boundary of the lands granted to the Santa Clara Valley Water District by Grant Deed recorded in Book B 811, at Page 392, Santa Clara County Records
49. North 30° 38' 56" West, 530.37 feet to the beginning of a tangent curve to the left; thence
50. Along said curve to the left, having a radius of 686.06 feet, through a central angle of 26° 15' 54", and an arc length of 314.50 feet to the end of said curve; thence

51. North $56^{\circ} 54' 50''$ West, 950.10 feet, to the Easterly sideline of Great America Parkway, as shown on the Record of Survey map recorded in Book 345 of Maps, at Pages 1 through 8, Santa Clara County Records; thence along said Easterly sideline
52. North $1^{\circ} 58' 31''$ East, 340.86 feet to the POINT OF BEGINNING.

EXCEPTING therefrom any portion of the above-described lands that are within the Right of Ways of Lafayette Street, Great America Way or the Union Pacific Railroad.

Containing 238.57 acres, more or less.

Description prepared by BKF Engineers, in June, 2016.

Signed

David Darling

6/08/2016

Date



EXHIBIT B

DEPICTION OF PROJECT SITE

CURVE TABLE			
CURVE	RADIUS	DELTA	LENGTH
C1	109.99	73°36'48"	141.32
C2	159.99	63°38'58"	177.73
C3	16.00	65°46'18"	18.37
C4	300.00	47°19'56"	247.83
C5	987.00	0°21'48"	6.26
C6	1987.00	7°36'13"	263.69
C7	1204.94	22°10'15"	466.25
C8	2920.84	1°47'48"	91.59
C9	686.06	26°15'54"	314.50

LINE TABLE		
LINE	BEARING	LENGTH
L1	N05°35'14"W	191.73
L2	N68°01'34"E	247.17
L3	S48°19'28"E	120.04
L4	N65°54'14"E	452.69
L5	N62°36'04"E	50.00
L6	N27°23'56"W	383.89
L7	N62°36'04"E	60.00
L8	N18°41'34"W	324.57
L9	N04°49'01"W	291.65
L10	N76°46'00"E	367.73

LINE TABLE		
LINE	BEARING	LENGTH
L11	N29°26'04"E	115.92
L12	N82°36'47"E	359.94
L13	N79°54'20"E	63.77
L14	S12°32'21"E	124.61
L15	S38°48'48"W	2.93
L16	S22°11'12"E	158.39
L17	S54°41'12"E	108.85
L18	N84°23'47"W	47.65
L19	S23°19'21"E	7.40
L20	N84°25'47"W	139.94
L21	S62°36'04"W	139.99
L22	S62°58'45"W	60.69
L23	S49°35'12"W	172.69
L24	S55°17'27"W	403.61
L25	S62°59'29"W	162.15
L26	S63°11'39"W	150.97
L27	S63°10'24"W	14.76
L28	S60°42'14"W	120.03
L29	S46°39'25"W	41.19

BASIS OF BEARINGS

NAD83 California Coordinate System, Zone 3 grid bearing base obtained by GPS measurements.

All measured distances as shown on this map are grid distances. Multiply by 1.00005310 to obtain ground level distances.



EXHIBIT B CITY PLACE PROJECT SITE

LINE	BEARING	LENGTH
L30	S60°42'14"W	203.54
L31	N26°03'52"W	394.25
L32	S63°56'08"W	15.50
L33	N26°03'52"W	59.36
L34	S63°56'08"W	382.83
L35	N30°38'56"W	530.37
L36	N01°58'31"E	340.86



1730 N. FIRST STREET
SUITE 600
SAN JOSE, CA 95112
408-467-9100
408-467-9199 (FAX)

Subject **EXHIBIT B**
CITY PLACE - PROJECT SITE

Job No. **20156041**

By **DS** Date **6-08-16** Chkd. **DRT**
SHEET **1** OF **1**

EXHIBIT C

ESTIMATED FEES BY PHASE

MIP Estimated Low-End and High-End Related Contribution by Phase Based on Trips per Phase						
Phases	MIP Action Plan	Land Use	Trips	Percent Trips	Estimated Low-End Related Traffic Fees by Phase	Estimated High-End Related Traffic Fees by Phase
Phase 1	\$740,000	873,000 sf mixed-use	1,173	10%	\$1,279,799	\$1,599,539
Phase 2	\$1,340,000	2.4 million s.f mixed-use	3,224	26%	\$3,517,539	\$4,396,347
Phase 3	\$2,900,000	750,000 s.f mixed-use	1,008	8%	\$1,099,776	\$1,374,540
Phase 4	\$5,987,000	1.1 million s.f office	1,478	12%	\$1,612,569	\$2,015,447
Phase 5	\$3,160,000	1.44 million s.f office	1,935	16%	\$2,111,178	\$2,638,626
Phase 6	\$5,502,000	1.3 million s.f. office	1,746	14%	\$1,904,970	\$2,380,900
Phase 7	\$2,090,000	1.3 million s.f. office	1,746	14%	\$1,904,970	\$2,380,900
Phases 1 to 7*	\$1,695,000					
Total	\$23,414,000	9.16 million s.f.	12,310	100%	\$13,430,800	\$16,786,300
Total Estimated Costs for MIP			\$23,414,000			
Estimated Low-End Traffic Fees			\$13,430,800			
Estimated High-End Traffic Fees			\$16,786,300			
Estimated Low-End Related Responsibility**			\$17,430,800			
Estimated High-End Related Responsibility*			\$20,100,150			
*The MIP Action Plan Total Item Cost of \$1.695M for items listed as "Phase 1 to 7" in the MIP was allocated proportionally to Phase 1 to 7 based on trips per Phase.						
**Includes Estimated Low (or High) End Traffic Fee + Potential Maximum Development Match of \$4.0M						

EXHIBIT D

Miscellaneous Provisions for MIP Funding Agreement

[to be attached]

Reference is made to that certain Disposition and Development Agreement dated for reference purposes as of August 12, 2016, and recorded October 7, 2016, as Document No. 23456796 in the Official Records of Santa Clara County, California, as it may be amended from time to time (the “**DDA**”).

Defined terms not otherwise set forth in the MIP Funding Agreement shall have the meanings set forth in Exhibit A to the DDA.

1. Expedited Arbitration Procedures. The following Procedures will apply to disputes under the MIP Funding Agreement if unresolved after the Meet and Confer procedures of Section 7 of the MIP Funding Agreement. Arbiters. The arbitrator (“**Arbiter**”) of Arbitration Matters and Expedited Arbitration Matters will be selected by mutual agreement of the parties from a list of pre-approved Arbiters attached to the DDA as Exhibit O (the “**Pre-Approved Arbiters List**”). The Arbiter will hear all disputes under this Agreement unless the Arbiter is not available to meet the time schedule set forth herein, in which case the Parties may agree to direct the dispute to another Arbiter on the Pre-Approved Arbiters List. If none of the Arbiters listed is able or willing to serve, or if the Parties mutually agree to select an Arbiter that is not on the Pre-Approved Arbiters List, then by the date that is seven (7) days after the Arbitration Initiation Date (or, if later, seven (7) days after the parties are informed that none of the Arbiters on the Pre-Approved Arbiters List are able to serve), the parties shall mutually agree on the selection of an Arbiter to serve for the purposes of this dispute. The Arbiter appointed must meet the Arbiters’ Qualifications. The “**Arbiter’s Qualifications**” shall be defined as at least ten (10) years’ experience in a real property professional capacity, such as a real estate economist, appraiser, broker, developer or construction manager or professional in the South Bay area. If the Parties cannot mutually agree on an Arbiter within fourteen (14) days after the Arbitration Initiation Date (or, if later, fourteen (14) days after the parties are informed that none of the Arbiters on the Pre-Approved Arbiters List are able to serve), then an Arbiter meeting the Arbiter’s Qualifications shall be appointed by the Presiding Judge of the Superior Court of Santa Clara County.

1.2 Expedited Arbitration Process. The Party(ies) disputing any Expedited Arbitration Matter shall submit a brief with all supporting evidence to the Arbiter with copies to all Parties no later than the date (the “**Arbitration Briefing Date**”) that is the later to occur of (a) the fifteenth (15th) Business Day after the Arbitration Initiation Date or (b) the fifth (5th) Business Day after the Arbiter is selected by the Parties or appointed by the Presiding Judge of the Superior Court of Santa Clara County., Evidence may include, but is not limited to, expert or consultant opinions, any form of graphic evidence, including photos, maps or graphs and any other evidence the Parties may choose to submit in their discretion to assist the Arbiter in resolving the dispute. In either case, any interested Party may submit an additional brief within five (5) Business Days after distribution of the initial brief. The Arbiter thereafter shall hold a telephonic hearing and issue a decision in the matter promptly, but in any event within ten (10) Business Days after the Arbitration Briefing Date, unless the Arbiter determines that further briefing is necessary, in which case the additional brief(s) addressing only those items or issues identified by the Arbiter shall be submitted to the Arbiter (with copies to all Parties) within ten (10) Business Days after the Arbiter’s request, and thereafter the Arbiter shall hold a telephonic hearing and issue a decision promptly but in any event within ten (10) Business Days after submission of such additional briefs, and no later than thirty (30) Business Days after the

Arbitration Briefing Date. The decision of the Arbiter will be final, binding on the Parties and non-appealable. Nothing in this Section 1.2 shall require a Party to postpone instituting any injunctive proceeding if it believes in good faith that such postponement will cause irreparable harm to such Party.

1.3 Additional Provisions Governing Arbitration of Disputes.

1.3.1 No Ex Parte Communications. No Party or anyone acting on its behalf shall have any ex parte communication with the Arbiter with regard to any matters in issue. Communications concerning procedural matters such as scheduling shall not be included in this prohibition.

1.3.2 Submission. Unless otherwise directed by the Arbiter or agreed by the Parties to a given dispute, the Parties involved in the dispute shall strive to make joint submissions to the Arbiter. The Arbiter shall determine the schedule for the Parties' submissions, the page and form limitations for the submissions, and the schedule and form of any hearing(s).

2. Event of Default; Remedies.General. If a Party breaches any of its obligations under this Agreement and such breach, if not cured, would constitute an Event of Default under Section 2.2 hereof, the Party to whom the obligation was owed (the “**Notifying Party**”) may notify the breaching Party of such breach. The notice shall state with reasonable specificity the nature of the alleged breach, the particular provision of Section 2.2 under which the breach is claimed to arise and the manner in which the failure of performance may be satisfactorily cured. Failure to cure such breach within the time period specified in Section 2.2 shall be an “**Event of Default**” by the breaching Party under this Agreement.

2.1.1 Upon delivery of a notice of breach, the Notifying Party and the breaching Party shall promptly meet to discuss the breach and the manner in which the breaching Party can cure the same. If before the end of the applicable cure period the breach has been cured to the reasonable satisfaction of the Notifying Party, the Notifying Party shall issue a written acknowledgement of the other Party's cure of the matter which was the subject of the notice of breach.

2.1.2 If the alleged breach has not been cured or waived within the time permitted for cure in accordance with Section 2.2 hereof, the Notifying Party may (i) extend the applicable cure period or (ii) institute such proceedings and/or take such action as is permitted in this Agreement with reference to such breach.

2.2 Particular Breaches by the Parties.

2.2.1 Event of Default by Master Developer. The Parties agree that each of the following shall be deemed to be an Event of Default by Master Developer under this Agreement:

(i) Master Developer causes or allows to occur, as to itself, an Assignment not permitted under this Agreement, and the Assignment is not reversed or voided within thirty (30) days following Master Developer's receipt of notice thereof from City;

(ii) Master Developer fails to pay any amount required to be paid to City under this Agreement, and such failure continues for thirty (30) days following Master Developer's receipt of notice thereof from City; provided, that if Master Developer is disputing in good faith its obligation to pay such amount, such thirty (30) day period shall not begin to run until the dispute is resolved; and

(iii) Master Developer fails to perform any other agreement or obligation to be performed by Master Developer under this Agreement or any of the Exhibits hereto, and such failure continues past any cure period specified in this Agreement, or if no such cure period is specified, then within sixty (60) days after receipt by Master Developer of notice thereof from City (and, for a failure that is not reasonably susceptible of cure within sixty (60) days, if Master Developer fails to promptly commence such cure within thirty (30) days after its receipt of such notice and thereafter diligently prosecute the same to completion within a reasonable time, but in no event to exceed one hundred and fifty (150) days from the receipt of such notice).

2.2.2 Event of Default by City. The Parties agree that if City fails to perform any obligation to be performed by City under this Agreement, such failure shall be deemed an Event of Default by City under this Agreement (i) if it continues past any cure period specified in this Agreement, or (ii) if no such cure period is specified, then if it continues past sixty (60) days after receipt by City of notice thereof from Master Developer (and, for a failure that is not reasonably susceptible of cure within sixty (60) days, if City fails to promptly commence such cure within thirty (30) days after its receipt of such notice and thereafter diligently prosecute the same to completion within a reasonable time, but in no event to exceed one hundred and fifty (150) days from the receipt of such notice).

2.3 Remedies. If an Event of Default occurs and is not waived in writing by the non-breaching party, then the non-breaching party shall have the following remedies:

(i) The right to cure, at the breaching party's cost and expense, any Event of Default and recover such costs, together with interest thereon and reasonable attorneys' fees and costs of court;

(ii) The right to sue to collect any sums not paid when due, together with interest accrued thereon and reasonable attorneys' fees and costs of court incurred in collecting the same;

(iii) The right to sue to collect damages suffered by the non-breaching party by reason of the occurrence of an Event of Default other than breach in the payment of money, together with reasonable attorneys' fees and costs of court incurred in such proceedings;

(iv) The right to terminate this Agreement; or

(v) The right to injunctive relief including seeking specific performance of the breached obligation, together with reasonable attorneys' fees and costs of court incurred in such proceedings.

2.4 Rights and Remedies Cumulative; No Consequential, Punitive, or Special Damages. Neither Party shall have any remedies for a breach of this Agreement by the other Party except to the extent that such remedy is expressly provided for in this Agreement, provided, however, that except as expressly limited by this Agreement, the rights and remedies of the Parties contained in this Agreement shall be cumulative, and the exercise by any Party of any one or more of such remedies shall not preclude the exercise by it, at the same or different times, of any other remedies contained in this Agreement for the same breach by the applicable Party. In addition, the remedies provided in this Agreement do not limit the remedies provided in other agreements and documents. Each Party waives any claims against the other Party, and covenants not to sue the other, for indirect or consequential, punitive, or special damages under this Agreement.

2.5 No Implied Waiver. No waiver made by a Party for the performance or manner or time of performance (including an extension of time for performance) of any obligations of the other Party or any condition to its obligations under this Agreement shall be considered a waiver of the rights of the Party making the waiver for a particular obligation of the other Party or condition to its own obligation beyond those expressly waived in writing

3. Assignment.

3.1 Assignment Generally. Master Developer shall have the right to transfer all or a portion of its rights and obligations under this Agreement and be released from its obligations hereunder in connection with either of the following: (i) a Consent Transfer or Permitted Transfer of Master Developer's entire right or interest in the DDA, so long as such transfer complies with the requirements of the DDA, including, without limitation, Article 22 thereof, and, in the event of a Direct Assignment (as defined in the DDA), the rights and obligations so assigned, and the release of Master Developer, is included in any AA&R between Master Developer, the City and the successor entity; and (ii) to a Master Owners' Association in accordance with Section 3.2 hereof. Any other transfer of this Agreement shall be subject to the approval of City, which approval shall not be unreasonably withheld, conditioned or delayed.

3.2 Assignment to Master Owner's Association. Upon formation of a Masters Owners' Association (the "**Master Owners' Association**"), and subject to the following requirements, this Agreement may be assigned to such Master Owners' Association, and upon the effectiveness of such assignment, Master Developer will be released from its obligations hereunder:

3.2.1 The Master Owners' Association shall enter into an Assignment, Assumption and Release Agreement in a form reasonably acceptable to the City, pursuant to which the Master Owners' Association assumes all rights and obligations under this Agreement from the Master Developer, and Master Developer is released from its obligations hereunder; and

3.2.2 The Master Owners' Association shall provide to the City financial assurance (including but not limited to annual evidence of any insurance required pursuant to this Agreement, as well as assurance that the Master Owners' Association shall remain in existence, and sufficiently capitalized, until the end of the term of this Agreement, or its earlier termination)

that the City reasonably agrees is sufficient to prove that the Master Owners' Association is capable of assuming all of Master Developer's obligations under this Agreement.

4. Representations and Warranties.

4.1 Master Developer's Representations. Master Developer hereby represents and warrants to City as of the date of full execution of this Agreement that Master Developer has the full right, power, authority and legal capacity to execute and deliver this Agreement, to execute and deliver the instruments referred to herein, and to enter into and fully perform the transactions contemplated hereby, or thereby.

4.2 City's Representations. City hereby represents and warrants to Master Developer as of the date of full execution of this Agreement that City is a municipal corporation duly organized and validly existing under the laws of the State of California and has the full right, power, authority and legal capacity to execute and deliver this Agreement, to execute and deliver the instruments referred to herein, and to enter into and fully perform the transactions contemplated hereby, or thereby.

5. Developer Indemnification.

5.1 Master Developer Indemnification. Master Developer shall Indemnify City and its elected and appointed officials, officers, employees, attorneys, contractors and agents of City and, as applicable, the partners, Affiliates, members and owners, and the officers, partners, agents, employees and members of each of them (or of its successors or assigns) (each, a "**City Party**," and collectively, the "**City Parties**") from and against all claims, demands, losses, liabilities, damage, liens, obligations, interest, injuries, penalties, fines, lawsuits or other proceedings, judgments and awards and costs and expenses (including reasonable attorneys' fees and costs, consultant fees and costs and court costs) of whatever kind or nature, known or unknown, contingent or otherwise, including the reasonable costs to City of carrying out the terms of any judgment, settlement, consent, decree, stipulated judgment or other partial or complete termination of an action or procedure that requires City to take any action (collectively "**Losses**") arising from or as a result of, any action taken by Master Developer, or failure of Master Developer to take any action, now or in the future, related to the adoption, Approval, or implementation of this Agreement. Master Developer's Indemnification and defense obligations under this Article 5 shall survive expiration or termination of this Agreement.

5.2 Other Remedies. The agreements to Indemnify set forth in Section 5.1 are in addition to, and in no way shall be construed to limit or replace, any other obligations or liabilities that Master Developer may have to City under this Agreement.

5.3 Defense of Claims. City agrees to give prompt notice to Master Developer with respect to any suit filed or claim made against City (or, upon City's discovery thereof, against any City Party that City believes in good faith is covered by any Indemnification given by Master Developer under this Agreement) no later than the earlier of (a) ten (10) days after valid service of process as to any filed suit or (b) fifteen (15) days after receiving notification of the assertion of such claim, which City has good reason to believe is likely to give rise to a claim for Indemnification hereunder by Master Developer. The failure of City to give such notice within

such timeframes shall not affect the rights of City or obligations of Master Developer under this Agreement except to the extent that Master Developer is prejudiced by such failure. Master Developer shall, at its option but subject to Approval by City, be entitled to control the defense, compromise or settlement of any such matter through counsel of Master Developer's choice; provided, that in all cases City shall be entitled to participate in such defense, compromise or settlement (either at City's own expense or, if there is a challenge to implementation of the Agreement itself, at Master Developer's own expense). If Master Developer shall fail, however, in City's reasonable judgment, within a reasonable time following notice from City alleging such failure, to take reasonable and appropriate action to defend, compromise or settle such suit or claim, City shall have the right promptly to hire counsel to carry out such defense, compromise or settlement, and the reasonable expense of City in so doing shall be due and payable to City within fifteen (15) days after receipt by Master Developer of a properly detailed invoice for such expense.

5.4 Limitations of Liability. It is understood and agreed that no City Party shall be personally liable to Developer, nor shall any direct or indirect partners, members or shareholders of Developer or its or their respective officers, directors, agents or employees (or their successors or assigns) be personally liable to City, in the event of any default or breach of this Agreement by City or Developer or for any amount that may become due to Developer or City or any obligations under the terms of this Agreement; provided, that the foregoing shall not release obligations of a Person that otherwise has liability for such obligations, such as (i) the general partner of a partnership that, itself, has liability for the obligation or (ii) the obligor under any security covering such obligation.

6. Additional Provisions.

6.1 Entire Agreement; Amendment. This Agreement, and its terms and conditions, embodies the entire agreement between the Parties relative to the matters set forth herein. No other understanding, agreements, or conversations with any officer, agent, or employee of City shall affect or modify any of the terms or obligations contained in any documents comprising this Agreement. It is mutually understood and agreed that no amendment to this Agreement shall be valid unless made in writing and signed by the Parties.

6.2 Waiver. Any waiver of any provision of this Agreement by a Party must be in writing and signed by a Person having authority to do so on behalf of such Party. No waiver made by a Party for the performance or manner or time of performance (including an extension of time for performance) of any obligations of any other Party or any condition to its obligations under this Agreement shall be considered a waiver of the rights of the Party making the waiver for a particular obligation of the other Party or condition to its own obligation beyond those expressly waived in writing.

6.3 Captions and Table of Contents. The captions of and names of defined terms in this Agreement are for convenience of reference only and are not intended to define, limit or describe the scope or intent of this Agreement or otherwise affect the interpretation of this Agreement. The Table of Contents (if any) is for the purpose of convenience of reference only and is not intended to be a part of this Agreement or to be used in interpreting this Agreement.

6.4 Extensions of Time.

6.4.1 Any Party may in its sole discretion extend the time for the performance of any term, covenant or condition of this Agreement by a Party owing performance to the extending party, or permit the curing of any related default, upon such terms and conditions as it determines appropriate; provided, however, any such extension or permissive curing of any particular default shall not operate to release any of the obligations of the Party receiving the extension or cure rights or constitute a waiver of the granting Party's rights with respect to any other term, covenant or condition of this Agreement or any other default in, or breach of, this Agreement.

6.4.2 In addition to matters set forth in Section 6.4.1, the Parties may in their sole discretion extend the time for performance by any of them of any term, covenant or condition of this Agreement by a written instrument signed by authorized representatives of such Parties without the execution of a formal recorded amendment to this Agreement, and any such written instrument shall have the same force and effect and (once recorded) impart the same notice to third parties as a formal recorded amendment to this Agreement. For the purposes of this Section 6.4, City's authorized representative shall be the City Manager.

6.5 Interpretation. Wherever in this Agreement the context requires, the use of a verb in any tense shall be construed as the use of the verb in all other tenses, references to the masculine shall be deemed to include the feminine and the neuter and vice-versa, and references to the singular shall be deemed to include the plural and vice versa. Unless otherwise specified, whenever in this Agreement, including its Exhibits, reference is made to the Table of Contents (if any), any Section, Exhibit or any defined term, the reference shall be deemed to refer to the Table of Contents (if any), Section, Exhibit or defined term of this Agreement. Any reference to a Section includes all subsections and subparagraphs of that Section. The use in this Agreement of the words "including", "such as" or words of similar import when following any general term, statement or matter shall not be construed to limit such statement, term or matter to the specific statements, terms or matters, whether or not language of non-limitation, such as "without limitation" or "but not limited to", or words of similar import, is used with reference thereto. In the event of a conflict between the Recitals and the remaining provisions of this Agreement, the remaining provisions shall prevail.

6.6 More than One Person. If Master Developer's obligations under this Agreement are assumed by more than one Person (including but not limited to a new Master Developer), City may require the signatures of each such Person on any notice given by Master Developer, except to the extent that any such Person shall designate to any other such Person the right to act as such Person's attorney in fact to act on its behalf, which designation shall be effective until receipt by City of notice of its revocation. Nothing herein shall be construed as conferring on any such Person any rights or obligations to or against any other such Person. Without limiting the other provisions of this Agreement, each Person named as or that becomes Master Developer under this Agreement shall be fully, and jointly and severally, liable for all of Master Developer's obligations hereunder.

6.7 Time of Performance.

6.7.1 All performance (including cure) dates expire at 5:00 p.m. Pacific Time on the applicable date for performance (including cure), as such date may be extended pursuant to the effect of any extension of time permitted in this Agreement.

6.7.2 Where a date set forth in this Agreement is a calendar month without reference to a specific day in such month, or a year without reference to a specific month in such year, the date in question shall be the last day in such month or year, as applicable.

6.7.3 If the last day of any period to give notice, reply to a notice, meet a deadline or undertake any other action occurs on a day that is not a Business Day, then the last day for undertaking the action or giving or replying to the notice shall be the next succeeding Business Day.

6.7.4 Time is of the essence in the performance of all the terms and conditions of this Agreement for which a time for performance is specified.

6.8 No Third Party Beneficiaries. This Agreement is made and entered into only for the protection and benefit of the Parties and their successors and assigns. No other Person shall have or acquire any right or action of any kind based upon the provisions of this Agreement except as explicitly provided to the contrary in this Agreement.

6.9 Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of California. All references in this Agreement to California or federal laws and statutes shall mean such laws, regulations and statutes as they may be amended from time to time, except to the extent a contrary intent is stated.

6.10 Successors and Assigns. The agreements, terms, covenants and conditions herein shall be binding upon, and shall inure to the benefit of, the Parties and their respective successors and (to the extent permitted hereunder) assigns.

6.11 Relationship of the Parties. None of the provisions in this Agreement shall be deemed to render any of the Parties a partner in any other Party's business, or a joint venturer or member in any joint enterprise with any other Party. No Party shall have the right to act as the agent of any other Party in any respect hereunder.

6.12 Construction. This Agreement shall be construed without regard to any presumption or other rule requiring construction against the Party causing this Agreement to be drafted. In the event of any action, suit, arbitration, dispute or proceeding affecting the terms of this Agreement, no weight shall be given to any deletions or striking out of any of the terms of this Agreement contained in any draft of this Agreement and no such deletion or strike out shall be entered into evidence in any such action, suit, arbitration, dispute or proceeding nor given any weight therein.

6.13 Further Assurances. Each Party shall execute and deliver such further documents, and perform such further acts, as may be reasonably necessary or desirable to achieve the Parties' intent in entering into this Agreement.

6.14 Numbers.

6.14.1 Generally. For purposes of calculating a number under this Agreement where a whole number is required, any fraction equal to or greater than one half (1/2) shall be rounded up to the nearest whole number and any fraction less than one half (1/2) shall be rounded down to the nearest whole number.

6.14.2 Number of Days. References in this Agreement to days shall be to calendar days unless otherwise specified.

6.15 No Gift or Dedication. Except as otherwise specified in this Agreement, this Agreement shall not be deemed to be a gift or dedication of any portion of the Project to the general public, for the general public, or for any public use or purpose whatsoever.

6.16 Correction of Technical Errors. If by reason of inadvertence, and contrary to the intention of Master Developer and City, errors are made in this Agreement in the identification or characterization of any title exception, in a legal description or the reference to or within any Exhibit with respect to a legal description, in the boundaries of any parcel (provided such boundary adjustments are relatively minor and do not result in a material change), in any map or drawing that is an Exhibit, or in the typing of this Agreement or any of its Exhibits, Master Developer and City by mutual agreement may correct such error by memorandum executed by both of them and replacing the appropriate pages of this Agreement, and no such memorandum or page replacement shall be deemed an amendment of this Agreement.

6.17 Severability. If any term or provision of this Agreement or the application thereof to any Person or circumstances shall, to any extent, be invalid or unenforceable (an “**Excluded Term**”), the remainder of this Agreement, or the application of such Excluded Term to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby, and each term and provision of this Agreement shall be valid and be enforced to the fullest extent permitted by law. Notwithstanding the foregoing, if either Party considers an Excluded Term material to this Agreement, the Parties shall negotiate in good faith to adopt alternative terms or provisions that will achieve the objectives of the Excluded Term as closely as possible while avoiding the problem causing the Excluded Term to be invalid or unenforceable, and if unable to agree the matter shall be resolved through Expedited Arbitration.

6.18 Legal Representation. Each Party acknowledges, warrants and represents to each other Party that it has been fully informed with respect to, and represented by counsel of its choice in connection with, the rights and remedies of and waivers by it contained in this Agreement and after such advice and consultation has presently and actually intended, with full knowledge of its rights and remedies otherwise available at law or in equity, to waive and relinquish those rights and remedies to the extent specified in this Agreement, and to rely solely on the remedies provided for in this Agreement with respect to any breach of this Agreement by any other Party.

6.19 Counterparts. This Agreement may be executed in any number of counterparts, each of which, when so executed and delivered, shall be deemed an original, and all of which together shall constitute one and the same instrument. This Agreement shall become effective when the Parties have duly executed and delivered signature pages to this Agreement to each other. Delivery of this Agreement may be effectuated by hand delivery, mail, overnight courier

or electronic communication (including by PDF sent by electronic mail, facsimile or similar means of electronic communication). Any signatures (including electronic signatures) delivered by electronic communication shall have the same legal effect as physically delivered original signatures.

6.20 Survival. Termination of this Agreement shall not affect (i) the right of any Party to enforce any and all rights and obligations under this Agreement to the extent they relate to the period before termination, or (ii) any provision of this Agreement that, by its express terms, is intended to survive the expiration or termination of this Agreement.

6.21 Estoppel Certificates.

6.21.1 Developer Estoppels. At any time, and from time to time, upon not less than fifteen (15) days' notice by City, Master Developer shall execute, acknowledge and deliver to City and to any other Person reasonably requested by City a statement certifying: (a) that this Agreement is unmodified and in full force and effect (or, if there have been modifications, that the same, as modified, is in full force and effect and stating the modifications), (b) whether or not any amounts due and owing by Master Developer to City under this Agreement have been paid, (c) whether or not, to Master Developer's actual knowledge, City is in default in performance of any covenant, agreement or condition contained in this Agreement, and, if so, specifying each such default of which Master Developer has actual knowledge, and (d) as to any other matter with respect to this Agreement as City may reasonably request.

6.21.2 City Estoppels. At any time, and from time to time, upon not less than fifteen (15) days' notice by Master Developer, City shall execute, acknowledge and deliver to Master Developer and to any other Person reasonably requested by Master Developer a statement certifying: (a) that this Agreement is unmodified and in full force and effect (or, if there have been modifications, that the same, as modified, is in full force and effect and stating the modifications), (b) whether or not any other amounts due and owing by Master Developer to City under this Agreement have been paid, (c) whether or not, to City's actual knowledge, Master Developer is in default in performance of any covenant, agreement or condition contained in this Agreement and, if so, specifying each such default of which City has actual knowledge, and (d) as to any other matter with respect to this Agreement as Master Developer may reasonably request.

6.22 Approvals.

6.22.1 As used herein, "**Approval**" and any variation thereof (such as "**Approved**" or "**Approve**") refer to the prior written consent of the applicable Party or other Person. When used with reference to a Governmental Authority, such terms are intended to refer to the particular form of consent or approval required from such Governmental Authority in order to obtain the Authorization being sought.

6.22.2 Whenever Approval is required or permitted to be given by any Party under this Agreement, it shall not be unreasonably withheld, conditioned or delayed unless the Approval is explicitly stated in this Agreement to be within the "sole discretion" (or words of similar import) of the Party whose Approval is sought. A Party that denies an Approval under

this Agreement, or that gives a conditional Approval, shall in giving such denial or conditional Approval state the reasons therefor in reasonable detail, unless such Approval is explicitly stated in this Agreement to be within the “sole discretion” (or words of similar import) of the Party whose Approval is sought. It is understood and agreed that the granting of any consent or approval by a Party to another Party under this Agreement to perform any act of requiring such Party’s consent or approval under this Agreement, or the failure by a Party to object to any such action taken by any other Party without the former Party’s consent or approval, shall not be deemed a waiver by the former Party of its right to require such consent or approval for any further similar act by any other Party. In determining whether to give an Approval, City shall not require changes from or impose conditions inconsistent with the Project Documents, except to the extent that City reasonably determines that such changes or conditions are necessary for important reasons of public health or safety.

6.22.3 Notwithstanding the foregoing, it is specifically acknowledged by all Parties that Section 6.22.2 shall not apply to any Approval given by a public entity in its regulatory capacity. Such Approvals shall be governed by the standards of review generally accorded by the state courts of California.

6.23 Recordation. It is understood and agreed by Master Developer and City that after execution by Master Developer and City, this Agreement (or a memorandum hereof in form and substance Approved by City and Master Developer) will be recorded by City; provided, that the recordation shall affect only Master Developer’s and City’s interest in the Project and the Project Site. In addition to the exchange of signatures described in Section 6.19 of this Exhibit, Master Developer shall deliver to City an original of this Agreement signed and notarized suitable for recording. If this Agreement is terminated in accordance with its terms, Master Developer or City may record a Notice of Termination as provided in Section 6.24.

6.24 Notice of Termination. In the event of any termination of this Agreement in whole or in part in accordance with the terms of this Agreement, the terminating Party shall provide the other Parties with a copy of any proposed Notice of Termination at least fifteen (15) days before recording the same. After the expiration of such fifteen days, the terminating Party may cause the Title Company to record such Notice of Termination in the Official Records. Any such “Notice of Termination” shall be in recordable form and describe the portion of the Project Site to which such termination pertains. Following the recordation of any Notice of Termination, the terminating Party shall promptly provide a conformed copy of such recorded Notice of Termination to City, Master Developer, and any applicable Mortgagee. The recordation of a Notice of Termination shall not affect in any manner the rights of City, Master Developer, or any applicable Mortgagee to contest the terminating Party’s right to cause such recordation.

6.25 Attorneys’ Fees.

6.25.1 Should any Party institute any action or proceeding in court or other dispute resolution mechanism permitted or required under this Agreement, the prevailing party shall be entitled to receive from the losing party the prevailing party’s reasonable costs and expenses incurred including expert witness fees, document copying expenses, exhibit preparation costs, carrier expenses and postage and communication expenses, and such amount as may be awarded to be reasonable attorneys’ fees and costs for the services rendered the prevailing party

in such action or proceeding. Attorneys' fees under this Section 6.25 shall include attorneys' fees on any appeal.

6.25.2 For purposes of this Agreement, reasonable fees of attorneys and any in-house counsel shall be based on the average fees regularly charged by private attorneys with an equivalent number of years of professional experience in the subject matter area of the law for which the in-house counsel's services were rendered who practice in the City in law firms with approximately the same number of attorneys as employed by the City.

6.26 Notices.

6.26.1 Notice Addresses. Whenever this Agreement permits or requires that a notice, demand, request, consent, approval or other communication to be given by a Party (each, a "**Notice**"), and whenever either Party desires to give or serve a Notice, such Notice must be in writing and shall not be effective for any purpose unless it is in writing and given or served as follows: (a) by personal delivery (including by same day commercial courier or messenger service) with receipt acknowledged; (b) delivered by reputable, national overnight delivery service (with its confirmatory receipt therefor), next Business Day delivery specified; or (c) sent by a telephonic facsimile transmitting machine (with the receipt of such transmittal acknowledged in writing or by telephone, and with a confirmatory copy to be delivered thereafter by duplicate notice in accordance with either clause (a) or (b) of this Section 6.27), in each case to the Parties at the following addresses:

If to Master Developer:

Related Santa Clara, LLC
c/o the Related Companies
60 Columbus Circle
New York, NY 10023
Attn: Joshua Young

and

Related Santa Clara
5201 Great America Parkway, Suite 532
Santa Clara, California 95054
Attn: Chief Legal Officer

With a copy to:

Gibson, Dunn & Crutcher LLP
555 Mission Street
San Francisco, CA 94105
Attn: Neil H. Sekhri, Esq.

If to City:

City of Santa Clara
1500 Warburton Avenue
Santa Clara, CA 95050
Attn: City Manager

With a copy to:

City of Santa Clara
1500 Warburton Avenue
Santa Clara, CA 95050
Attn: City Attorney

A Party may change the address(es) to which any Notice is to be delivered to such Party by furnishing ten (10) days' written notice of such change(s) to the other Parties in accordance with the provisions of this Section 6.26. The attorney for any Party may send Notices on that Party's behalf.

To be effective, every notice given to a Party under the terms of this Agreement must be in writing and must state (or must be accompanied by a cover letter that states) substantially the following: (a) the Section of this Agreement under which the notice is given; (b) if applicable, the action or response required; (c) if applicable, the period of time within which the recipient of the notice must respond thereto; (d) if applicable, the period of time within which the recipient of the notice must cure an alleged breach; (e) if applicable, that the failure to object to the notice within a stated time period will be deemed to be the equivalent of the recipient's approval or disapproval of the subject matter of the notice; (f) if Approval is being requested, shall be clearly marked "Request for Approval"; and (g) if a notice of a disapproval or an objection that requires reasonableness, shall specify with particularity the reasons for the disapproval or objection.

6.26.2 When Notices Deemed Given. Every Notice shall be deemed to have been given or served (a) if given by hand or overnight delivery service, upon delivery thereof, or (b) if given by telephonic facsimile transmitting machine, upon delivery by such means to the addressee if delivered before 5:00 pm (in the recipient's time zone) on a Business Day, otherwise on the next Business Day, regardless of the timing of receipt of any confirmatory copy, in each case with failure to accept delivery to constitute delivery for such purpose and with inability to deliver because of changed address of which no Notice was given under this Section 6.26 to constitute delivery for such purpose (provided, that, the sending Party shall use good faith efforts to deliver to any other address of the intended recipient known to the sending Party).