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DISPOSITION AND DEVELOPMENT 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

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LIST OF EXHIBITS

Exhibits highlighted in grey will be attached to this Agreement upon agreement of the parties in accordance with terms of this Agreement.

Exhibit A	**Definitions**
Exhibit B-1	**Legal Description of the Landfill Parcel**
Exhibit B-2	**Legal Description of the Airspace Parcels**
Exhibit B-3	**Legal Description of the Tasman Parcel**
Exhibit B-4	**Map of Project Site**
Exhibit C	**Mitigation Monitoring and Reporting Program (MMRP)**
Exhibit D	**Project Approvals**
Exhibit E	**Phasing Plan**
Exhibit F	**Schedule of Performance – General**
Exhibit F-1	**Form of Phase Schedule of Performance**
Exhibit G-1	**Form of Ground Lease – Phase 1**[1]
Exhibit G-2	**Form of Ground Lease – Phases 2-7**[1]
Exhibit H	**Minimum Requirements for CC&Rs**
Exhibit I	**Form of Financing Plan**
Exhibit J	**Form of Permit to Enter**
Exhibit K	**Form of Certificate of Completion**
Exhibit L	**Permitted Exceptions**
Exhibit M	**Landfill Operation and Management Term Sheet**

[1] As of the Reference Date.

Exhibit N	**Definition of Premium Costs**
Exhibit O	**List of Pre-Approved Arbiters**
Exhibit P	**Form of Assignment, Assumption and Release Agreement**
Exhibit Q	**Form of City Completion Guaranty**
Exhibit R	**Addresses for Notices**
Exhibit S	**Form of Architect's Certificate**
Exhibit T	**Form of Engineer's Certificate**
Exhibit U	**Provisions Relating to Construction Sales and Use Tax Allocations**

DISPOSITION AND DEVELOPMENT AGREEMENT
(CITY PLACE SANTA CLARA)

This DISPOSITION AND DEVELOPMENT AGREEMENT (CITY PLACE SANTA CLARA) (including all Exhibits and as amended from time to time, this "**Agreement**"), dated for reference purposes only as of August 12, 2016 (the "**Reference Date**"), is made by and between Related Santa Clara, LLC, a Delaware limited liability company ("**Master Developer**"), and the City of Santa Clara, a chartered municipal corporation ("**City**").

RECITALS

Master Developer and City enter into this Agreement with reference to the following facts and circumstances:

A. Capitalized terms used herein are defined or referenced in Exhibit A of this Agreement.

B. City owns a fee interest in the real property generally located in the North of Bayshore Area in Santa Clara, California, consisting of approximately two hundred and thirty (230) acres shown on the Phasing Plan (the "**City Landfill Parcels**"). Subsequent to the Reference Date, Master Developer will seek approval of a tentative subdivision map (the "**Tentative Map**") and a first phased final map (the "**First Final Map**") that will subdivide the City Landfill Parcels to create two sets of vertical parcels: (i) one parcel (the **"Landfill Parcel")** which, in general, constitutes City's fee interest in the Landfill and (ii) multiple parcels comprising the **"Airspace Parcels,"** which constitute City's fee interest in the airspace parcels above the Landfill Parcels. The legal description of the City Landfill Parcels is provided as Exhibit B-1. Upon the recordation of the First Final Map, the legal description of the Landfill Parcel and the outer boundaries of the Airspace Parcels will be appended to this Agreement as Exhibit B-2 in accordance with Section 3 hereof.

C. City also owns a fee interest in the real property generally located immediately south of the City Landfill Parcels and north of Tasman Drive on the east and west sides of Centennial Boulevard (APNs 104-03-038 and -039) and a portion of another parcel (104-03-036) located immediately northward of those other parcels, consisting of approximately 9.48 acres (the "**Tasman Parcels**"). The legal description of the Tasman Parcels is in Exhibit B-3. The City Landfill Parcels and the Tasman Parcels are collectively referred to herein as the "**Project Site**" as shown on Exhibit B-4 attached hereto. The portions of the Airspace Parcels and the Tasman Parcels that will be ground leased to Master Developer in accordance with this Agreement are collectively referred to herein as the "**Development Parcels**".

D. City and Master Developer entered into that certain (1) Exclusive Negotiation Rights Agreement in April 2013 for development of the City Landfill Parcels (the "**ENA**"), and (2) Term Sheet dated as of February 11, 2014 (City Council Resolution No. 14-8112) (the "**Term Sheet**"). City and Master Developer entered into a Term Sheet Supplement dated as of July 1, 2014 (City Council Resolution No. 14-8157) and a Term Sheet Supplement No. 2 dated as of June 16, 2015 (City Council Resolution No. 15-8245).

E. On June 26, 2012, the City and the Montana Property Group ("**MPG**") entered into (1) an Exclusive Negotiating Rights Agreement, as subsequently extended and amended, and (2) a Term Sheet dated as of February 11, 2014, for the development of the Tasman Parcels. Subsequently, Master Developer entered into a joint venture agreement with MPG to jointly develop the Tasman Parcels concurrently with the City Landfill Parcels, as reflected in a Term Sheet Supplement between the City and MPG, dated June 16, 2015. Under such Term Sheet Supplement, the City and MPG agreed that the site planning efforts and negotiations for the Tasman Parcels would be included as part of the site planning efforts and negotiations for the City Landfill Parcels, which understanding is reflected in the terms of this Agreement.

F. The City has analyzed potential environmental impacts of the Project and identified mitigation measures in the Environmental Impact Report for the City Place Santa Clara Project (the "**Project EIR**") and Mitigation Monitoring and Reporting Program attached hereto as Exhibit C (the "**Project MMRP**"), in accordance with the requirements of CEQA. On June 28, 2016, the City Council adopted Resolution No. 16-8337, certifying the Project EIR in accordance with the requirements of CEQA, which attached CEQA Findings and the MMRP.

G. Concurrently with certification of the Project EIR, the City Council (i) adopted amendments to its General Plan, including an amendment to create a new "Urban Center Entertainment District" General Plan classification for the Project Site, an amendment to the Climate Action Plan setting forth vehicle trip reduction targets for the new classification and an amendment revising city-wide limitations on office development, and (ii) rezoned the Project Site to PD-MC and adopted the Master Community Plan for the Project (such Master Community Plan, together with the Master Community Plan Supplement, the "**Master Community Plan**" or "**MCP**"), including an Infrastructure Master Plan (the "**Infrastructure Master Plan**" or "**IMP**"), in accordance with the requirements of CEQA.

H. The MCP includes an "Enhanced Open Space" variant ("**EOS Variant**") for the Project, in which most of one of the parcels (APN 104-01-102) would be retained as a public park, and the development previously planned for that parcel would be redistributed to the other parcels in the development. This DDA contemplates the development of the EOS Variant in which the public park is represented by Phase 2A. As a public benefit to the Project, this DDA contemplates development of the EOS Variant by providing special procedures for Phase 2A, which will be reserved for park, recreation and open space uses that are complementary to, and do not unreasonably interfere with, the City Center Phases.

I. City has determined that the development and use of the Project Site under this Agreement are included within the scope of the Project EIR in that the potential environmental impacts of the development and use of the Project Site under this Agreement and the MCP are addressed in the Project EIR.

J. Concurrently with the actions listed above, the City Council took other actions consistent with the Project, including approving this Agreement, and the Development Agreement, together with other approvals (the "**Project Approvals**"). The Project Approvals are listed on Exhibit D hereto.

K. The principal objective of the Project Approvals is to create a new mixed-use development on the Project Site that is anchored by a "city center," consistent with the elements shown in the Phasing Plan attached hereto as Exhibit E and permitted under the Master Community Plan (such development, the "**Project**"). This objective is intended to be achieved through the ground lease by City to Phase Developers, from time to time, of the Development Parcels, and the construction and operation by Phase Developers of the Improvements.

AGREEMENT

NOW, THEREFORE, in reliance on the foregoing and in consideration of the mutual covenants, agreements and conditions set forth herein, and for other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged by the Parties, the Parties hereby agree as follows:

1. The Project. This Article 1 is intended to serve as an overview of the rights and obligations of the Parties with respect to the Project. To the extent that any provision in this Article 1 conflicts with a provision elsewhere in this Agreement, the provision that is elsewhere shall control.

1.1 Overview. This Agreement contemplates development of the Project, which will entail Developer entering into ground leases of the Development Parcels from the City on a phased basis for the purposes of: (i) constructing Infrastructure to support the Project, such as roads, utilities and geotechnical improvements required for development on the Landfill (e.g. a structural slab on which other Improvements will be constructed); (ii) constructing and improving certain public parks and open spaces; and (iii) constructing and operating Buildings within each ground lease premises, all in accordance with the Project Approvals, Subsequent Project Approvals and the Schedule of Performance to the extent applicable, as more particularly described in this Agreement.

1.2 Property.

1.2.1 Subdivision. Master Developer intends to submit to the City an application for the Tentative Map in accordance with CSCC Chapter 17.05 (Subdivisions), as may be amended from time to time, in order to create the Airspace Parcels and the Landfill Parcels. The Airspace Parcels as shown on the Tentative Map will consist of those Development Parcels that are congruent with the footprint of the City Landfill Parcels but located above the top of the fill layer of the landfill cap, as more particularly described in the Landfill Operation and Management Term Sheet attached hereto as Exhibit M (the "**Landfill O&M Term Sheet**"), but excluding any public streets. Within thirty (30) days after recordation of the First Final Map creating the Airspace Parcels, the Parties shall prepare an Exhibit B-2 that will be appended to this Agreement and become a part thereof that shall set forth the legal description of the Landfill Parcel and the Airspace Parcels. Each Phase of development will be conveyed to the Phase Developer by reference to a subsequent phased Final Map or a metes and bounds description that in either case is consistent with the corresponding Airspace Parcel as shown on the Tentative Map; provided, however, that if the Phase is conveyed by a metes and bounds description, the applicable Phase Developer will be required to record a phased Final Map covering the applicable Phase prior to Commencement of Infrastructure within the applicable Phase. Each

Ground Lease requires the parties to process a boundary adjustment through a lot line adjustment or other legal process upon Completion of the applicable Infrastructure in order to finally determine the boundaries of the applicable Airspace Parcel that is subject to the Ground Lease. The Parties anticipate that each Final Map will identify the Building parcels that are anticipated to be divided into and operated as separate condominium projects.

1.2.2 Property Subject to this Agreement. The property that is the subject of this Agreement consists of the (i) Landfill Parcel (described in Exhibit B-2 to be attached hereto) that will continue to be owned and controlled by the City, subject to various rights granted to Developer for infrastructure, support facilities, utilities and other penetrations, installations, equipment and/or improvements from the Airspace Parcels into (or through) the Landfill Parcel as necessary to develop the Project contemplated under the Project Documents; (ii) the Tasman Parcels, as described in Exhibit B-3 attached hereto that will be ground leased to Developer in Phase 1 of the Project; and (iii) the Airspace Parcels (described in Exhibit B-2 to be attached hereto), some or all of which will be conveyed to Developer in accordance with this Agreement.

1.3 Improvements. The Project will be developed consistent with the Phasing Plan (as may be amended from time to time), the Project Documents and the Project Approvals and Subsequent Project Approvals, including, without limitation, the MCP, the IMP, and the DAPs that are Approved with respect to each Phase. Developer shall have the right and, with regard to certain Improvements identified in this Agreement and upon the satisfaction of certain conditions set forth in this Agreement, the obligation, to construct the Improvements in accordance with the Project Documents. Unless otherwise specifically provided herein, all references to building square footages in this Agreement shall be deemed to refer to Gross Square Footages.

1.4 Project Development Generally. The Project will be constructed in up to eight Phases, as illustrated in the Phasing Plan attached hereto as Exhibit E, including the Phases numbered 1 through 7 and Phase 2A. Phases 1, 2 and 3, collectively, are designated in the Master Community Plan as "City Center Mixed Use" (sometimes referred to herein as the "**City Center Phases**"). The Phases depicted in the Phasing Plan are conceptual, and as appropriate, Phases 1 through 7 may be consolidated or otherwise modified through the Phase Option process described in Article 4.

1.5 Master Developer's Role Generally. Master Developer shall be the master developer for the Project, coordinating the development of the Project in cooperation with City, Phase Developers and others as more fully provided herein. Either Master Developer or an assignee of Master Developer pursuant to a "Permitted Transfer," as described in Section 22.6.1(b) shall have the obligation to serve as the Phase Developer for Phase 1 and 2, as shown on the Phasing Plan attached hereto as Exhibit E. Subject to its timely Take Down of Phases 1, 2 and 2A, Master Developer, on behalf of itself or an Affiliate, retains the exclusive option to Take Down Phases 3 through 7 as the Phase Developer thereof in accordance with the terms of this Agreement; provided, however, that the failure of Master Developer to Take Down any Phase other than Phases 1, 2 and 2A shall not affect its option to Take Down future Phases. In addition to Master Developer's other rights and obligations under this Agreement, Master Developer remains obligated to City for the payment of all Financial Obligations hereunder.

1.6 Phase Development Generally. The procedure for developing each Phase shall generally be as follows, as described in more detail in the following sections of this Agreement:

1.6.1 Phase Option Notice Approval. Master Developer shall exercise each Phase Option by submitting to City a Phase Option Notice for the applicable Phase (or portion thereof), in accordance with the terms of Article 4 hereof. Once each Phase Option Notice is Approved by City, Master Developer (or an approved Transferee) shall be deemed to be the "Phase Developer" of that Phase.

1.6.2 Assignment. Subject to the terms of this Agreement, Master Developer shall have the right in certain circumstances to Assign its rights and obligations to other Persons. In the event that the Assignment is a Consent Transfer and is Approved by City, then Master Developer, the Transferee, and City will enter into an AA&R for the applicable rights and obligations to be assigned.

1.6.3 DAP Approval. Following City's Approval of the Phase Option Notice, the Phase Developer shall submit to City an application for a Development Area Plan (each, a "**DAP**") for the applicable Phase (or portion thereof), in accordance with Article 5 hereof.

1.6.4 Ground Lease Execution. Following City's Approval of the DAP(s) for the applicable Phase (or portion thereof) and satisfaction of all other terms and conditions discussed in Section 6.2, City and the Phase Developer shall enter into a Ground Lease for that Phase (or portion thereof), in accordance with Article 6 hereof. The Phase Developer shall be deemed to have Taken Down each Phase (or portion thereof) upon the effective date of the applicable Ground Lease.

1.6.5 Construction of Phase Improvements. Upon the effective date of the Ground Lease for a Phase, the Phase Developer shall thereupon have the obligation to Commence construction of, and diligently pursue to Completion, the Infrastructure set forth in the applicable DAP and shall have the right (subject to certain terms and conditions) to construct the other Improvements shown in the DAP, all in accordance with the terms of this Agreement. In addition, the Phase Developer shall (1) have the obligation to construct the Minimum Initial Buildings and Minimum Retail Buildings among Phases 1, 2 and 3, as more particularly described in Sections 5.3.2 and 5.3.4, and (2) use best efforts to construct and/or deliver the Additional Initial Buildings, Additional Retail Buildings and Major Department Stores among Phases 1, 2 and 3, as more particularly described in Sections 5.3.3, 5.3.5, 5.3.6, and 5.3.7.

1.6.6 Certificate of Completion. Once the Initial Improvements for the applicable Phase (or portion thereof) are Complete, City shall issue a Certificate of Completion for such Initial Improvements in accordance with Article 12 hereof.

1.6.7 Post-Completion. Upon issuance of the Certificate of Completion for the Initial Improvements for a particular Phase, the applicable Phase Developer will thereafter use and operate the Phase in accordance with the applicable Ground Lease and any terms of this Agreement that survive the termination of this Agreement.

1.7 Schedule of Performance. The Schedule of Performance attached hereto as Exhibit F sets forth the Outside Dates for several actions contemplated by this Agreement, including (but not limited to): (i) the exercise of the Phase Option for each Phase or Partial Phase; (ii) the submittal of a Substantially Complete DAP application for each Phase or Partial Phase; (iii) the Take Down of each Phase, and (iv) the Commencement of the Infrastructure with respect to each Phase, as any of the foregoing Outside Dates may be extended by Excusable Delay, where applicable. Master Developer (and any applicable Phase Developer) shall also be required to comply with Phase Schedules of Performance for the Minimum Initial Buildings and Minimum Retail Buildings in accordance with Section 9.1.2 of this Agreement, as any of the foregoing Outside Dates therein may be extended by Excusable Delay, where applicable.

1.8 Development Agreement. Concurrently herewith, City and Master Developer have executed and delivered the Development Agreement, which confirms the vesting of the Project Approvals and applicable City laws and fees and sets forth the City's commitment regarding staffing devoted to the Project.

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 terminate, unless earlier terminated as provided below, upon the issuance of a Certificate of Completion for all of the Initial Improvements with respect to the last Phase Taken Down pursuant to the Schedule of Performance. However, on the date that a Certificate of Completion for all Initial Improvements with respect to a Phase has been issued, the obligations of the Phase Developer under this Agreement with respect to such Phase shall automatically and conclusively terminate, subject to the sections that survive pursuant to Section 29.22 of this Agreement.

3. Project Phasing.

3.1 Phasing Plan. The development of the Project will take place over a total of up to eight (8) Phases, each of which is conceptually illustrated on the Phasing Plan attached hereto as Exhibit E. The Phasing Plan illustrates on a conceptual level the size, and order of the Phases, given City's and Master Developer's best estimates of the conditions forecast for the expected development period; however, this Agreement anticipates that other than Phases 1, 2 and 2A, the subsequent Phases as shown on the Phasing Plan may be reconfigured, re-ordered and/or developed in partial Phases, subject to the provisions of Article 4 hereof. Notwithstanding the foregoing, Master Developer's rights and obligations with respect to Phase 2A shall be as set forth in Section 4.8 below.

3.2 Sequence of Development. Subject to Section 4.7 below, City hereby grants to Master Developer the exclusive option to elect to develop each Phase (such option for each Phase being referred to herein as a "**Phase Option**").

3.2.1 Phases 1, 2 and 2A. Master Developer (acting as Phase Developer) shall exercise Phase Options for, and shall Take Down, Phase 1, Phase 2 and Phase 2A in accordance with the Schedule of Performance and all other applicable terms and conditions of this Agreement. Failure to Take Down Phase 1, Phase 2 and/or Phase 2A in

accordance with this Agreement shall constitute an Event of Default pursuant to Section 21.2.1(b).

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

4. Exercise of Phase Option.

4.1 Phase Option Notice. The Parties intend that each Phase shall allow for planning of large mixed-use areas or neighborhoods within the Project Site. Accordingly, from time to time, Master Developer shall submit to City written notice that it intends to exercise a Phase Option for a Phase (each, a "**Phase Option Notice**") prior to the Outside Date to Take Down the applicable Phase, as set forth in the Schedule of Performance.

4.1.1 Each Phase Option Notice shall include the following information (collectively, the "**Phasing Information**"):

(a) The proposed geographic boundaries of the Phase, consistent with the Phasing Criteria outlined in Section 4.1.2, below, including, at a conceptual plan level, the proposed public street and open space network and any other community facility parcels on which public improvements will be constructed but ownership will remain in the City;

(b) A revised conceptual Phasing Plan that shows the boundaries and anticipated order of development of all remaining Phases of development in the context of the proposed Phase boundaries, plus the boundaries of all Phases that have already been Taken Down (depending on the size of the applicable Phase, the number of subsequent Phases may be consolidated or reduced in size), subject to the requirement that all portions of the Project Site except for the retention pond, public streets, and (if elected by City pursuant to Section 15.3) all or part of the Station Area, must be shown as part of a Phase;

(c) A revised Allowed Square Footage Table (if required pursuant to Section 4.2.3 hereof).

(d) A textual description of the conceptual scope of development for the Phase, which shall include: (i) the anticipated types and amounts of uses; (ii) maximum anticipated development density; and (iii) the amount and timing of Infrastructure anticipated to be constructed as part of the Phase; and (iv) a general overview of the parking and loading facilities anticipated to be provided as part of the Phase. With the exception of Phases 1 and 2, to the extent that Master Developer has not yet determined the conceptual scope of development for the Phase, Master Developer shall have the option of so stating in the Phase Option Notice, in which case Master Developer shall be deemed to have complied with this Section 4.1.1(d).

(e) An updated Best Efforts Report in accordance with Section 5.3.7(a) below).

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

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

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

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

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

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

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

and Master Developer shall work together to finalize the modified Allowed Square Footage Table in accordance with the Approval procedure outlined in Section 10.1, below.

4.2.4 Timing. The failure to meet a Phase Outside Date (as such term is defined in Article 7, below) for any portion of a Phase shall be governed by Article 7, below; provided, however, that submittal of a Phase Option Notice for the first Partial Phase in Phases 4 through 7 shall adjust the Phase number and Phase Outside Date for all future Phases. By way of example only, and not limitation, if Phase 6 were partially Taken Down prior to any portion of Phase 5 being taken down, then Phase 6 would become Phase 5 for the purposes of this Agreement, and the Phase Outside Dates formerly applicable to Phase 5 would apply to the Phase 6 boundaries instead; however, if Phase 5 were partially Taken Down and subsequently Phase 6 were partially Taken Down, then the Phase Outside Dates applicable to Phase 5 would apply to the property within the boundaries of Phase 5, and the Phase Outside Dates applicable to Phase 6 would apply to the property within the boundaries of Phase 6.

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

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

4.3 Special Procedures for BMX Track.

4.3.1 Phase Option Notice Timing. In order to provide the City with adequate advance notice to discontinue the BMX Track located on Parcel 1 and deliver the applicable Phase free of all tenants in accordance with Section 13.2.1, for any Phase or Partial Phase on which the BMX Track is located and operational, Developer shall provide a Phase Option Notice no earlier than the date on which the BMX track has been relocated or discontinued or the second (2nd) anniversary of the Effective Date, whichever is earlier, and no later than eighteen (18) months prior to the Outside Date for Take Down of Such Phase or Partial Phase.

4.3.2 Good Faith Efforts to Relocate. Commencing upon the Effective Date and ending upon the first (1st) anniversary of the Effective Date, Master Developer and City shall work together in good faith to determine a site to which the BMX track may feasibly be relocated. If Master Developer and City are unable to identify such a site prior to the first (1st) anniversary of the Effective Date, then until the second (2nd) anniversary of the Effective Date, Master Developer and City shall continue work together in good faith to determine a site to which the BMX track may feasibly be relocated.

4.4 City Approval Process. Subject to the conditions precedent set forth in Section 4.1 and (if applicable) Section 4.2, above, within thirty (30) days of receiving a complete Phase Option Notice, City shall review such information and documentation and render a decision regarding its Approval of the Phase Option Notice. If City objects in writing within

such thirty (30) day period, City shall include a reasonably detailed description of its reasons for objecting, and Master Developer shall have the opportunity to revise and re-submit the Phase Option Notice, which shall again be subject to the City Approval process set forth in this Section 4.4. If Master Developer disagrees with the statements or requests made in City's objection letter, Master Developer shall have the right (but not the obligation) to submit the dispute to arbitration as an Expedited Arbitration Matter in accordance with Article 20 hereof. If City fails to render a decision regarding its Approval of the Phase Option Notice within the thirty day period, then the Phase Option Notice shall be deemed approved upon satisfaction of the further notice procedures set forth in Section 29.33.4 hereof.

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

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

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

4.7 Requested Change Notice Procedure. The Parties acknowledge that Project development will take place over many years and that the circumstances affecting such development may change during that period. If Master Developer reasonably determines that the development of any Phase in accordance with this Agreement other than Phases 1, 2 and 2A has become commercially infeasible for reasons other than the financial condition of Master

Developer, then before the applicable Outside Date for Developer's submittal of any Phase Option Notice (as may be extended for Excusable Delay), Master Developer may notify City that Master Developer is willing to exercise the Phase Option and proceed with the applicable Phase only if City agrees to specified changes to the requirements of this Agreement to make the proposed development commercially feasible (the "**Requested Change Notice**"). The Requested Change Notice shall include a detailed description of all the terms and conditions of this Agreement that Master Developer proposes to change and the reasons why Master Developer believes that development of the applicable Phase is infeasible without the proposed changes. If Master Developer submits a Requested Change Notice and there is no uncured Material Breach by Master Developer, then all dates in the Schedule of Performance relating to that Phase shall be tolled, the City shall not terminate all or any part of this Agreement relating to that Phase and Master Developer shall retain all of its rights to exercise the Phase Options until the Parties have negotiated proposed changes to this Agreement for a period of not less than ninety (90) days, subject to any extensions agreed to by Master Developer and City (each in its sole discretion). If City staff and Master Developer are able to agree to changes, then they shall promptly prepare a proposed amendment to this Agreement, including an extension of the Schedule of Performance permitting Master Developer a reasonable time to submit any required applications for amendments to the Project Approvals for review and consideration by the City Council. Any such changes shall be subject to the Approval of City in its sole and absolute discretion, following, if required, additional environmental analysis and review. If City staff and Master Developer are unable to agree on the changes to this Agreement within the time period set forth above, or if the City Council to the extent required does not Approve the proposed changes to this Agreement, then City may submit to Master Developer a Phase Termination Notice and terminate Master Developer's rights with respect to the applicable Phase (or portion thereof) in accordance with the terms of Article 7 hereof.

4.8 Special Procedures for Phase 2A. The MCP identifies the EOS Variant for the parcel shown on the Phasing Plan as Phase 2A (**"Phase 2A"**). As a public benefit to the Project, the Parties have agreed to proceed with the EOS Variant in which Phase 2A will be reserved for park, recreation and open space uses that are complementary to, and do not unreasonably interfere with, the City Center Phases. In order to implement the EOS Variant in connection with the rest of the Project, Phase 2A shall be subject to the following provisions, notwithstanding anything to the contrary in this Agreement, including this Article 4:

4.8.1 Developer Rights and Obligations.

(a) Master Developer or a Phase Developer permitted hereunder shall Take Down Phase 2A in accordance with the Schedule of Performance and at the rent set forth in Section 6.1.8 hereof.

(b) The form of Ground Lease for Phase 2A shall be modified to reflect the following terms:

(i) The permitted uses shall be limited to interim uses that will not unreasonably interfere with the City's ability to implement the EOS Variant upon the Ground Lease termination. By example and without limitation, permitted uses shall include construction staging, temporary special events and surface parking. In addition, Phase Developer shall have

the right to regrade and lower the contours of Phase 2A and to export and use clean topsoil from Phase 2A for use as needed within Parcel 4 (as shown on the Phasing Plan) or elsewhere within the Project Site.

(ii) As a condition to the effectiveness of the Phase 2A Ground Lease, unless otherwise approved in connection with the Phase 2 DAP, Master Developer shall have entered into an agreement on terms reasonably satisfactory to the City governing Master Developer's obligation to provide an access road to Parcel 3 from Parcel 4 (the "**Parcel 3 Access Road**"), including schedule, scope of development and procedures for City approval and acceptance. Without limiting the foregoing, the improvements to be constructed under the agreement shall be consistent with the requirements of the MCP and IMP, including, without limitation, the Parcel 3 Access Road improvements described in the MCP Enhanced Open Space "EOS" Variant, and shall require Substantial Completion of the Parcel 3 Access Road no later than the effective date of the Phase 2A Lease Termination Notice (defined below).

(iii) The Phase Developer shall return the Phase 2A premises to City in accordance with the requirements of the Ground Lease (including construction of the Parcel 3 Access Road); provided, however, that if Developer exports topsoil from Phase 2A, then it shall return the Phase 2A premises to the City in a rough-graded condition.

(c) Upon (30) thirty days' prior written notice by the Phase Developer to the City (the "**Phase 2A Lease Termination Notice**"), City and the Phase Developer shall execute a Ground Lease termination agreement in recordable form that will terminate the Phase 2A Ground Lease as of the date for termination identified in the Termination Notice, but in no event later than twenty-four (24) months after the effective date of the Phase 2A Ground Lease, subject to Section 4.8.1(d) below.

(d) It is the intent of the Parties that the Base Rent payable under the Phase 2A Ground Lease as of the termination date will be re-allocated to the Base Rent payable under one or more Ground Lease(s) then in effect (as determined by Developer in its sole discretion to be identified in the Termination Notice). Therefore, in no event shall the termination of the Phase 2A Ground Lease become effective without the City and the applicable Phase Developer(s) entering into a concurrent amendment(s) to the Ground Lease(s) identified in the Phase 2A Lease Termination Notice that adjusts the Base Rent thereunder to fully account for the Base Rent payable to the City under the Phase 2A Ground Lease as of the termination date. In the event Developer wishes to again reallocate the Base Rent originally payable under the Phase 2A Ground Lease to future Ground Leases upon their effectiveness, City shall accommodate such request through appropriate documentation as necessary to implement the increase or decrease in Base Rent as applicable, subject to the agreement of the tenant under the applicable Ground Lease.

(e) Master Developer shall pay to the City up to Five Million Dollars ($5,000,000) for the design and construction of the City Place Park, as described in the MCP (the "**City Place Park**"), of which Five Hundred Thousand Dollars ($500,000) may be used by the City for planning and design work for the initial concept design (the "**City Place Park Design Contribution**"), with the remaining amount to be used for construction of the Phase 2A park (the "**City Place Park Construction Contribution**"). City shall include its

anticipated City Place Park planning and design costs in its Semi-Annual Budget and Master Developer shall advance funds for the City Place Park Design Contribution in accordance with the procedures for payment of City Costs set forth in Section 26 up to the maximum amount payable of Five Hundred Thousand Dollars ($500,000). Master Developer shall pay to City the City Place Park Construction Contribution within thirty (30) days after request by City, but in no event earlier than the City's Commencement of the City Place Park improvements. City shall use the City Place Park Construction Contribution solely for Hard Costs for construction of the City Place Park and shall provide Master Developer with quarterly invoices showing its expenditure of the City Place Park Construction Contribution up to the maximum amount.

(f) Upon termination of the Phase 2A Lease, Master Developer shall have no further liability or obligations with respect thereto except for its funding commitment under Section 4.8.1(e) above.

4.8.2 City Rights and Obligations.

(a) Upon termination of the Phase 2A Lease, City will be solely responsible for the development, maintenance and operation of City Place Park. In connection therewith, City hereby agrees to Indemnify Master Developer, each Phase Developer, and their respective Mezzanine Lenders and Mortgagees, if any, and each officer, director, Affiliate, direct or indirect interest holder, manager, trustee, contractor, agent or representative of any of the same (collectively, "**Indemnified Parties**") from and against any and all loss, cost, liabilities, suits, obligations, fines, damages, penalties, claims, costs, charges and expenses (including engineers', architects' and attorneys' fees and charges) asserted against or incurred by any Indemnified Party related to the development, use, operation or maintenance of Phase 2A from and after the termination of the Phase 2A Lease except to the extent that such failure is caused by the breach of this Agreement by Master Developer, any Phase Developer, or any tenant or occupant of a Phase, or any negligence or misconduct by any Indemnified Party or any tenant or occupant of a Phase. The terms of this Section 4.8.2 shall survive the termination of this Agreement and shall survive as to each Phase of the Project Taken Down by a Developer through the expiration of the applicable Ground Lease for that Phase.

(b) City, in consultation with Master Developer, shall diligently undertake the planning and design work for the City Place Park in an expeditious manner and will use best efforts to obtain on or before the effective date of the Phase 2A Termination Notice all required local regulatory approvals (including completion of environmental review to the extent required and approval by the Planning Commission and/or the City Council) necessary to Commence construction of City Place Park improvements.

(c) City shall be responsible for a community engagement process related to the development of City Park pursuant to this Section 4.8.2.

(d) Upon termination of the Phase 2A Lease, City shall restrict the use of City Place Park to park, passive and participatory recreation (such as athletic fields) and open space uses, which may include special events, fairs and festivals. Without limiting the foregoing, City shall not develop or permit the development of the City Place Park under a lease or otherwise for any residential, commercial or industrial use (other than ancillary

uses that directly serve the public park, open space and recreation uses, such as, but not limited to, small kiosks and equipment rental) through the expiration of the final Phase Ground Lease for the Project. The restrictions under this Section 4.8.2(d) shall survive the expiration or termination of this Agreement and upon request of Master Developer, City shall record a deed restriction against the title to City Place Park reflecting the terms hereof.

5. Development Area Plans. As provided in the Development Agreement and the MCP, DAPs for the Project Site will be processed in accordance with the procedures set forth in the CityPlace Santa Clara Development Area Plans and Architectural Review Submittal and Approval Procedures attached as Appendix C to the MCP (the "**DAP Procedures**").

5.1 Submittal of DAP Application. No later than the Outside Date for the application of a DAP for each Phase, as set forth in the Schedule of Performance (as such Outside Date may be extended for Excused Delay), Master Developer or the designated Phase Developer shall submit a Substantially Complete DAP application to City for the applicable Phase (or Partial Phase), provided, however, that no DAP application from Developer shall be required for Phase 2A. If there is any disagreement as to the scope of Improvements to be included within the DAP, such matter shall be submitted to arbitration as an Expedited Arbitration Matter in accordance with the terms of Article 20 hereof. The DAP submittal shall include all materials required by the DAP Procedures, including, without limitation, the following documentation that relate specifically to the Developer's obligations under this Agreement:

5.1.2 An updated Best Efforts Report in accordance with Section 5.3.7(a) below).

5.1.3 Subject to Section 29.34 hereof (Limitations on Disclosure), a financing plan (the "**Financing Plan**") in the format attached hereto as Exhibit I and that conforms to the allocation of financial responsibilities set forth in Article 15 hereof and includes the following information to the extent know at that point in time: (i) a preliminary budget of development and construction costs (including, without limitation, anticipated Hard Costs and Soft Costs, including preliminary identification of Premium Costs by the categories set forth in Exhibit N); (ii) projected total debt and equity funding, and proposed funding sources to the extent known; (iii) the amount and sources of funding of capital and separately of maintenance costs that Master Developer intends to fund through public financing vehicles, including but not limited to community facilities districts ("**CFDs**"), provided, however, that any such public financing shall not involve the City's general fund; and (iv) the mechanism by which the privately-maintained Public Improvements within the Phase shall be financed (such as homeowner's association dues or a maintenance CFD).

5.2 Effect of Failure of Developer to submit DAP Application. Except with respect to Phases 1 and 2 (and for Phase 2A for which it is inapplicable), if Developer fails to submit a Substantially Complete DAP application to City for any portion of a Phase for which a DAP application is required by the applicable Outside Date (as it may be extended by Excusable Delay, if applicable), such failure shall not constitute a default hereunder by Master Developer but City may submit to Master Developer a Phase Termination Notice and terminate Master

Developer's rights with respect to the applicable Phase (or portion thereof) in accordance with the terms of Article 7 hereof.

5.3 Development Obligations. The following development obligations (collectively, the "**Development Obligations**") shall be included in the DAP(s) for the relevant Phases (or Partial Phases), and shall be implemented and funded by Master Developer. Each DAP shall indicate which specific Improvements are intended to fulfill each of the Development Obligations. Master Developer shall have the right to allocate the Development Obligations to the applicable Phase Developers; however, Master Developer shall remain jointly and severally liable for any failure to meet the Development Obligations in accordance with the timing and terms set forth in Section 9.1 hereof.

5.3.1 Relocation of Fire Station. Development of the Project will necessitate the relocation of the existing Fire Station 10, located at 5111 Stars and Stripes Drive (the "**Fire Station**"). This relocation may entail a move first to a temporary fire station location (the "**Temporary Station Site**") and then to a new permanent fire station location (the "**Final Station Site**"), or it may entail a move directly to the Final Station Site. Neither the Temporary Station Site nor the Final Station Site have been conclusively selected as of the Reference Date. The process for review and approval of the Temporary Station Site and Final Station Site shall be as follows:

(a) Temporary Station Site Improvements.

(i) The DAP Application for Phase 1 shall include the following information related to the temporary Fire Station: (i) the location of the Temporary Station Site, which may be on land provided by a Developer Party, City, or a third party that is not on the Project Site; and (ii) a conceptual design and construction schedule for the temporary fire station (together, the "**Temporary Station Site Improvements**") (if applicable).

(ii) Master Developer shall Complete the Temporary Station Site Improvements Approved in accordance with the Phase DAP no later than the first Certificate of Occupancy for any Building within Phase 1; however, the City may require completion of the Temporary Station Site Improvements earlier than such date if City reasonably determines that construction of Infrastructure and/or Buildings within Phase 1 could interfere with access to, and/or operations of, the existing Fire Station.

(b) Final Station Site Improvements.

(i) As a condition to Commencement of Infrastructure within Phase 2, Developer shall have obtained City Council Approval of the conceptual design, location, and construction schedule for the final station (together, the "**Final Station Site Improvements**").

(ii) Subject to the terms of Section 5.3.1(b)(iii), below, Master Developer shall Complete the Final Station Site Improvements no later than the issuance of the first Certificate of Occupancy for any Building within Phase 2.

(iii) City and Master Developer may, by mutual agreement, elect to have the City construct the Final Station Site Improvements itself in lieu of Master Developer. Such election shall be made, if at all, through a separate construction funding agreement mutually agreeable to both Parties that must be executed prior to Developer's Commencement of Infrastructure within Phase 2. If City undertakes the construction of the Final Station Site Improvements in accordance with this Section 5.3.1(b)(iii), (A) Master Developer shall not be subject to the timing requirements set forth in Section 5.3.1(b)(ii), above, and (B) in no event shall City withhold a Certificate of Occupancy for any Building within Phase 2 on the sole basis that the Final Station Site Improvements are not yet Complete.

(c) Scope of Improvements and Security. The Temporary Station Site Improvements and the Final Station Site Improvements shall be of a size and design suitable to meet the City's needs for the time frame in question. The Final Station Site Improvements shall include a minimum of three (3) truck bays. The Temporary Station Site Improvements and Final Station Site Improvements shall be considered part of the Secured Public Improvements or Secured Phase Improvements for the Phase in which they are required to be constructed. As such, construction of the Temporary Station Site Improvements and Final Station Site Improvements must be secured by Adequate Security pursuant to Article 28 hereof.

5.3.2 Minimum Initial Buildings. The "**Minimum Initial Buildings**" shall consist of the following: (i) not less than six hundred thousand (600,000) square feet of office, hotel and/or Retail Buildings in Phase 1, which shall include a minimum of a three hundred (300) key (or larger) hotel other than an extended stay hotel and fifty thousand (50,000) square feet of Retail uses; (ii) not less than seven hundred thousand (700,000) square feet of Buildings in Phase 2, consisting of (x) five hundred thousand (500,000) square feet of Retail, and (y) two hundred thousand (200,000) square feet of office and/or a three hundred (300) key (or larger) hotel; and (iii) not less than two hundred (200) residential units in the aggregate in Phases 1 and 2 (the "**Minimum Residential Buildings**"). The Minimum Initial Buildings may be submitted in one or more DAPs within Phases 1 and 2 and may be constructed over time, so long as all of the Minimum Initial Buildings are Completed by the Outside Dates therefor set forth in the applicable Phase Schedule of Performance, in accordance with Article 9 hereof (as such Outside Dates may be extended for Excusable Delay).

5.3.3 Additional Initial Buildings. In addition to the Minimum Initial Buildings, the Master Developer shall use best efforts to build an additional two hundred thousand (200,000) square feet of office, Retail and/or residential Buildings in Phase 1, and shall use best efforts to build an additional two hundred and thirty thousand (230,000) square feet of office, Retail and/or residential Buildings in Phase 2 (collectively, the "**Additional Initial Buildings**"). The Additional Initial Buildings may be included in one or more DAPs within Phases 1 and 2, as applicable, may be constructed over time and shall be subject to the best efforts provisions set forth in Section 5.3.7 below.

5.3.4 Minimum Retail Buildings. The "**Minimum Retail Buildings**" shall consist of the following: (i) not less than fifty thousand (50,000) square feet of Retail Buildings in Phase 1; and (ii) not less than seven hundred and fifty thousand (750,000) square feet of Retail Buildings in the aggregate in Phases 2 and 3. The total square feet of the Minimum Initial Buildings and Additional Initial Buildings intended for such Retail uses within

the applicable City Center Phase(s) shall be included in any calculation of Minimum Retail Buildings. The Minimum Retail Buildings may be included in one or more DAPs within each of the City Center Phases and may be constructed over time, so long as all of the Minimum Retail Buildings are Completed by the Outside Date therefor set forth in the applicable Phase Schedule of Performance, in accordance with Article 9 hereof (as such Outside Dates may be extended for Force Majeure).

5.3.5 Additional Retail Buildings. Developer shall use best efforts to build an aggregate of one million five hundred thousand (1,500,000) square feet of Retail, within Phases 2 and 3 (collectively, the "**Additional Retail Buildings**"). The total square footage of the Minimum Retail Buildings within Phases 2 and 3 shall be included in any calculation of the Additional Retail Buildings. The Additional Retail Buildings may be included in one or more DAPs within Phases 2 and 3, as applicable, may be constructed over time and shall be subject to the best efforts provisions set forth in Section 5.3.7 below.

5.3.6 Department Stores. Without limiting the foregoing provisions regarding the Minimum Retail Buildings and Additional Retail Buildings, Developers shall use best efforts to Complete and ensure the opening of two (2) to three (3) department stores of one hundred thousand (100,000) gross square feet or larger with middle to high price points in terms of caliber of merchandise (each, a "**Major Department Store**"), at least two (2) of which would be stores that are not presently located within the City, unless otherwise reasonably approved by City. Examples of the contemplated caliber of "Major Department Stores" include Nordstrom and Neiman Marcus. The Major Department Stores may be included in one or more DAPs within each of Phase 1, Phase 2, and/or Phase 3, may be constructed over time and shall be subject to the best efforts provisions set forth in Section 5.3.7 below.

5.3.7 Best Efforts for Additional Buildings and Additional Retail Buildings. For purposes of Sections 5.3.3, 5.3.5, and 5.3.6 hereof, "best efforts" shall mean the following:

(a) Required Efforts. The applicable Phase Developer shall engage in diligent marketing efforts reasonably designed to identify and obtain credit-worthy tenants at market rates sufficient to justify the construction of the Additional Buildings, Additional Retail Buildings, or Major Department Stores, as applicable. On the earlier of (i) the date that is sixty (60) days after the Effective Date of this Agreement or (ii) the submission of a Phase Option Notice for any Phase, Master Developer shall submit to the City Manager a report that describes the efforts undertaken by Master Developer and each applicable Phase Developer to achieve the development of the Additional Buildings, Additional Retail Buildings, or Major Department Stores within Phase 1, Phase 2 and Phase 3, as applicable (the "**Best Efforts Report**"). Master Developer shall subsequently submit an updated Best Efforts Report to the City Manager according to the following schedule: (a) every six (6) months after submission of the first Best Efforts Report; (b) as part of the submission of a Phase Option Notice for Phase 1, Phase 2, and/or Phase 3; (c) as part of the submission of a DAP for Phase 1, Phase 2, and/or Phase 3; and (d) as part of any request to implement an Alternate Leasing Plan (as described in Section 5.3.7(b) below). The Best Efforts Report shall include a description of the leasing plan for the applicable Phase, marketing and leasing outreach efforts designed to identify and obtain tenants as necessary to justify the construction and/or tenanting of the Additional Buildings,

Additional Retail Buildings, or Major Department Stores, a description of the success or failure of such efforts and a list of brokers engaged to market the property, if any, recognizing that the majority of Master Developer's leasing efforts may be conducted in-house. Master Developer's obligation to submit updated Best Efforts Reports shall continue until Master Developer has either achieved the development of the Additional Buildings, Additional Retail Buildings, and Major Department Stores within Phase 1, Phase 2 and Phase 3, as applicable, or has obtained relief from all or a portion of such requirement, as described in Section 5.3.7(b) below.

(b) Alternate Leasing Plan/Relief from Best Efforts. The Parties recognize that, despite best efforts, many factors could contribute to Developer's failure to achieve some or all of the Additional Buildings, Additional Retail Buildings, or Major Department Stores within Phase 1, Phase 2 and Phase 3, as applicable, including a lack of market demand, financial infeasibility based on construction and entitlement costs (including availability of labor and materials), prevailing market rents and the availability of financing at commercially reasonable terms. If, any time after Take Down for the applicable Phase, Developer reasonably determines that despite its best efforts, it will be unable to achieve some or all of the Additional Buildings, Additional Retail Buildings, or Major Department Stores within Phase 1, Phase 2 and Phase 3, as applicable, and that an alternative leasing plan would enable the Phase Developer to feasibly develop the Development Parcels with other uses that may not satisfy, in part or in full, the achievement of the Additional Initial Buildings, Additional Retail Buildings, or Major Department Stores (the "**Alternate Leasing Plan**"), Developer may pursue an Alternate Leasing Plan and be relieved of the obligation to undertake best efforts for all or a portion of the Additional Buildings, Additional Retail Buildings, or Major Department Stores for the applicable Phase in accordance with the process set forth in this Section 5.3.7(b). In order to be relieved of the best efforts obligation, Developer shall first submit to the City a written request that it be relieved of all or a portion of its best efforts obligations, which request will include the following: (i) a written request as to the nature and scope of the requested relief, including the applicable Phase(s) and square footage of improvements; (ii) a copy of its Alternate Leasing Plan for the applicable Phase(s); and (iii) an updated Best Efforts Report covering a minimum period of twenty-four (24) months (starting with the April 2013 execution of the ENA) that will include a description of factors that have contributed to Developer's inability to develop the applicable Additional Buildings, Additional Retail Buildings, or Major Department Stores for which it seeks relief. Such factors may include market studies showing a lack of demand, pro formas, case histories describing negotiations with major tenants and the reasons that such tenants were unable or unwilling to lease the Additional Initial Buildings, Additional Retail Buildings, or Major Department Stores, the availability of financing at commercially reasonable terms and/or costs of construction (including availability of labor and materials). Upon receipt, City and Developer shall meet and confer in good faith for a period of up to ninety (90) days to review and discuss the updated Best Efforts Report and the Alternate Leasing Plan. The parties' rights and obligations during such ninety (90) day period shall be as follows:

(i) Within the first forty-five (45) days of the ninety (90) day period, the City Manager shall present an informational report to the City Council concerning the Master Developer's Best Efforts Report, Alternate Leasing Plan, and request for relief pursuant to this Section 5.3.7(b). The Master Developer shall be invited to participate in the presentation, and the City Council will be invited to provide feedback on the request.

(ii) During the ninety (90) day meet and confer period, City shall have the right to suggest additional marketing efforts or revisions to the Alternate Leasing Plan, to which Developer shall be obligated to respond in good faith by (a) taking any specific steps requested by City, including but not limited to contacting certain potential tenants, and (b) reasonably exploring any other options suggested by City. Notwithstanding the foregoing, however, the updated Best Efforts Report and Alternate Leasing Plan shall not be subject to City approval, nor shall Developer be obligated to adopt or institute changes thereto proposed by the City.

(iii) Prior to the expiration of the ninety (90) day period, so long as Developer has complied with the substantive and procedural requirements set forth in this Section 5.3.7(b), the City Manager shall issue a letter relieving Developer of the applicable best efforts requirement.

Nothing herein shall relieve Developer of its obligation to obtain the approvals specified in the DAP Procedures for the Alternate Leasing Plan (which shall be processed in accordance with the DAP Procedures and not withheld for failure to include the Additional Initial Buildings, Additional Retail Buildings, or Major Department Stores) or any amendment to the MCP to the extent required (which may be given or withheld by City in its sole discretion).

(c) The issuance of a Certificate of Occupancy for any portion of the Additional Initial Buildings or Additional Retail Buildings, or the opening for business of the Major Department Stores shall satisfy the best efforts requirements under Sections 5.3.3, 5.3.5, and/or 5.3.6 hereof, as applicable, as to those improvements.

5.4 Satisfaction of Multi-Phase Development Obligations.

5.4.1 Because the Minimum Residential Buildings can be satisfied between Phases 1 and 2, the DAP for Phase 1 shall indicate whether or not such Development Obligation will be met by Improvements constructed as part of Phase 1 or if all or a portion of such Development Obligation will be deferred to Phase 2 (which will include verification that residential uses will be permitted by environmental regulatory plans to be constructed on Phase 2 and that Developer deems the conditions of such residential development on Phase 2 consistent with environmental regulatory plans to be feasible). If all or a portion of the Development Obligation will be deferred to Phase 2, then the DAP for Phase 2 shall demonstrate how such Development Obligation will be satisfied within Phase 2.

5.4.2 For all other Development Obligations that can be satisfied between two (2) or more of the City Center Phases (i.e., the Minimum Retail Buildings, the best efforts requirements for the Additional Retail Buildings, and the best efforts requirements for Major Department Stores), the DAP for Phase 2 shall indicate whether or not all of each such Development Obligation will be met by Improvements constructed as part of Phase 2, or if part of such Development Obligation will be deferred to Phase 3. If some of the Development Obligation will be deferred to Phase 3, then the DAP for Phase 2 shall also include a preliminary construction schedule that shall demonstrate how such Development Obligation will be satisfied between Phase 2 and Phase 3.

5.4.3 The DAP for Phase 3 shall indicate how any Development Obligations that may be allocated to Phase 3 will be met with construction of City Center Phase 3, to the extent that such Development Obligations have not been previously satisfied by the inclusion of Improvements within the DAPs for Phases 1 and/or 2, as applicable.

5.4.4 If any portion of the Development Obligations allocable between the Phases is deferred to Phase 3 pursuant to Section 5.4.2, above, but Phase 3 is not Taken Down by the applicable Outside Date set forth in the Schedule of Performance, then such Development Obligations shall be re-allocated to Phase 2, and the Phase Developer for Phase 2 shall take all necessary actions to ensure that such Development Obligations are Completed in accordance with a revised Phase Schedule of Performance Approved by the City in accordance with Section 9.1.2(a).

5.5 Parking and Access. Parking and access generally shall be governed by the DAPs and the Master CC&Rs. In addition, Master Developer, Phase Developers and City will cooperate and manage portions of the Tasman Parcel, Airspace Parcels and City Landfill Parcels so that approximately three thousand (3,000) parking spaces ("**Non-NFL Event Parking Spaces**") will be available to serve non-NFL events at Levi's Stadium. Concurrently with the first DAP application, to be updated concurrently with each subsequent DAP application, Master Developer and City will work cooperatively on preparing a Parking Management Plan (the "**Parking Management Plan**") that will show how the Non-NFL Event Parking Spaces will be accommodated on all remaining City-owned property within the Project, and, if all of the Non-NFL Event Parking Spaces cannot be accommodated on City-owned property (*e.g.*, as future Phases are Taken Down and City-owned property is reduced), within the non-reserved retail parking developed for any Phases. The Parking Management Plan, which shall survive the termination of this Agreement, will incorporate the following underlying principles: (1) Non-NFL Event Parking Spaces will be prioritized on City-owned property that has not been Taken Down; (2) City will take reasonable measures at its sole cost and expense to locate the Non-NFL Event Parking Spaces on property not then Ground Leased to Developer at the time in question, including any paving, striping, operation and management that City deems to be necessary in its sole discretion; and (3) Non-NFL Event Parking Spaces that are proposed on Development Parcels that are subject to a Ground Lease will be available on a first-come, first-serve basis within non-reserved retail parking developed for the applicable Phase.

6. Ground Leases. Following satisfaction of the conditions set forth in Section 6.2 hereof, and prior to the applicable Outside Date set forth in the Schedule of Performance (as such Outside Date may be extended due to Excusable Delay, if applicable), City and the applicable Phase Developer shall enter into a Ground Lease for a Phase. A Phase Developer shall be deemed to have Taken Down the Development Parcel(s) within a Phase upon the effective date of the Ground Lease for the applicable Phase.

6.1 Form of Ground Leases . The form of Ground Lease to be executed for Phase 1 shall be the form attached hereto as Exhibit G-1, and the form of Ground Lease to be executed for Phases 2 through 7 (as depicted in the Phasing Plan as of the Reference Date) shall be the form attached hereto as Exhibit G-2, in each case modified or supplemented as follows:

6.1.1 The Phase Developer shall be inserted into the caption to the Ground Lease and as a signatory, in each case as "Tenant" thereunder, and the proper Phase shall be identified in all places where the term is used.

6.1.2 The dates of all documents referred to in the Ground Lease shall be inserted and any other minor, administrative changes shall be made, as appropriate.

6.1.3 The Commencement Date and Expiration Date (as defined in the Ground Lease) shall be updated, as applicable, and consistent with the dates directed in the forms of Ground Lease attached as Exhibit G-1 and Exhibit G-2.

6.1.4 For Phases 2 through 7, the legal description of and reference to the Development Parcel(s) (or portions thereof) encompassing the Phase in question shall be inserted where required.

6.1.5 For Phase 2A, the Ground Lease shall reflect the terms described in Section 4.8 hereof.

6.1.6 The definition of Project Documents shall be amended to reflect any other additional project documents pertaining to the development and use of the Phase that were entered into after the Reference Date and were Approved by City and Master Developer or any amendments to existing Project Documents.

6.1.7 The definitions and other provisions of Article 3 of the Ground Lease that require revision to reflect dates as directed in the form of Ground Lease attached as Exhibit G-1 and Exhibit G-2 shall be updated to reflect the applicable dates as so directed.

6.1.8 For Phases 2 through 7, subject to the terms of Section 6.1.9, below, the initial annual "**Base Rent**" for each Ground Lease shall be inserted into Article 3 thereof, and shall be, for each applicable Phase, as shown in the Phasing Plan for the Project as of the Reference Date (such original Phase boundaries being referred to herein as the "**Original Phase Boundaries**"):

Phase 2 – One Million Five Hundred Thousand Dollars ($1,500,000);

Phase 2A – Seven Hundred Fifty Thousand Dollars ($750,000);

Phase 3 – Five Hundred Thousand Dollars ($500,000);

Phase 4– Seven Hundred Fifty Thousand Dollars ($750,000);

Phase 5 – Seven Hundred Fifty Thousand Dollars ($750,000);

Phase 6 – Eight Hundred Seventy-Five Thousand Dollars ($875,000); and

Phase 7 – Eight Hundred Seventy-Five Thousand Dollars ($875,000).

6.1.9 Notwithstanding the Base Rent amounts provided in Section 6.1.8, above, the following modifications shall be made to the initial annual Base Rent for a particular Phase:

(a) If the Phasing Plan has been altered such that the gross square footage of the overall Phase has changed, then the initial annual Base Rent for the Phase in question shall be determined by multiplying the Base Rent for the applicable Phase as set forth in Section 6.1.8 by a fraction, the numerator of which is the gross square footage of the altered footprint of the Phase (calculated based upon the Final Tract Map for the Phase) and the denominator of which shall be the gross square feet of the original footprint of the Phase, as shown in the Phasing Plan for the Project as of the Reference Date.

(b) Notwithstanding the terms of Section 6.1.9(a), above, if the altered Phase encompasses portions of more than one (1) Phase pursuant to the Original Phase Boundaries, then the initial annual Base Rent for the altered Phase shall be calculated separately for each portion of the altered Phase that is located within different Original Phase Boundaries, based on the Base Rent for the Original Phase Boundaries in question as set forth in Section 6.1.8.

(c) No reallocation of square footages of Buildings pursuant to a DAP shall result in a change in the amount of Base Rent due under the Ground Lease for the Phase in question.

(d) To the extent that the Phase Option for any of Phases 3 through 7 has not been exercised within ten (10) years after the execution and delivery of a Ground Lease for Phase 2, then the initial annual Base Rent for each such Phase shall increase at the rate of three percent (3%) per annum from the end of such period until the date that the Phase Option is exercised with respect to such Phase.

6.1.10 The construction obligations described in Article 9 of this Agreement shall be incorporated into the Ground Leases as specified therein to the extent applicable.

6.1.11 The Ground Lease for each Phase shall reserve easements as necessary for public utilities and rights of way.

6.1.12 Except for the Phase 2A Ground Lease, the Ground Lease for each Phase shall require the Phase Developer to construct the applicable Infrastructure and open space facilities approved in connection with the applicable Phase DAP application in accordance with the MCP and IMP. Notwithstanding the foregoing, the Parties recognize that the City Center North Neighborhood Park is included with Phase 2A for which no DAP application will be submitted. Therefore, if the Phase 3 DAP Application (or the Phase 2 DAP Application if required for compliance with CSCC Chapter 17.35, as it may be amended from time to time) does not include the relevant information required under the DAP Procedures pertaining to the City Center North Neighborhood Park (as described in the MCP), Developer shall include the proposed terms for an agreement regarding the timing and procedures for approval and

development of the City Center North Neighborhood Park, which agreement shall be a condition of approval to the applicable DAP Application.

6.1.13 If the approved Phase would allow the development of fractional interest units, the Ground Lease must include a mechanism establishing a transient occupancy in-lieu fee running with the land, payable in the same manner and subject to the same terms and conditions as the City's Tax on Transient Occupancy of Hotel Rooms (CSCC Chapter 3.25 (as it may be amended from time to time)).

6.1.14 The Ground Lease shall set forth all of the Mitigation Measures set forth in the Project MMRP that are applicable to the Phase in question, and obligate the Phase Developer to perform, or cause to be performed, all such Mitigation Measures.

6.1.15 The Landfill related costs described in Section 12.2 of the Ground Lease attached as Exhibit G-2 and allocated to such Phase shall be finalized.

6.1.16 If the approved Phase would allow for the development of Retail uses other than restaurants, the Ground Lease for such Phase shall require the Tenant thereunder to use commercially reasonable efforts to (i) focus on mid-to-high level price points, and (ii) include either national stores or local enterprise that have a demonstrated track record of providing unique and high quality merchandise and service.

6.1.17 If the approved Phase would allow for the development of Retail uses, the Ground Lease for such Phase shall require the Tenant thereunder to prepare a leasing plan that will be finalized after consultation with (but not approval by) the City. The leasing plan will be updated every two (2) years, or more frequently as reasonably determined by the Tenant, and will contemplate a variety of brands and merchandise in order to appeal to a wide demographic of customers.

6.1.18 If the approved Phase contains all or any part of the Station Area, the Ground Lease for such Phase shall provide that the Tenant thereunder shall reconvey that part of the Station Area to City upon City's request, in accordance with the terms of Section 15.3, with no corresponding reduction in Base Rent.

6.1.19 Such other matters as are Approved by both Master Developer and the City Manager.

6.2 Conditions Precedent to Execution of Ground Leases.

6.2.1 Phase Developer Conditions to Execution of Ground Leases. The following are conditions precedent to the execution and delivery of a Ground Lease by a Phase Developer with respect to a particular Phase (or Partial Phase), to the extent not waived by such Phase Developer by notice to City:

(a) City shall have performed in all material respects all obligations under this Agreement and the Development Agreement that relate to the Phase in question and are required to be performed by City on or before the date of execution of such Ground Lease;

(b) Prior to execution of the Ground Lease for the first Phase to be Taken Down, City and Master Developer shall have executed a Landfill Operation and Management Agreement in accordance with Section 14.1, below;

(c) Prior to execution of the Ground Lease for the first Phase to be Taken Down, City and Master Developer shall have agreed upon the form of Master Conditions, Covenants and Restrictions (the "**Master CC&Rs**") that shall contain at a minimum, the provisions set forth in Exhibit H attached hereto, and such form shall have been recorded against the title of the City Landfill Parcels, the Airspace Parcels, and the Tasman Parcels prior to or concurrently with the delivery of the Ground Lease for the first Phase to be Taken Down;

(d) In accordance with Article 13, below, the Title Company shall be irrevocably committed to issue to the Phase Developer a CLTA leasehold title insurance policy (or at the Phase Developer's option an ALTA leasehold title insurance policy), with such endorsements, reinsurance and direct access agreements as the Phase Developer shall reasonably designate and the Title Company shall accept; provided, however, that the applicable Phase Developer shall have used commercially reasonable efforts to secure such insurance policy. The title policy will be in an amount reasonably designated by the Phase Developer and acceptable to the Title Company, and will insure that leasehold title to the property at issue and all appurtenant easements are vested in the Phase Developer, subject only to the Permitted Exceptions. If the Phase Developer elects to obtain an ALTA leasehold policy, such Phase Developer shall be responsible for securing any and all surveys, engineering studies and other documents required to obtain an ALTA leasehold policy in sufficient time to permit execution of the Ground Lease as required by this Agreement. A title insurance policy complying with this paragraph (d) is referred to herein as the "**Phase Title Policy**";

(e) Except for Phase 2A, the applicable Phase Developer shall have obtained all requisite Authorizations necessary to Commence construction of the Infrastructure for the applicable Phase in accordance with the terms of this Agreement and the applicable Schedule of Performance, and such Authorizations shall have become final, binding and non-appealable; and

(f) In the event there are tenants or other occupants lawfully occupying any portion of the Phase who are entitled by Applicable Law (including, to the extent applicable, the California Relocation Act (sections 7260 et seq. of the California Government Code)) to relocation assistance, such tenants or other occupants shall have been relocated in accordance with the terms of Section 18.2 hereof.

6.2.2 City Conditions to Execution of Ground Leases. The following are conditions precedent to the execution and delivery of a Ground Lease by City with respect to a particular Phase (or Partial Phase), to the extent not waived by City by notice to the applicable Phase Developer:

(a) Prior to execution of the Ground Lease for the first Phase to be Taken Down, City and Master Developer shall have executed a Landfill Operation and Management Agreement in accordance with Section 14.1, below;

(b) Prior to execution of the Ground Lease for Phase 1, the City Council shall have Approved all required documentation related to the relocation of the existing Fire Station, pursuant to Section 5.3.1 hereof;

(c) Prior to execution of the Ground Lease for the first Phase to be Taken Down, City and Master Developer shall have agreed upon the form of the Master CC&Rs that shall contain at a minimum, the provisions set forth in Exhibit H attached hereto, and such form shall have been recorded against the title of the City Landfill Parcels, the Airspace Parcels, and the Tasman Parcels prior to or concurrently with the delivery of the Ground Lease for the first Phase to be Taken Down. The Master CC&Rs shall name City as a third party beneficiary with respect to the provisions thereof benefitting City;

(d) Except for Phase 2A, City shall have approved a DAP that encompasses all of the area to be Taken Down pursuant to the Ground Lease, in accordance with the terms of this Agreement;

(e) A Tentative Subdivision Map shall have been Approved that includes the applicable Phase in accordance with City's Subdivision Code;

(f) Except for Phase 2A and further subject to Section 29.34 (Limitations on Disclosure), the Phase Developer shall have provided to City for informational purposes an updated Financing Plan for the applicable Phase.

(g) Except for Phase 2A, the Phase Developer shall have provided to City an anticipated construction schedule for all Improvements depicted in the DAP(s) for such Phase, including any Improvements that are intended to meet those Development Obligations set forth in Sections 5.3.2, and 5.3.4. If the Phase subject to this Section 6.2.2 is Phase 2 or Phase 3, the construction schedule shall also include any updates to the allocation of Development Obligations previously provided pursuant to Section 5.4 hereof.

(h) Master Developer and the Phase Developer shall have performed in all material respects all other obligations under this Agreement (including all Exhibits) that relate to the Phase in question and are required to be performed by Master Developer and the applicable Phase Developer on or before the date of execution of the Ground Lease for such Phase, including paying the Annual Landfill Costs and all City Costs then due and owing from Master Developer to City;

(i) Phase Developer shall have furnished to City certificates of insurance or duplicate originals of insurance policies as and to the extent required under the Ground Lease; and

(j) In the event there are tenants or other occupants lawfully occupying any portion of the Phase who are entitled by Applicable Law (including, to the extent applicable, the California Relocation Act (sections 7260 et seq. of the California Government Code)), to relocation assistance, such tenants or other occupants shall have been relocated in accordance with the terms of Section 18.2 hereof.

6.3 Ground Leases for Partial Phases. Master Developer shall have the option to Take Down one or more Partial Phases instead of a full Phase, so long as the conditions set forth in Section 4.2.1 and Section 6.2 are met or waived by the applicable Party with respect to such Partial Phase.

6.3.1 Subsequent Partial Phases. To the extent that the conditions set forth in Section 6.2 are later met or waived by the applicable Party with respect to another Partial Phase within the same Phase by the applicable Outside Date (as such date may be extended for Excusable Delay, if applicable), then City and the applicable Phase Developer shall enter into a Ground Lease for the subsequent Partial Phase. The Phase Developer shall be deemed to have Taken Down such Partial Phase upon the effective date of the Ground Lease for the applicable Partial Phase.

6.3.2 Initial Base Rent for Partial Phases. Notwithstanding the provisions of Sections 6.1.9(a) and 6.1.9(b), above, the initial annual Base Rent for any Partial Phase other than the City Center Phases shall be determined by multiplying the Base Rent for the applicable Phase as set forth in Section 6.1.8 (as increased, if applicable, pursuant to Section 6.1.9(d) hereof) by a fraction, the numerator of which is the gross square feet of the land area of the Partial Phase and the denominator of which shall be the gross square feet of the land area of the Phase, as shown in the Phasing Plan for the Project as of the Reference Date. Notwithstanding the foregoing, however, if the altered Phase encompasses portions of more than one Phase pursuant to the Original Phase Boundaries, then the initial annual Base Rent for the altered Phase shall be calculated separately for each portion of the altered Phase that is located within different Original Phase Boundaries, based on the Base Rent for the Original Phase Boundaries in question as set forth in Section 6.1.8.

6.3.3 Initial Base Rent for Partial Phases within City Center Phases. If Master Developer delivers a Phase Option Notice for a Partial Phase within one of the City Center Phases, the Base Rent for the first Partial Phase with such Phase shall be as set forth in Section 3.1.2 of the form of Ground Lease attached hereto as Exhibit G-1 for Phase 1 and as set forth in Section 6.1.8 hereof for City Center Phases 2 and 3 without adjustment (in each case, the "**Initial Phase Base Rent**"). Notwithstanding the foregoing, at Master Developer's request, the Base Rent payable under each Ground Lease for a Partial Phase within the City Center Phases may be adjusted after the initial Ground Lease within that Phase to allocate Base Rent proportionally among the Partial Phases with that Phase, so long as the total amount of Base Rent attributable to the Phase is never less than the Initial Phase Base Rent at any time from and after the first Take Down of the Partial Phase (as such Initial Phase Base Rent may be increased over time in accordance with Section 6.1.9(d) hereof). For example, if Master Developer exercises its Phase Option for fifty percent (50%) of the land area of Phase 1 as a Partial Phase, the Base Rent under the initial Ground Lease will be one million, five hundred thousand dollars ($1,500,000), as required in Section 6.1.8. When Master Developer exercises its Phase Option for the remaining Partial Phase within Phase 1, Article 3 of the first Partial Phase Ground Lease will amend the Base Rent to seven hundred fifty thousand dollars ($750,000) (subject to agreement by the first Phase Developer) and the Base Rent for the second Partial Phase Ground Lease pursuant to Article 3 will be set at $750,000.

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

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

6.6 Concurrent Events. Concurrently with the execution of each Ground Lease, City, Master Developer, and the applicable Phase Developer, as applicable, shall take the following actions:

6.6.1 The applicable Phase Developer or Master Developer shall cause the Final Map for the Phase to be recorded in the Official Records; and

6.6.2 The applicable Phase Developer and Master Developer shall cause the Master CC&Rs to become applicable to the Phase by causing to be recorded against such Phase an annexation in the form required under the Master CC&Rs, with such changes thereto as Master Developer, the Phase Developer and City shall mutually Approve.

7. Failure to Meet Phase Outside Dates.

7.1 Notice of Intent to Terminate. The Schedule of Performance attached as Exhibit F hereto sets forth the Outside Dates for certain events over the life of the Project, including: (i) submission of Phase Option Notices for each Phase; (ii) submission of a Substantially Complete DAP for each Phase; and (iii) Taking Down each Phase (these three Outside Dates together shall be referred to herein as the "**Phase Outside Dates**"). Except with respect to Phases 1, 2 and 2A, if Developer fails to meet any Phase Outside Date (as it may be extended by Excusable Delay, if applicable) for all or any portion of a Phase, such failure shall not constitute a default hereunder by Developer, but City may notify Developer that City intends to terminate Developer's rights with respect to the portion of the applicable Phase for which Developer has not met the Outside Date in question, based on the Phase boundaries depicted in the Phasing Plan then in effect (the "**Phase Termination Notice**"). If Developer does not respond to such Phase Termination Notice by (i) submitting the Phase Option Notice, (ii) submitting the applicable DAP, or (iii) Taking Down the applicable Phase, as applicable, within forty-five (45) days after receipt of such notice, City may set a date for a public meeting on such termination and notify Developer of the meeting date, after which City may, with the Approval

of the City Council following the public meeting (and subject to Section 7.2.8, below), terminate Developer's rights with respect to the portion of applicable Phase that is the subject of the Termination Notice. Upon any such termination, Developer's rights and obligations under this Agreement for the affected real property shall, subject to Section 7.2.8, below, terminate and City shall have the right to record a Notice of Termination as set forth in Section 29.30. No such termination shall affect Developer's rights with respect to any Phase or Partial Phase for which Developer has complied with the applicable Outside Dates under any Phase Option already exercised or its rights to exercise any future Phase Option not yet exercised. In the event of such termination, Developer shall have no further obligation to install Infrastructure required for such Phase(s) (or Partial Phase(s)) as may be necessary to support the other Phases or Partial Phases within the Project, as set forth in the IMP and MCP, 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 (a "**Third Party**") that is offered the applicable Phase as part of a Development Opportunity in accordance with Section 7.2.8, below, each in their sole discretion. In the event of such termination, the Base Rent adjustment in the 45th Project Lease Year, as calculated in Section 3.3.2(b) and 3.3.3 of the form of Ground Lease, shall be adjusted so that the thirty million dollars ($30,000,000) set forth in those sections shall be thirty million dollars ($30,000,000) *multiplied by* a fraction, the numerator of which is the gross square footage of the footprint of Phases 2 through 7 *less* the gross square footage of the footprint of any of Phases 2 through 7 that have been terminated (as such gross square footage is calculated based upon the Final Map for each Phase), and the denominator of which will be the gross square footage of all Phases 2 through 7 (calculated based upon the Final Map for each Phase).

7.2 Offer of Development Opportunity. If City exercises its termination rights as set forth in Section 7.1, above, City may in its sole discretion offer the development opportunity that was terminated (the "**Development Opportunity**") to other qualified developers under a request for proposals or other process determined by City in its sole discretion, subject to the following:

7.2.1 The boundaries of the land subject to the Development Opportunity shall be as identified on the conceptual Phasing Plan then in effect.

7.2.2 Except as expressly provided under Section 7.2.4 and Section 7.2.5 hereof, City may require that the Development Opportunity conform to the material requirements of this Agreement with respect to the applicable real property or may make such changes to the Development Opportunity as City determines are appropriate under the circumstances.

7.2.3 If City offers the Development Opportunity to others following termination under Section 7.1, City must do so as part of an open and competitive process and, so long as Master Developer is not in Material Breach, Master Developer shall have the right to participate in the competitive process.

7.2.4 In formulating the Development Opportunity, City will not permit uses that are incompatible with Developer's development rights under any portion of this Agreement that has not been terminated.

7.2.5 The acceptance by a Third Party of the Development Opportunity shall be documented by the execution of a Development Opportunity Lease that, among other things, shall require the Third Party to: (i) conform to the requirements of the MCP (as may be amended from time to time); (ii) be obligated to pay its fair share of Annual Landfill Costs to be determined by a formula in which the total Annual Landfill Costs payment is multiplied by a fraction, the numerator of which is the gross square footage of the footprint of the Phase (calculated based upon the Final Map for the Phase) and the denominator of which shall be the gross square feet of the Landfill Parcel as described on Exhibit B-1; (iii) undertake, at its sole cost and expense, the obligations and costs to construct, maintain, repair, and service elements of the Phase that are allocated to the Developer in Article 15 hereof; (iv) comply at its sole costs and expense with all Mitigation Measures attributable to the Phase that are the responsibility of Tenant under the Ground Lease or Developer, including, without limitation, funding and improvement obligations under the Multimodal Improvement Plan in accordance with the Development Agreement; and (v) execute and deliver such documents as are reasonably required in order for (a) such Phase to be subject to the Master CC&Rs and the Landfill Operation and Management Agreement; and (b) such Person to be obligated to provide Master Developer (and any Phase Developer as applicable) with such rights of access as may be reasonably required to fulfill Master Developer's (and any Phase Developer's) remaining obligations under this Agreement, the Landfill Operation and Management Agreement, and any applicable Ground Lease, such as Developer's obligation to construct the Initial Improvements and any Infrastructure and to allow Master Developer or any Phase Developer to access their property prior to Completion and acceptance of public rights-of-way.

7.2.6 Master Developer and any applicable Phase Developers shall execute and deliver any easements, Master CC&R amendments, or other such documents that are reasonably required in order for the Third Party to develop the applicable property in accordance with the terms of the Development Opportunity Lease offered by the City, so long as such development is not incompatible with the development rights of Master Developer and such Phase Developer(s) under this Agreement and any applicable Ground Leases. Neither Master Developer nor any applicable Phase Developers shall object to any amendments to the MCP so long as such amendments are not incompatible with the development rights of Master Developer and such Phase Developer(s) under this Agreement and any applicable Ground Leases. The terms of this Section 7.2.6 shall survive the expiration or earlier termination of this Agreement.

7.2.7 So long as City offers the Development Opportunity under an open and competitive process that is consistent with the terms of this Article 7, Developer shall have no right to challenge, limit or contest City's process or the offering of the Development Opportunity to others as set forth in this Article 7.

7.2.8 Upon any termination under this Article 7: (i) the termination shall be without any cost reimbursement or other obligation to Developer; and (ii) City shall release Developer from all obligations that relate to the terminated portions of this Agreement, but excluding any Indemnities, Financial Obligations, or other obligations that survive termination.

7.2.9 All references to "Master Developer" in this Article 7 shall be deemed to include all Affiliates of Master Developer, if applicable, but shall not include Third Parties.

8. Permits to Enter.

For any Infrastructure to be constructed by Master Developer or a Phase Developer pursuant to the DAP for the applicable Phase that is located on land owned by the City that has not been conveyed to Master Developer or the applicable Phase Developer by Ground Lease or easement, City shall enter into a permit to enter with the applicable Phase Developer, substantially in the form attached hereto as Exhibit J (each, a "**Permit to Enter**"). The Permit to Enter shall become effective no earlier than the effective date of the applicable Ground Lease, unless such requirement is waived by City in its sole discretion. If there is any disagreement between City and the applicable Phase Developer as to the terms of any such easement or Permit to Enter, such matter shall be submitted to dispute resolution in accordance with the terms of Article 20 hereof.

9. Construction Obligations.

9.1 Timing for Commencement and Completion of Certain Improvements.

9.1.1 Commencement and Prosecution of Infrastructure. Following the Take Down of a Phase, the applicable Phase Developer shall (i) Commence all Infrastructure for such Phase on or before the applicable Outside Date therefor as set forth in the Schedule of Performance (subject to Excusable Delay), as relevant, and (ii) use commercially reasonable efforts to prosecute such Infrastructure to Completion in accordance with this Article 9 (subject to delays due to Force Majeure). Failure to fulfill either of these requirements with respect to any Phase shall constitute a Material Breach of this Agreement under the terms of Section 21.2.5.

9.1.2 Additional Timing Obligations With Respect to Phases 1, 2, and 3. Master Developer and the applicable Phase Developers have the following additional timing obligations with respect to the City Center Phases:

(a) Approval of Phase Schedules of Performance. No later than ninety (90) days prior to Commencement of the Improvements for Phase 1, Phase 2, and Phase 3, Master Developer or the applicable Phase Developer shall submit to City for City's reasonable Approval a schedule of performance for that particular Phase (each, a "**Phase Schedule of Performance**"), in the form of Exhibit F-1 which shall set forth specific Outside Dates for the satisfaction of the Development Obligations set forth in Sections 5.3.2 and 5.3.4 that are applicable to that Phase (including, if necessary, obligations related to the Temporary Station Site Improvements and/or the Final Station Site Improvements). If City objects in writing within thirty (30) days after receiving such revised Phase Schedule of Performance, City shall include a reasonably detailed description of its reasons for objecting, and Master Developer or the applicable Phase Developer shall have the opportunity to revise and re-submit the relevant Phase Schedule of Performance, which shall again be subject to the City Approval process set forth in this Section 9.1.2(a). If City fails to render a decision regarding its Approval of the Phase Schedule of Performance within thirty (30) days, then the revised Schedule of

Performance shall be deemed approved upon satisfaction of the further notice procedures set forth in Section 29.33.4 hereof. If Master Developer or the applicable Phase Developer disagrees with the statements or requests made in City's objection letter, Master Developer and/or the applicable Phase Developer shall have the right (but not the obligation) to submit the dispute to arbitration as an Expedited Arbitration Matter in accordance with Article 20 hereof. Upon mutual Approval of the Phase Schedule of Performance for Phase 1, Phase 2, or Phase 3, the form document attached hereto as Exhibit F-1 shall be replaced with the Approved Phase Schedule of Performance.

(b) Completion of Minimum Initial Buildings and Minimum Retail Buildings. Following the Take Down of Phase 1, Phase 2, or Phase 3, as applicable, the applicable Phase Developer shall (i) prosecute the Minimum Initial Buildings and Minimum Retail Buildings to Completion on or before the applicable Outside Date in accordance with this Article 9 (subject to delays due to Excusable Delay (if triggered prior to Commencement of Construction) or Force Majeure (if triggered after Commencement of Construction)); and (ii) comply with the requirements of Section 5.3.7 hereof (Best Efforts for Additional Buildings and Additional Retail Buildings) to the extent applicable.

(c) Failure to Meet Outside Dates in Phase Schedule of Performance.

(i) If the Phase Developer foresees that it will not meet one or more Outside Dates set forth in a Phase Schedule of Performance for Completion of the Minimum Initial Buildings and Minimum Retail Buildings, it may request in writing an extension of the applicable Outside Date(s). City shall Approve a reasonable extension of the applicable Outside Date(s) so long as the Phase Developer (a) demonstrates to City's reasonable satisfaction that the Phase Developer is diligently pursuing tenants for and/or construction of the Minimum Initial Buildings and Minimum Retail Buildings in question, and (b) provides to City a revised construction schedule detailing how and when construction of the Development Obligations will be completed. The City Manager may Approve up to a one (1) year extension of the applicable Outside Date(s); any extension (or aggregate of extensions) of the applicable Outside Date(s) by more than one (1) year must be approved by the City Council. For the purposes of this Section 9.1.2(c), the term "diligently pursuing" shall not necessarily mean that each of the relevant Improvements must be under construction, but shall require the Phase Developer to demonstrate to City's reasonable satisfaction that the Phase Developer is making good faith efforts to Commence and Complete such Improvements.

(ii) If the Phase Developer fails to meet its obligations under the relevant Phase Schedule of Performance, subject to Excusable Delay or Force Majeure, if applicable pursuant to Section 9.1.2(b)(i), and cannot demonstrate to City's reasonable satisfaction that (a) it is diligently pursuing construction of the Minimum Initial Buildings and Minimum Retail Buildings (as relevant), and/or (b) it is complying with the requirements of Section 5.3.7 hereof (Best Efforts for Additional Buildings and Additional Retail Buildings) to the extent applicable, then such failure shall constitute a Material Breach of this Agreement under the terms of Section 21.2.5.

(iii) Any disputes with respect to this Section 9.1.2(c) shall be submitted as an Expedited Arbitration Matter pursuant to Article 20.

9.1.3 Prosecution of All Other Improvements to Completion. To the extent that a Phase Developer Commences construction of any other Improvements within each Phase other than the Initial Improvements, the applicable Phase Developer shall use commercially reasonable efforts to prosecute such Improvements to Completion in accordance with this Article 9.

9.1.4 Construction Covenants under CC&Rs. Without limiting Section 9.1.3, the Master CC&Rs will include a covenant requiring the construction of all buildings to be prosecuted diligently and continuously, and further requiring the owner of any work of construction that is left in an unfinished state for more than one hundred and twenty (120) consecutive days or a total of one hundred and eighty (180) days to take reasonable measures to protect public health and safety, protect the building structure from the elements and screen unsightly elements from view (such as fencing, painting or attractive screens or coverings) (the "**Construction Covenant**"). The City shall be a named third party beneficiary of the Construction Covenant. The Master CC&Rs shall provide the master association thereunder with a right of entry to enforce the Construction Covenant and a right to impose special assessments to recover any costs expended in connection with the enforcement thereof.

9.2 Compliance with Standards. In Completing the applicable Improvements, (i) the Phase Developer shall comply with all applicable requirements of the Project Documents (including all Exhibits), and (ii) all such Improvements shall be Completed in a good and workman-like manner, without material defects, in accordance with all applicable Authorizations.

9.3 Conditions to Commencement of Improvements. Before a Phase Developer may Commence any Improvements within a Phase, the following conditions precedent shall be satisfied with respect to such Improvements:

9.3.1 To the extent not obtained prior to delivery of the Ground Lease, Phase Developer shall have obtained all Authorizations necessary to Commence such Improvements, including City approval of demolition, grading, and improvement plans in accordance with the applicable tentative map conditions of approval and, to the extent required under the Subdivision Code for any proposed Infrastructure, providing any subdivision improvement bonds required thereunder;

9.3.2 Subject to Section 29.34 hereof (Limitations on Disclosure), Developer shall have provided to City at least ninety (90) days before Commencement of the Improvements, and City shall have Approved, a detailed financing plan (the "**Detailed Financing Plan**") that conforms to the allocation of financial responsibilities set forth in Article 15 hereof and includes the following information: (a) a proforma only to the City's economic consultant in an industry-standard form as reasonably agreed by the City's economic consultant that includes in reasonable detail sources, uses, and revenue projections for horizontal and vertical improvements within the applicable Phase by product type; (b) a description of the sources of funds that Developer intends to fund with equity along with information on the

identity and experience of equity partners and a general description of the deal structure and relationship between the equity partners and Developer; (c) bona fide commitments for the financing of that portion of the budget that Developer intends to borrow; (d) the amount, sources and anticipated timing of funding that Developer intends to fund through public financing vehicles, including but not limited to CFDs, provided, however, that any such public financing shall not involve the City's general fund; (e) a detailed description of the establishment and timing of public funding mechanisms (such as maintenance CFDs or association dues) for the Developer's project development as well as Developer's maintenance responsibilities for public improvements and public services as set forth in Article 15 hereof; and (f) a detailed description of the establishment and timing of privately funded mechanisms (such as association dues) for Developer's obligations for ongoing maintenance of private improvements to be maintained by Developer or the master association in accordance with the standards set forth in the Master CC&Rs, Infrastructure Master Plan, and MCP. Approval by City of the Detailed Financing Plan shall not constitute final agreement by City as to the establishment of any public financing mechanism identified therein that requires City processes and approval, which shall be separately undertaken and subject to City's discretion.

9.3.3 The Phase Developer shall have complied with all provisions within this Agreement (including Exhibits) that pertain to the Improvements in question;

9.3.4 To the extent that such Improvements are to be located outside of the boundaries of the applicable Phase and are not otherwise contemplated within the scope of the rights over City property granted under the applicable Ground Lease and Master CC&Rs, prior to commencing such Improvements, Phase Developer shall have obtained all approvals necessary in order for such Improvements to lawfully encroach on the property located outside of the boundaries of the applicable Phase and shall have entered into a Permit to Enter with City and/or made such arrangements with any other owners of such property as are necessary to Commence and Complete the same;

9.3.5 Prior to Commencement of Construction of the applicable work of Secured Public Improvements, the Phase Developer shall have provided the City with Adequate Security for the Secured Public Improvements in accordance with the requirements of Cal. Government Code Section 66499 et seq. and CSCC Section 17.05.660 and the applicable Public Improvement Agreement (collectively, the "**SMA Security Requirements**");

9.3.6 Prior to Commencement of Construction of the applicable work of Secured Phase Improvements, the Phase Developer shall have provided the City with Adequate Security for the Secured Phase Improvements in accordance with the requirements of Article 28; and

9.3.7 Phase Developer shall have fully complied with any requirements of the Subdivision Map Act.

9.4 Conditions for Benefit of City. The conditions set forth in Section 9.3 are solely for the benefit of City and may be waived only by City (except that the requirement to comply with the nonwaivable portions of the Subdivision Map Act shall not be waivable). Provided that Phase Developer has not committed a Material Breach that remains uncured

beyond any applicable cure period, City shall take such actions as are reasonably required of City under the MCP and this Agreement to review, consider and grant Developer's request for necessary Approvals to satisfy the above conditions. If any of the conditions are not timely satisfied, they may be waived by the City Manager or City may extend the time for satisfaction of the conditions, as Approved by the City Manager in his or her sole discretion (except that any requirement to comply with nonwaivable portions of the Subdivision Map Act shall not be waivable). Notwithstanding the foregoing, the scope of City's approval rights with respect to the Detailed Financing Plan shall be limited to adherence to the form of the development and construction budget (such as categories of uses), compliance of the commitment letters with the Agreement requirements and the commercial reasonableness of the proposed financing sources (including debt, equity and public financing) available or reasonably foreseeable at the time of submittal.

9.5 Phase Developer Efforts to Satisfy City Conditions. Except as otherwise set forth in Article 7 hereof (Failure to Meet Phase Outside Dates), provided that City has not committed a Material Breach with respect to the Phase (or Partial Phase) in question that remains uncured beyond any applicable cure period, Phase Developer shall use its diligent and reasonable efforts, and otherwise take such actions as are required under this Agreement to cause the conditions set forth in Section 9.3 to be satisfied in sufficient time to enable Phase Developer to meet the Outside Dates set forth in the Schedule of Performance.

9.6 Effect of Failure of Condition. The Parties expressly acknowledge and agree that a failure of a condition in Section 9.3 for one Phase shall not be deemed the failure of such a condition for any other Phase, nor shall such failure relieve a Phase Developer or City of an obligation that arose before the failure of such condition. The failure of such a condition shall not, in and of itself, be an Event of Default; provided, however, that the failure of Phase Developer to meet any Outside Date set forth in the applicable Schedule of Performance or Phase Schedule of Performance (if any) due to its failure to meet a condition in Section 9.3 shall be governed by the provisions of Section 9.1.1 or Section 9.1.2(c), as relevant. The failure of City to act upon an Application as and when required under the MCP shall not be a Material Breach but shall give rise to an Excusable Delay.

10. Determination of Allowed Square Footage. The form of Ground Lease for Phases 2 through 7 attached hereto as Exhibit G-2 includes the concept of Allowed Square Footage, which shall be determined in accordance with this Article 10. The calculation of Allowed Square Footage in accordance with this Article only applies to Phases 2 through 7 (and specifically excludes Phase 1 and Phase 2A). Accordingly, references in this Article 10 to a "Phase" or "Partial Phase" refer only to Phases 2 through 7 (and any Partial Phases thereof) and exclude Phase 1 and Phase 2A.

10.1 Calculation of Allowed Square Footage. Promptly following the later of (i) Completion of all Infrastructure depicted in the approved DAP(s) for all of Phase 3, and (ii) the date that at least fifty percent (50%) of all Buildings depicted within the approved DAP(s) for all of Phase 3 are constructed and open for business, Master Developer shall prepare and deliver to City an analysis of the Building square footage in each Phase that sets forth the maximum total amount of Gross Square Footage for Buildings that can be constructed within each Phase based on the reasonably anticipated maximum amount of square footage for each Phase or Partial

Phase, taking into account the total density and mix of uses permitted under the MCP and the economic viability of constructing, leasing and operating the same in light of site constraints, but not based upon market viability (referred to in total as the "**Allowed Square Footage**"). Based on the foregoing and in such analysis, Master Developer shall propose a table showing the Allowed Square Footage for each Phase (the **"Allowed Square Footage Table"**), which shall in no event show for Phase 2 less than the square footage for the Minimum Initial Buildings required in Phase 2, and for Phase 2 and Phase 3 together, less than the aggregate Gross Square Footage for the Minimum Retail Buildings minus the gross square footage allocated to Minimum Retail Buildings within Phase 1. Within sixty (60) days after its receipt of the Allowed Square Footage Table, City shall (i) Approve such Allowed Square Footage Table, in which case the Allowed Square Footage for all Phases shall be as set forth in Master Developer's analysis, or (ii) disapprove the Allowed Square Footage Table, in which case City shall within such sixty (60)-day period so notify Master Developer and explain the reasons for its disapproval and its proposal for the Allowed Square Footage Table. If City fails to render a decision regarding its Approval of the Allowed Square Footage Table within sixty (60) days, then the Allowed Square Footage Table shall be deemed approved upon satisfaction of the further notice procedures set forth in Section 29.33.4 hereof. If City disapproves the Allowed Square Footage Table, Master Developer may submit the matter as an Expedited Arbitration Matter as provided in Article 20, provided, however, that the scope of the Arbiter's review shall be the consistency of the Master Developer's proposed Allowed Square Footage Table with the requirements of this Section 10.1, taking into account the fact that Phases may have future development potential in addition to that shown in the applicable DAP(s). The Allowed Square Footage Table, as finally determined under this Article 10, shall be memorialized in an amendment to the Memorandum of Ground Lease in recordable form signed by both Parties and recorded against title to the applicable Phase. Such amendment (as revised from time to time pursuant to Section 10.2, below) shall cite this Article 10 and shall be binding upon City and each Phase Developer in respect of the Allowed Square Footage in the Phase in question for purposes of determining Base Rent in the 45th and 70th Lease Years (as such terms are used in the Ground Lease shown in Exhibit G-2) under Section 3 of the Ground Leases.

10.2 Partial Phases.

10.2.1 Before Memorialization of Allowed Square Footage Table. If any Partial Phases have been incorporated into the Phasing Plan for the Project prior to the date that the Allowed Square Footage Table has been memorialized pursuant to Section 10.1, above, then the Allowed Square Footage Table shall allocate Allowed Square Footages between such Partial Phases.

10.2.2 After Memorialization of Allowed Square Footage Table. If any Partial Phases are incorporated into the Phasing Plan for the Project after the date that the Allowed Square Footage Table has been memorialized, then Developer shall submit to City as part of the Phase Option Notice for such Partial Phase a revised Allowed Square Footage Table, which shall show the Allowed Square Footage as a number to be determined by multiplying the Allowed Square Footage for the overall Phase by a fraction, the numerator of which is the total Allowed Square Footage for Partial Phase and the denominator of which shall be the total Allowed Square Footage for the total Phase (each as determined as of the date such Allowed Square Footage was established pursuant to Section 10.1, above). The revised Allowed Square

Footage Table shall be subject to the same review and Approval process as set forth in Section 10.1, above, for the original Allowed Square Footage Table.

11. Issuance of Authorizations.

11.1 Generally. Each Phase Developer must obtain from City or any other Governmental Authority having jurisdiction over all or a portion of the applicable Phase all permits, approvals, entitlements, agreements, permits to enter, utility services, subdivision maps (including under the City's Subdivision Code), Building Permits or other authorization(s) required under Applicable Law for the work it is required to perform under this Agreement and as may be necessary or desirable to effectuate and implement such work (each, an "**Authorization**"). Authorizations required for the Project from City shall be consistent with the Applicable Regulations and the Development Agreement. City will reasonably cooperate with Phase Developer on request in obtaining these Authorizations, including executing any such Authorizations to the extent City is required to execute the same as co-applicant or co-permittee, or as otherwise Approved by City Manager, so long as such Authorizations are consistent with this Agreement and all applicable Administrative Fees are paid as and when due. City and each Phase Developer will not agree to the imposition of any conditions or restrictions in connection with obtaining any such Authorization if the same would create any obligations on City's part not otherwise contemplated under this Agreement, without the Approval of City, which may be given or withheld in City's sole discretion.

11.2 Compliance with Laws. Master Developer and each Phase Developer shall be solely responsible for ensuring that the design and construction of the Improvements within the Phase for which it is responsible comply with any and all Applicable Laws and conditions or restrictions imposed by any City agency or other Governmental Authority in connection with any Authorization, whether such conditions are to be performed on the Project Site or require the construction of Improvements or other actions off the Project Site. Any fines, penalties or corrective actions imposed as a result of the failure of Master Developer or a Phase Developer to comply with the terms and conditions of any such Authorization shall be paid or otherwise discharged by the Master Developer or the applicable Phase Developer, and (i) City shall have no liability, monetary or otherwise, for such fines and penalties, and (ii) such fines or penalties shall not constitute Premium Costs. Master Developer or any Phase Developer shall have the right to appeal or contest the applicability of any law or the conditions imposed by any Authorization in any manner permitted by Applicable Law.

11.3 Additional Costs or Fees. Notwithstanding anything to the contrary above, City shall have no obligation to execute any application for any Authorization that would impose costs or fees on City not otherwise permitted by the Project Approvals unless the applicant arranges a reimbursement arrangement Approved by City.

12. Certificates of Completion.

12.1 Generally. When a Phase Developer reasonably believes that it has Completed the Infrastructure component approved pursuant to a DAP for a Phase, or a portion thereof, the Phase Developer may request the Engineer to issue an Engineer's Certificate verifying that the specified Infrastructure, or a portion thereof, has been completed. When the

applicable Phase Developer reasonably believes that it has Substantially Completed the Required Buildings or the Additional Buildings or a portion of any of the foregoing, the applicable Phase Developer may request the Architect to issue an Architect's Certificate verifying that the specified Required Buildings or Additional Buildings have been Substantially Completed. Upon issuance, such Phase Developer shall deliver to City the Engineer's Certificate or the Architect's Certificate, as applicable. Within thirty (30) days after City's receipt of any such Engineer's Certificate or Architect's Certificate, as applicable, City shall either issue to Phase Developer a Certificate of Completion substantially in the form of Exhibit K for the applicable Initial Improvements or comply with Section 12.5. Upon issuance of a Certificate of Completion for all of the Initial Improvements of a particular Phase (and City's approval or deemed approval of a Best Efforts Report with respect to any Additional Buildings that are not constructed within the Phase), and except as otherwise specified by this Agreement, this Agreement will terminate with respect to such Phase, and the applicable Phase Developer will thereafter use and operate the Phase in accordance with the applicable Ground Lease, except as provided in those provisions of this Agreement that survive termination hereof.

12.2 Effect of Certificate of Completion on Master Developer and the applicable Phase Developer. For purposes of this Agreement, the issuance of a Certificate of Completion shall be a conclusive determination of the Completion of the applicable Initial Improvements in accordance with this Agreement, including without limitation with respect to the obligations to Complete the applicable Initial Improvements in accordance with Section 9.1 hereof, however, such determination shall not impair City's right to Indemnity under Article 27 or City's right to require correction of any defects in accordance with City's Subdivision Code. Master Developer or a Phase Developer shall record the Certificate of Completion in the Official Records within forty-five (45) days following receipt thereof.

12.3 Effect of Certificate of Completion on Any Person. Following recordation of the Certificate of Completion, any Person then owning or later purchasing, leasing or otherwise acquiring any interest in the applicable Phase shall not, solely by virtue of such ownership, purchase, lease, or acquisition, or by virtue of such Person's actual or constructive knowledge of the contents of this Agreement, incur any obligation or liability under this Agreement for the Completion of Improvements with respect to which the Certificate of Completion was recorded; provided, that such Person shall be subject to any Agreement to which it is a party, obligations of record and any other applicable Project Approvals. City's issuance of any Certificate of Completion shall not relieve Master Developer, Phase Developer or any other Person from any applicable building, fire or other construction code requirement, conditions to occupancy of any Improvement, or other Applicable Laws.

12.4 City Cooperation Regarding Certain Certificates of Completion. The Parties acknowledge and agree that City will forward all Engineer's Certificates for Public Improvements and the results of any inspection thereof to City's Department of Public Works for its review and potential acceptance of such Public Improvements in accordance with City's Subdivision Code and any applicable subdivision improvement agreement entered into by Master Developer or Phase Developer and the City. City shall use commercially reasonable efforts to cause the Department of Public Works to expeditiously review and the City Council to accept such Public Improvements. The Parties acknowledge and agree that City will forward all Architect's Certificates for other Buildings and the results of any inspection thereof to the

Building Department for its review in accordance with applicable City Authorizations. City will use commercially reasonable efforts to cause the Building Department to expeditiously review and Approve such other Buildings.

12.5 City Refusal to Issue a Certificate of Completion. If City refuses or fails to issue a Certificate of Completion in a timely manner under Section 12.1, then City shall promptly provide to the applicable Phase Developer a written statement setting forth the basis for such refusal or failure and the reasonable acts or measures that must be taken by the Phase Developer to obtain a Certificate of Completion. Thereafter, upon Completion of such reasonable acts or measures, as certified by the Engineer or the Architect, as applicable, City shall issue the Certificate of Completion to the applicable Phase Developer.

12.6 Use of Public Improvements Before Certificate of Completion. The Parties acknowledge and agree that a Phase Developer shall not be obligated to allow use of any Public Improvements by any Person, including City, any City agencies, any other Governmental Authority or any third parties, before the acceptance of such Public Improvements by City and the issuance of a Certificate of Completion for such Public Improvements by City.

12.7 Acceptance of Public Improvements. Except as may otherwise be specified in the Infrastructure Plan, all Public Improvements will be dedicated as public improvements for their intended purpose to the City by the applicable Phase Developer. Upon the issuance of a Certificate of Completion for any Public Improvements, City will accept the subject Public Improvements offered for dedication in accordance with City's Subdivision Code and any applicable facilities acquisitions agreement or other similar agreement entered into in connection with the formation of a community facilities district or other public financing vehicle.

12.8 Certain Certificates of Completion. City shall have the right to withhold a Certificate of Completion if the following conditions have not been met (as applicable):

12.8.1 For Public Improvements, on receipt of a certificate of completion from the City Engineer with respect to such Public Improvements delivered in accordance with any applicable subdivision improvement agreement; and

12.8.2 For Buildings, a temporary Certificate of Occupancy.

12.9 Arbitration. Any disputes arising under this Article 12 relating to the issuance or non-issuance of Certificates of Completion shall be subject to the arbitration provisions of Article 20 hereof.

13. Condition of Title.

13.1 Condition of Title.

13.1.1 Prior to the Effective Date, Master Developer caused the Title Company to deliver to City and Master Developer a preliminary title report (the "**Preliminary Title Report**") for the Project Site, together with copies of all documents relating to title exceptions shown in the title reports.

13.1.2 Attached as Exhibit L is a copy of the Preliminary Title Report, marked to show those title exceptions to which Master Developer objects (together, the "**Disapproved Exceptions**") and those title exceptions to which Master Developer has no objection (together, the "**Initially Approved Exceptions**").

13.1.3 Promptly after the Effective Date, City and Master Developer shall meet and confer in good faith to determine how to address each of the Disapproved Exceptions.

13.1.4 Within sixty (60) days after the Effective Date, City shall give Master Developer written notice (the "**City Title Notice**") either stating that the City agrees to remove all of the Disapproved Exceptions from title pursuant to the terms of Section 13.2.1, or identifying which of those Disapproved Exceptions City is unwilling or unable after reasonable and good faith efforts to have eliminated from title (as so identified, the "**Retained Exceptions**"). If City fails to provide the City Title Notice to Master Developer within such sixty (60) day period, then Master Developer may simultaneously submit a request to the City Manager, the Director of Planning, and the City Attorney at the addresses set forth in Exhibit R attached hereto (or such substitute address as may be provided by City from time to time) by delivery in the manner specified in Sections 29.33.1(a) or (b), which request shall be labelled prominently: "Request for City Title Notice: Deemed Approval Matter." If City fails to respond to the subsequent request within fifteen (15) days following the date when given (as determined under Section 29.33.2(a), then City shall be deemed to have agreed to remove all of the Disapproved Exceptions from title pursuant to the terms of Section 13.2.1.

13.1.5 If City has identified any Retained Exceptions in the City Title Notice, Master Developer shall have fifteen (15) days from receipt of the City Title Notice to notify City in writing that either (1) Master Developer is willing to continue with the Project, subject to the Retained Exceptions, or (2) Master Developer elects to terminate this Agreement and the Development Agreement. Failure of Master Developer to take either one of the actions described in clause (1) or (2) in the previous sentence which failure is not cured within ten (10) days after a second written notice from City shall be deemed to be Master Developer's election to take the action described in clause (1). If Master Developer elects to terminate this Agreement and the Development Agreement, then this Agreement and the Development Agreement shall automatically be deemed to be null and void, and City and Master Developer shall have no further obligations or rights to one another under this Agreement or the Development Agreement.

13.1.6 If City does not identify any Retained Exceptions in the City Title Notice to Master Developer, or Master Developer elects to continue with the Project subject to the Retained Exceptions, then the current Exhibit L to this Agreement shall automatically be deemed to be replaced by a new Exhibit L, which shall consist of a copy of the Preliminary Title Report, marked to show that Master Developer has "approved" the Initially Approved Exceptions and the Retained Exceptions, subject to Section 13.5 hereof (Title Clearance).

13.1.7 The "**Permitted Exceptions**" are (i) those exceptions that are marked as "approved" on the replacement Exhibit L pursuant to Section 13.1.6, (ii) exceptions created by or with the written consent of Master Developer, (iii) exceptions for

the easements and rights of entry granted to Master Developer and Phase Developers under this Agreement and (iv) exceptions for the Project Documents and any amendments thereto; provided, that there shall be no Permitted Exception for any violation of a Project Document related to the Landfill. Once a Phase Developer has been designated, no further exceptions shall be Permitted Exceptions with respect to such Phase Developer's Phase without the Approval of such Phase Developer.

13.2 City Obligations.

13.2.1 Removal of Non-Permitted Exceptions. Except as set forth in Section 13.3, below, City shall be obligated hereunder to convey the leasehold interest in the applicable Airspace Parcel subject only to the Permitted Exceptions and free of all tenants, leases, and occupants. If any exceptions to title to any Phase are not Permitted Exceptions, City shall cause the removal of such exceptions prior to execution and delivery of the applicable Ground Lease or otherwise cause the Title Company not to show such exceptions in the Phase Title Policy, and any such delay shall be an event of Excusable Delay applicable to all times for performance by Master Developer or the applicable Phase Developer under this Agreement, including the extension of the Outside Dates for the Take Down of the applicable Phase. City's efforts with respect to the removal of exceptions pursuant to this Section 13.2 shall be at City's sole cost and expense, except as otherwise specified in this Agreement.

13.2.2 Removal of Permitted Exceptions. The Parties acknowledge that the Permitted Exceptions include various easements and agreements in favor of the City and PG&E relating to public streets and various public utilities, including gas, oil, sewer, water and electrical (collectively, the "**Street and Utility Easements**"), the presence of which could adversely affect or delay the Commencement or the Completion of the Initial Improvements of a particular Phase. However, in the absence of an approved DAP Application and Final Map, the Parties are unable to identify all Permitted Exceptions that might interfere with the development of the Project. Therefore, in connection with each Final Map and DAP Application, the Parties will work cooperatively to identify those Street and Utility Easements that should be abandoned, removed, relocated, amended or otherwise modified to permit the construction of the Initial Improvements within the Phase (collectively, the "**Easement Actions**"). To the extent that the Easement Actions will require action by the City, such as a quiet title action or City Council action to abandon, vacate or relocate (temporarily or permanently) the applicable Street and Utility Easement, City shall, at Developer's sole cost and expense, take all such reasonable measures to implement the required Easement Actions.

13.3 New Exception Prohibition. City agrees that it shall not voluntarily permit or cause to be created during the period between the Reference Date and the execution and delivery of the Ground Lease for a Phase any exceptions to title to that Phase other than the Permitted Exceptions (the "**City's Title Covenant**"). If, during the period between the Reference Date and the execution and delivery of the Ground Lease for any Phase, any new exceptions to title arise for such Phase, then the applicable Phase Developer may object to such new exception by notice to City given within ten (10) Business Days after Phase Developer receives written notice from the Title Company of the new exception. If the applicable Phase Developer fails to object within such period, then the new exception will be deemed to be a Permitted Exception. If the Phase Developer does object, then City may elect in City's sole and

absolute discretion, at its cost, to remove any new exceptions that are not Permitted Exceptions prior to Take Down of the Phase, or to remove or otherwise cause the Title Company to eliminate any such new exception in the Phase Title Policy, which may include obtaining an endorsement insuring over such exception subject to such conditions and requirements imposed by Title Company. If City does so elect, it will notify Phase Developer within thirty (30) days after receipt of Phase Developer's objection. If such exception is caused by the City's breach of City's Title Covenant set forth above, such breach shall be subject to the terms of Section 21.2.4(b) below. If City elects not to remove or cause to be eliminated the exception, or fails to respond within the thirty (30) day period, then the applicable Phase Developer shall have the right to: (i) terminate this Agreement as to the affected Phase by notice to City delivered within ten (10) days after Phase Developer receives City's notice that it has elected not to remove or cause to be eliminated the exception or expiration of the thirty (30) day period, whichever occurs earlier, in which case City can offer the Phase (or a portion thereof) to Third Parties as a Development Opportunity in accordance with Section 7.2, above, without any cost reimbursement or other obligation to Developer; (ii) upon written notice provided to City within ten (10) days of City's election not to remove or cause to be eliminated the exception or failure to respond, diligently proceed to take such actions necessary to remove the exception, which may include obtaining an endorsement insuring over such exception subject to such conditions and requirements imposed by Title Company (and so long as the applicable Phase Developer is diligently proceeding with removal of the title exception, such delay in close of Escrow shall be considered an event of Excusable Delay); or (iii) Take Down the Phase in question subject to such exception. If the applicable Phase Developer fails to so terminate or elect to cure within the ten (10) day period, then it shall be deemed to have elected clause (iii) above. Exceptions that City elects not to remove or cause to be eliminated, or is deemed to have elected not to remove or cause to be eliminated, and that the Phase Developer elects to accept, or is deemed to have accepted, are also Permitted Exceptions.

13.4 Post-Closing Boundary Adjustments. The Parties acknowledge that as development of the Project advances, the description of the premises under each Ground Lease may require further refinements, including minor vertical and horizontal boundary adjustments, to reflect the actual boundaries of the leased Premises thereunder. City agrees to cooperate (at no cost to City) with Master Developer, Phase Developers and any lender to any of them in effecting any such boundary adjustment consistent with this Agreement, including by executing and delivering in recordable form corrective exhibits to applicable Ground Leases and other Project Documents.

13.5 Title Clearance. Without limiting Section 13.2.2 hereof (that relates to Permitted Exceptions), if the Phase Title Policy issued to a Phase Developer upon the execution of a Ground Lease contains exceptions that are not Permitted Exceptions and that would, in the reasonable judgment of the applicable Phase Developer, adversely affect or delay the Commencement or the Completion of the Initial Improvements of such Phase, and such exceptions may be removed by means of a quiet title action or street vacation, then the Parties agree to take reasonable actions to eliminate such exceptions, at City's sole cost, by means of quiet title action or a supplemental street vacation ordinance. The period of any such delay shall constitute Excusable Delay.

14. Landfill Obligations.

14.1 Landfill Operation and Management Agreement. City and Master Developer shall enter into a Landfill Operation and Management Agreement (the "**Landfill Operation and Management Agreement**") that is consistent with the Landfill O&M Term Sheet attached hereto as Exhibit M and contains such other provisions as are mutually satisfactory to City and Master Developer. The Landfill Operation and Management Agreement shall be executed within ninety (90) days after the Effective Date, or within thirty (30) days after the date on which all necessary Authorizations upon which the execution of the Landfill Operation and Management Agreement is contingent have issued, whichever is later. Upon execution of the Landfill Operation and Management Agreement, the Landfill Operation and Management Agreement shall be deemed to have replaced the Landfill O&M Term Sheet and shall serve as Exhibit M to this Agreement.

14.2 Apportionment of Costs. The Parties acknowledge that the City will incur costs related to its operation and maintenance of the landfill due to the Project that will exceed its current baseline landfill operation and maintenance costs as of the date of this Agreement. The Parties have agreed that the amount of the Landfill Baseline Costs is deemed to be Four Hundred Fifty Thousand Dollars ($450,000) per year, which amount will be increased by a CPI Adjustment on each anniversary of the Reference Date of this Agreement (the "**Anniversary Date**") (such costs, as increased from time to time, the "**Landfill Baseline Costs**"). On an annual basis, commencing sixty (60) days after the first Anniversary Date, City shall provide to Master Developer a written report that includes the actual costs (the "**Annual Landfill Costs**") incurred by City in connection with its obligations pursuant to this Article 14 (including "open book" backup of such costs), an analysis of the same by a reputable engineering company or consultant and the amount by which the Annual Landfill Costs exceed the Landfill Baseline Costs determined for the applicable twelve (12) month period. Within sixty (60) days following its receipt of such report, Master Developer shall deliver to City (a) reimbursement for all uncontested Annual Landfill Costs set forth in such report, plus (b) to the extent that any Annual Landfill Costs set forth in such report are contested, a written response to the report, which written response shall include an analysis of the contested Annual Landfill Costs by Master Developer's reputable consultant or engineering company. City and Master Developer shall, for sixty (60) days after Master Developer's submittal of such written response, attempt to resolve their differences concerning any contested Landfill Costs; if they are unable to do so, either of them may submit the matter to arbitration as provided in Article 20. Each year, Master Developer's obligation to reimburse City for that year's Annual Landfill Costs pursuant to this Section 14.2 shall be limited to the lesser of (i) the amount by which the Annual Landfill Costs exceed the Landfill Baseline Costs and (ii) an amount originally equal to (x) One Million Dollars ($1,000,000), increased by a CPI Adjustment on each Anniversary Date, minus (y) the Landfill Baseline Costs. Master Developer may assign this obligation without prior consent of City to the Master Owners' Association established for the Project Site, which obligation may be documented in the Master CC&Rs or other appropriate instrument recorded against the Airspace Parcels. The provisions of this Section 14.2 shall survive any expiration or termination of this Agreement with respect to Master Developer and all Phase Developers.

14.3 Indemnification. City agrees to Indemnify and hold harmless the Indemnified Parties from and against any and all loss, cost, liabilities, suits, obligations, fines,

damages, penalties, claims, costs, charges and expenses (including engineers', architects' and attorneys' fees and charges) asserted against or incurred by any Indemnified Party directly related to City's sole negligence or willful misconduct that results in a failure to perform its obligations under this Article 14, except to the extent that such failure is caused by the breach of this Agreement by Master Developer, any Phase Developer, or any tenant or occupant of a Phase, or any negligence or misconduct by Master Developer, any Phase Developer, or any tenant or occupant of a Phase.

15. Project Development and Maintenance Responsibilities. The obligations and costs to construct, maintain, repair, and service elements of the Project shall be as allocated below; provided, however, that to the extent that anything in this Article 15 conflicts with any specific provisions in this Agreement or any other Project Document, such specific provisions shall control.

15.1 Construction Obligations. Except as otherwise specifically provided in this Agreement or any of the other Project Documents, all Improvements (including any Public Improvements) constructed as part of the Project shall be constructed at Developer's sole cost and expense. Notwithstanding the foregoing, Developer's obligations with respect to Phase 2A shall be governed exclusively by Section 4.8 hereof.

15.2 Maintenance, Repair, and Replacement Obligations; Public Services. The obligation to maintain, repair, and replace Improvements and to provide Public Services shall be as set forth below. To the extent that Developer bears the obligation to maintain, repair, and replace any category of Improvements, subject to City Council approval, Developer may pursue formation of a community facilities district, landscape lighting district, or other form of special tax assessment to fund that obligation, and City shall reasonably cooperate with such formation. Master Developer may assign its obligations under this Section 15.2 without prior consent of City to the Master Owners' Association, which obligation may be documented in the Master CC&Rs or other appropriate instrument recorded against the Airspace Parcels. The provisions of Sections 15.2.2 shall survive any expiration or termination of this Agreement with respect to Master Developer and all Phase Developers.

15.2.1 Buildings. City shall be responsible at its sole cost and expense for the ongoing maintenance, repair, and replacement of (a) the Temporary Station Site Improvements until the Final Station Site Improvements are completed and operational, and (b) the Final Station Site Improvements. Developer shall be responsible for the ongoing maintenance, repair, and replacement of all other Buildings at its sole cost and expense.

15.2.2 Infrastructure. City shall be responsible for the ongoing maintenance, repair, and replacement of all publicly-owned and accepted Infrastructure (including, without limitation, all improvements constructed within Phase 2A) at its sole cost and expense, and Master Developer shall be responsible for the ongoing maintenance, repair, and replacement of all privately-owned Infrastructure at its sole cost and expense, except as otherwise set forth in this Section 15.2.2.

(a) Public Streets. City shall be responsible for the ongoing maintenance, repair, and replacement of (a) any public streets (including, without

limitation, curbs, sidewalks, street lighting and street furniture within the public right-of-way) that currently exist and are improved as part of the Project, (b) any new public streets that are dedicated to the City in the future, and (c) curbs, sidewalks, street lighting and street furniture to the extent that any of the foregoing are located within the public right-of-way (subsections (a), (b) and (c), collectively, the "**Public Streets**"). Notwithstanding the foregoing, Master Developer shall be responsible for the incremental costs for maintenance, repair and replacement of Public Streets to the extent that such costs exceed the typical and customary costs incurred by the City for the maintenance of public streets built to City standards located elsewhere in the City, including, without limitation, by reason of the Project's location with respect to the Landfill (e.g., repairs warranted due to settlement of roads), higher costs resulting from physical improvements that are of a different and more costly variety than those otherwise required by the City (e.g., enhanced light standards) or higher costs resulting from Developer's request for enhanced maintenance, repair or replacement of Public Streets than would otherwise be provided by City (e.g., street cleaning more than once per week). The procedures for establishment of the Master Developer share of costs for Public Streets shall be established in connection with the first DAP application for Phase 1 and shall be reflected in the Master CC&Rs. Such procedures may include the submittal and approval of a public facilities financing plan with periodic updates that establishes the City's baseline costs, the excess costs to be borne by Master Developer and the manner of payment.

(b) Parks and Open Space. City shall be responsible for the ongoing maintenance, repair, and replacement of the public parks and open space program elements within the City Center area ("**Park Maintenance**") for those publicly dedicated parks described in the MCP as the City Center East Neighborhood Park, the City Center North Neighborhood Park and the City Center West Neighborhood Park (collectively, the "**Neighborhood Parks**"). Notwithstanding the foregoing, City and Developer may mutually agree that Developer or its successors and assigns (including the Master Owners' Association established for the Project Site) will undertake the Park Maintenance obligations, in which case, such work shall be at the sole cost and expense of Developer and in accordance with a scope of work, maintenance standards and level of funding as may be agreed-upon by the Parties. If City undertakes the Park Maintenance work, Developer or its successors and assigns (including the Master Association) will fund the Park Maintenance costs in amounts and for such purposes as reasonably determined by City, and shall include but not be limited to the following, all to the end that City shall not need to expend its own funds to maintain the Neighborhood Parks: all personnel or third party costs related to such maintenance; costs of maintaining irrigation systems and other equipment directly related to such maintenance; maintenance or replacement as needed of landscape areas, water features, bathrooms, trash receptacles, park benches, play structures, planting containers, picnic tables and other equipment or fixtures installed in areas to be maintained; insurance costs; and any other related overhead costs, along with City personnel, administrative and overhead costs related to such maintenance or to contracting for and managing third parties in connection with such maintenance. The procedures for establishment of the Developer's costs and the Party responsible for the Park Maintenance shall be established in connection with the first DAP application for Phase 2 (which procedures may be adjusted in subsequent DAP applications by mutual agreement) and the ongoing funding obligation shall be reflected in the Master CC&Rs.

(c) Public Services.

(i) Police. City shall provide at its sole cost and expense one Police Beat to the Project, primarily to address issues within the City Center portion of the Project. Master Developer shall pay for the cost of additional police officers (or off-duty police officers) as reasonably determined by the City to be necessary to service the Project ("**Police Services**") on an on-going, periodic or one-time basis. For purposes hereof, a "**Police Beat**" means eight (8) full-time employees ("**FTEs**"). The procedures to establish the manner, timing and payment by Master Developer for its Police Services obligation hereunder shall be established in connection with the first DAP application for Phase 1 (as may be updated with subsequent DAP applications) and shall be reflected in the Master CC&Rs. Such procedures shall include preparation by Developer and review by the City of an annual security plan for the applicable Phase and/or Project that identifies the appropriate level of Police Services, private security services and off-duty police officers to be provided and will include an estimate of costs to be borne by Master Developer for the applicable year.

(ii) Fire. City will provide appropriate fire protection services and equipment to the Project at its sole cost and expense, except as otherwise provided in this subsection (ii). At any time (at Master Developer's election) after approval of the PCLUP for the Project but in no event later than in connection with the DAP application for Phase 2, City will commission at Master Developer's expense an independent study by a third party expert jointly selected by City and Master Developer (the "**Fire Protection Assessment Study**") that will provide an assessment and recommendations for the level of fire protection services (equipment, FTEs and equipment replacement costs and timing) to address hazardous materials issues on the Landfill Parcel (collectively, "**Fire Protection Services Obligations**"). The study will also include recommendations for the timing of such equipment and FTEs in relation to the development of the Project. Developer shall be obligated to pay the costs for Fire Protection Services Obligations at the level and in accordance with the timing set forth in the Fire Protection Assessment Study up to a maximum of 4.5 fire protection FTEs annually, one piece of equipment if recommended by the study and replacement costs for such equipment at such times as indicated by the study.

15.3 Station Area. The Parties acknowledge that the area that is designated as the "Station Area" in one or more exhibits to the Parcel Development Plan for Block 4H (City Center Southeast) (the "**Station Area**") may at some time in the future be improved with enhancements to Great America station as part of a separate project by City or a Third Party. Therefore, at any time prior to the effective date of a Ground Lease for a Phase that contains any part of the Station Area, City may elect to reserve such portion of the Station Area from future Ground Leases by notifying Developer of such election in writing. At any time after the effective date of a Ground Lease for a Phase that contains any part of the Station Area, City shall have the right to require Developer to reconvey its interest in such portion of the Station Area to City within sixty (60) days after Developer's receipt of notice from City. Notwithstanding anything to the contrary in this Agreement, including but not limited to the terms of Section 6.1.9 hereof, no such retention or reconveyance of any portion of the Station Area shall cause any decrease in the annual Base Rent payable for the Phase in which the Station Area is located.

16. Premium Costs and Shared Infrastructure Costs.

16.1 Premium Costs.

16.1.1 Premium Costs Defined. The Parties acknowledge that development of the Project will necessitate many extraordinary and unusual additional on-site and off-site development costs to be incurred by Master Developer and any Phase Developer, including costs on account of the Landfill, the lack of customary infrastructure on the Project Site, and the need to acquire necessary rights and access to Phases 2 through 7 of the Project Site. Therefore, the form of Ground Lease for Phases 2 through 7 attached hereto as Exhibit G-2 includes the concept of Premium Costs, which shall be tracked, verified, and allocated to the Development Parcels for use in calculating rent in the 45th Lease Year and 70th Lease Year (as defined in the Ground Lease). "**Premium Costs**" is defined as the categories of development costs set forth in Exhibit N and associated with development of Phases 2 through 7. In no event shall Premium Costs include any of the following: (i) direct costs of Master Developer or any Phase Developer (e.g., wages and benefits of employees, administrative overhead, management fees, etc.); (2) costs associated with the development of Phase 1 (with the exception of costs associated with the relocation of Stars and Stripe Drive, Phase 1 tenant relocation costs and costs associated with the proximity of Phase 1 to the Landfill); (3) costs that will be reimbursable at any time to Master Developer or any Phase Developer by the City or by owners of land not included within the Project Site; and (4) costs financed through public financing mechanisms.

16.1.2 Approval of Premium Costs. Within twelve (12) months after the later of (i) Completion of all Infrastructure within a Phase Taken Down by Master Developer or its assignee(s) (including all Partial Phases comprising such Phase) in accordance with the Approved DAP (s) for such Phase, or (ii) the date by which of at least fifty percent (50%) of all Building square footage within such Phase (including all Partial Phases comprising such Phase) in accordance with the Approved DAP(s) for such Phase is open for business, Master Developer will provide City with a written report that includes the actual Premium Costs incurred in connection with such Phase (including "open book" backup of such costs), plus an analysis of the same by a reputable engineering company or consultant. The Premium Costs shall be divided into Hard Costs and Soft Costs. Within sixty (60) days following its receipt of such report, City will deliver to Master Developer its Approval of or its written response to the report, which written response shall include an analysis of the report by City's reputable consultant or engineering company. If City does not Approve such report in its reasonable discretion, City and Master Developer shall for sixty (60) days attempt to resolve their differences concerning Master Developer's report; if they are unable to do so, either of them may submit the matter to arbitration as provided in Article 20.

16.1.3 Determination of Premium Costs Allocation.

(a) Premium Costs Allocation Per Phase. Every time the Premium Costs for a Phase have been determined in accordance with Section 16.1.2, Master Developer shall submit to City a proposed allocation (the "**Premium Costs Allocation**") of such Premium Costs (both Hard Costs and Soft Costs) among the Phases (and Partial Phases) that have been Taken Down by Developer in such manner as Master Developer determines in its discretion. Master Developer will update the Premium Costs Allocation each time a Premium

Cost determination occurs under Section 16.1.2 so that all Premium Costs incurred to date will be allocated or re-allocated among the Phases that have been Taken Down as of the date of the Premium Costs Allocation. Each Ground Lease Taken Down by Developer shall permit a future re-allocation of Premium Costs to the extent approved by the applicable tenant thereunder.

(b) Final Reconciliation. After Approval of Premium Costs for the last Phase Taken Down by Developer, Master Developer shall submit to the City a final Premium Costs Allocation that shows all Premium Costs (Hard Costs and Soft Costs) incurred by Developer and the final Premium Costs Allocation for all Phase Ground Leases Taken Down by Developer. The final Premium Costs Allocation shall constitute the final determination of Premium Costs and shall be allocated among each applicable Ground Lease Taken Down by Developer as permitted thereunder for purposes of determining the Base Rent adjustment and as otherwise provided thereunder.

16.2 Shared Infrastructure Costs. City and Master Developer acknowledge and agree that the Infrastructure for a Phase, whether constructed by Master Developer, a Phase Developer or any third party on behalf of either of them, may benefit more than one Phase. To the extent that the costs of constructing and completing such Infrastructure are not included in Premium Costs (the portion not so included, "**Shared Infrastructure Costs**"), Master Developer shall have the right to require Phase Developers who did not construct and complete the Infrastructure to which the Shared Infrastructure Costs relate to share in such cost as follows:

16.2.1 As to portions of the Project Site Taken Down by Master Developer pursuant to a Phase Option Notice, Master Developer may require such Phase Developers to reimburse a portion of such costs to the Person who constructed and completed the same, on such terms as Master Developer shall require. Master Developer may implement such requirement as part of the AA&R or otherwise; provided, that no Phase Developer may become obligated for such a reimbursement under this Section 16.2 after its execution of a Ground Lease to the extent not otherwise provided for in the AA&R or Ground Lease.

16.2.2 As to portions of the Project Site Taken Down by a Third Party pursuant to a Development Opportunity lease in accordance with Section 7.2.5 hereof, no such Third Party shall become obligated to reimburse Master Developer or any other Person for Shared Infrastructure Costs. Any Shared Infrastructure Costs that would have been allocable to such Third Party shall instead be added to the Premium Costs calculated in Section 16.1, above, and the Premium Cost Allocation most recently prepared for a Phase shall be amended to include such Shared Infrastructure Costs, subject to Approval of the City pursuant to the process set forth in Section 16.1.3 above.

16.3 Documentation of Premium Costs and Shared Infrastructure Costs. The Premium Costs, as finally determined and allocated under Section 16.1 and the Shared Infrastructure Costs, as finally determined and allocated under Section 16.2, shall be memorialized in documents executed by Master Developer and City from time to time. Such documents shall cite this Article 16 and shall be binding upon City and each Phase Developer with respect to the Premium Costs and Shared Infrastructure Costs incurred by Master Developer and such Phase Developer (including those Premium Costs and Shared Infrastructure Costs paid by such Phase Developer to another Phase Developer). The Premium Costs so allocated (and

updated from time to time) shall be binding upon the Phase Developers for purposes of determining Base Rent adjustments under Article 3 of the Ground Leases, as more particularly described therein.

16.4 Survival. The provisions of this Article 16 shall survive any expiration or termination of this Agreement with respect to Master Developer and all Phase Developers.

17. Property Condition.

17.1 As Is.

17.1.1 Except as otherwise provided in this Agreement (including subject to the requirement that City convey the leasehold interest in the applicable Development Parcel(s) and grant the easements described in the Ground Lease, pursuant to a Ground Lease executed and delivered in accordance with this Agreement in the condition described in Section 13.1) or in the other Project Documents, City shall convey each Development Parcel to the applicable Phase Developer strictly in its "as is, where is" condition with all faults and defects and neither party shall take any actions that materially exacerbate the environmental condition of such Phase between the Effective Date of this Agreement and the date each applicable Phase is Taken Down. No representations or warranties, express or implied, have been made by or on behalf of City in respect of any real property to be leased by City to any Phase Developer or the status of title or the physical condition thereof, including the environmental condition thereof and the zoning or other laws, regulations, rules and orders applicable thereto, the amount of taxes or other charges that may be assessed against such real property or the use that may be made of such real property. Master Developer and each Phase Developer acknowledge that all necessary physical and title due diligence with respect to a Phase shall have been performed by the applicable Phase Developer in accordance with this Agreement as of the date that such Phase Developer executes and delivers the Ground Lease for the Development Parcel(s) within such Phase.

17.1.2 Developer has been given the opportunity to investigate each Phase fully, using experts of its own choosing, and City shall continue to give Master Developer and any Phase Developer an opportunity under a Permit to Enter to investigate each Phase fully, with such reasonable conditions as City may impose for any testing of any Phase. At no cost to City that is not reimbursed by Master Developer or any Phase Developer, City shall cooperate reasonably to afford Master Developer and any Phase Developer access, upon not less than five (5) days' prior notice to City, and otherwise at all reasonable times, to such non-privileged books and records as City shall have in its possession or control relating to the prior use and/or ownership of the Phase in question.

17.1.3 Developer acknowledges that no City Party has made any representation or warranty, express or implied, with respect to the Project Site, and Developer expressly releases the City Parties from all Losses arising out of or relating to the condition of any improvements, the size, suitability or fitness of the land, the existence of Hazardous Substances, compliance with any Environmental Laws, or otherwise affecting or relating to the condition, development, use, value, occupancy or enjoyment of the Project Site, excluding any Losses arising from any Release of a Hazardous Substance to the extent that it is caused,

contributed to or exacerbated by a City Party. Developer expressly understands that the portions of the Development Parcels conveyed by City to Developer are being conveyed strictly in their "as is, where is" condition with all faults and defects. The provisions of this Section 17.1.3 shall survive the termination of this Agreement.

Developer acknowledges that it is familiar with Section 1542 of the California Civil Code, which provides as follows:

> A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR.

Developer waives and relinquishes any right or benefit that it has or may have under Section 1542 of the California Civil Code or any similar or successor provision of law pertaining to the foregoing release.

17.1.4 City releases Master Developer, the Phase Developers, their partners, Affiliates and owners, and the officers, partners, agents, employees and members of each of them (each, a "**Developer Party**"), for any Losses suffered by City relating to (i) any Release of a Hazardous Substance, or any pollution, contamination or Hazardous Substance-related nuisance on, under or from the Project Site, to the extent the Release, pollution, contamination, or nuisance arose before the occupation or use of the applicable portion of the Project Site by a Developer Party; provided, however, that this release does not extend to Losses caused by: (A) any Release of a Hazardous Substance to the extent that it is caused, contributed to or exacerbated by a Developer Party or (B) breach of obligations assumed by a Developer Party under any agreement (including this Agreement) under which the Developer Party assumes responsibility for any Environmental Remediation. City reserves its rights to enforce Developer's obligations under this Agreement and any and all of the foregoing agreements and to take such additional actions as may be set forth in such agreements.

City acknowledges that it is familiar with Section 1542 of the California Civil Code, which provides as follows:

> A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR.

City waives and relinquishes any right or benefit that it has or may have under Section 1542 of the California Civil Code or any similar or successor provision of law pertaining the foregoing release.

17.2 Hazardous Substance Indemnification.

17.2.1 In addition to the Indemnifications set forth in Article 27, Developer shall Indemnify the City Parties from and against any and all Losses incurred by or asserted against any City Party in connection with, arising out of, or in response to, or in any manner relating to:

(a) Developer's breach of any obligation of Developer under this Agreement with respect to Hazardous Substances;

(b) Developer's violation of any obligation under this Agreement with respect to its compliance with Environmental Laws on or relative to the Project Site by Developer;

(c) Any Release or threatened Release of a Hazardous Substance, or any condition of pollution, contamination or Hazardous Substance-related nuisance on, under or from real property at the Project Site (including any Public Improvements) to the extent the Release, threatened Release, condition, contamination or nuisance was caused, contributed to, or exacerbated by Developer or others for whom Developer is responsible (including its contractors and servants) on any portion of the Project Site prior to conveyance under a Ground Lease; provided, that this clause (c) shall not apply as to a City Party to the extent such violation, Release, threatened Release, condition, contamination or nuisance commenced or was created by or caused by a City Party. From and after delivery of the applicable Development Parcel under a Ground Lease, the Phase Developer shall Indemnify the City in accordance with the provisions of the Ground Lease with respect to the Premises leased thereunder.

17.2.2 In each of (a), (b), and (c) in Section 17.2.1, above, the term "Developer" includes Developer's agents, servants, employees or contractors, or any other party for which Developer is responsible or which is acting pursuant to the authority of Developer with respect to this Agreement or the Project. Developer's obligations under Section 17.2.1 shall: (1) apply regardless of the extent or availability of insurance proceeds; and (2) survive the expiration or other termination of this Agreement. However, if it is reasonable to assert that a claim for Indemnification under Section 17.2.1 is covered by a pollution liability insurance policy, pursuant to which such City Party is an insured party or a potential claimant, then City shall reasonably cooperate with Developer in asserting a claim or claims under such insurance policy or Indemnity but without waiving any of its rights under Section 17.2.1. Developer specifically acknowledges and agrees that it has an immediate and independent obligation to defend the City Parties from any claim that may reasonably fall or is otherwise determined to fall within the Indemnification provision of Section 17.2.1, even if the allegations are or may be groundless, false or fraudulent. Developer's obligation to defend under Section 17.2.1 shall arise at the time such claim is tendered to Developer and shall continue at all times thereafter. Notwithstanding the foregoing, if a City Party is a named insured on a pollution liability insurance policy obtained by Developer, such City Party will not seek Indemnification from Developer under Section 17.2.1 unless it has asserted and used commercially reasonable efforts to pursue a claim for insurance under such policy and (if successful in the pursuit of such claim) until any limits from the policy are exhausted, on condition that (i) Developer pays any self-insured retention amount

required under the policy and (ii) nothing in this sentence requires any City Party to pursue a claim for insurance through litigation prior to seeking Indemnification from Developer.

17.3 Damage and Destruction.

17.3.1 Risk of Loss. From and after the Effective Date, and with the exception of disturbance to the real property required by or necessary to implement the Project Documents or otherwise to comply with Applicable Laws, Developer shall assume all risk of damage to or destruction of real property to be leased under a Ground Lease under this Agreement, subject to this Section 17.3. However, City owns and is the sole operator of the Landfill, and the Landfill Parcel is not being leased to any Phase Developer, although it shall be subject to certain easements granted herein and under the Ground Leases. City agrees that it shall meet the obligations with respect to the Landfill set forth under Article 14, above.

17.3.2 Existing Improvements. The Parties agree that any existing improvements in any Airspace Parcels that are not specifically required by the Project Documents to remain on such Airspace Parcels do not have significant value for Master Developer or any Phase Developer, and therefore damage to or destruction of such existing improvements will not affect the Parties' rights and obligations under this Agreement, which will continue in full force and effect without any modification except as set forth below. If permitted by Applicable Law, City shall assign to the applicable Phase Developer, without warranty, upon execution of each Ground Lease all of City's right, title, and interest in and to such existing improvements and all unexpended insurance proceeds and any uncollected claims and rights under insurance policies covering such damage or destruction, if any.

18. Compliance with Plans and Policies.

18.1 Compliance with Plans and Obligations. Developer and City shall each at all times comply with the applicable provisions of the following plans and obligations:

18.1.1 The IMP;

18.1.2 The MCP; and

18.1.3 The Landfill O&M Term Sheet or Landfill Operation and Management Agreement, as applicable, attached hereto as Exhibit M.

18.2 Relocation Assistance. In the event that there are tenants or other lawful occupants on any portion of the Project Site who require relocation, City shall comply with the requirements of the California Relocation Assistance Law (California Government Code Section 7260, et seq., referred to herein as the "**Relocation Act**"), to the extent that such Relocation Act is applicable to such tenant, and any other Applicable Laws and regulations regarding the displacement of tenants or other occupants of the Project Site. City shall consult with Master Developer regarding all such relocation proceedings, shall keep Master Developer reasonably informed of legal proceedings, including court dates, settlement conferences and proposed court orders and judgements, and shall provide Master Developer with at least twenty (20) days' advance notice of its intention to expend funds which are subject to reimbursement by Master Developer under this Section 18.2. Except for relocation costs incurred by City if City chooses

to relocate the BMX Track located on Parcel 1, Master Developer shall reimburse City for relocation costs that City is required to pay pursuant to the requirements of the Relocation Act within thirty (30) days following receipt of an invoice setting forth in reasonable detail the amount of such cost and the basis for payment under the Relocation Act. City shall not offer any relocation settlement award outside of the prescribed judicial process without Developer's prior review and reasonable approval and Developer shall have no responsibility for reimbursement for any such settlement costs that were incurred by City without involving Developer in prior consultation.

18.3 Compliance with CEQA Mitigation Measures. Developer shall perform, or cause to be performed, all Mitigation Measures applicable to each component of the Project that are identified in the Project MMRP as the responsibility of the Project Developer thereunder (including its successors in interest and contractors). As appropriate, these mitigation measures shall be incorporated by Developer into any AA&R and any other applicable contract or subcontract with Developer related to the construction or operation of the Improvements.

18.4 Restrictions on Competition. City shall use commercially reasonable efforts to avoid approving either of the following proposed projects to be located within two (2) miles of the Project Site: (i) any Major Department Store or (ii) any cinema; provided, that any expansion of the existing cinema at the Mercado Shopping Center shall not be subject to this Section 18.4. This Section 18.4 shall be applicable for a period ending three (3) years after the first opening within the Project of (1) with respect to (i) above, a Major Department Store, or (2) with respect to (ii) above, a cinema.

18.5 Survival. The terms of this Article 18 shall survive the termination of this Agreement with respect to any Phase that has been Taken Down.

19. Insurance.

19.1 Required Insurance. Each Ground Lease shall include the form, amount, type, terms and conditions of insurance coverages required of Developer in connection with such Phase.

20. Dispute Resolution.

20.1 Arbitration Matters.

20.1.1 Each of the following is an "**Arbitration Matter**" following notice from one Party to another Party that a dispute exists as to such matter, and shall be resolved by binding arbitration in accordance with the binding arbitration procedures set forth in Section 20.3.3: (i) City Approval of Master Developer's Premium Costs report (Section 16.1); (ii) City Approval of Allowed Square Footage (Article 10); (iii) City's issuance or non-issuance of a Certificate of Completion (Article 12); (iv) whether an event of Excusable Delay or Force Majeure has occurred (Article 24); (v) disputes under provisions set forth in Exhibits to this Agreement that call for or permit arbitration and do not otherwise specify a specific arbitration process; (vi) City failure to Approve a matter as to which it is required by this Agreement to be reasonable; (vii) the characterization of a transfer or proposed transfer hereunder as a Consent Transfer or Permitted Transfer (Article 22); (viii) the sufficiency of Adequate Security provided

under Article 28, but not any disputes regarding the right to call or act upon Adequate Security or the failure of an obligor of Adequate Security to perform its obligations under the Adequate Security; and (ix) any other matter mutually agreed upon by the Parties to be submitted to Arbitration in accordance herewith.

20.1.2 Each of the following is an "**Expedited Arbitration Matter**" following notice from on Party to another Party that a dispute exists as to such matter, and shall be resolved by binding arbitration in accordance with the expedited dispute resolution procedure set forth in Section 20.3.2: (i) City Approval of any Phase Option Notice (Article 4); (ii) any disagreement as to an objection letter provided by City in accordance with Section 4.4; (iii) any disagreement as to the scope of Improvements to be included within the DAP in accordance with Section 5.1; (iv) compliance with the "best efforts" obligations (Section 5.3.7); (v) Master Developer's disagreement with the statements or requests made in City's objection letter to the Parking Management Plan in accordance with Section 5.5; (vi) City's failure to respond to a revised Exhibit F-1 within thirty (30) days (pursuant to Section 9.1.2(a)); (vii) any disagreement as to an objection letter provided by City in accordance with Section 9.1.2(a); (viii) any disputes with respect to Section 9.1.2(c) (failure to meet outside dates in Phase Schedule of Performance); (ix) a dispute as to a Consent Transfer under Section 22.5.3; or (x) proposed additions or subtractions to the Pre-Approved Arbiters List (pursuant to Section 20.3.1).

20.2 Good Faith Meet and Confer Requirement. With respect to any dispute regarding an Arbitration Matter or an Expedited Arbitration Matter, the Parties shall attempt in good faith to resolve the dispute for a period of thirty (30) days after this Article 20 is invoked. If the dispute remains unresolved at the end of the thirty day period, any Party shall have the right to refer such dispute to the City Manager. If such dispute remains unresolved for an additional period of twenty-one (21) days after any such referral to City Manager, despite good faith efforts by Developer to resolve the same through discussions with City Manager, then the Parties shall have the right to pursue the expedited dispute resolution process set forth in Section 20.3.2 for Expedited Arbitration Matters and the general dispute resolution process set forth in Section 20.3.3 for Arbitration Matters. Nothing in this Section 20.2 shall require a Party to postpone instituting any injunctive proceeding or to pursue resolution under this Section 20.2 if it believes in good faith that such postponement will cause irreparable harm to such Party.

20.3 Dispute Resolution Procedures.

20.3.1 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 hereto 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, 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. The Parties shall review the Pre-Approved Arbiters List on an annual basis, determine the continued availability and willingness

to serve of each Arbiter, and may at that time or from time to time, seek to add or subtract arbiters from the Pre-Approved Arbiter List, by notice in writing to the other Party. Any such notice will be accompanied by supporting documentation of the new proposed Arbiter's qualifications or with the reasons for seeking to remove an Arbiter from the Pre-Approved Arbiters List, as applicable. The other Party shall have fifteen (15) Business Days to respond in writing to such request, and failure to respond shall be deemed consent so long as the notice shall include a statement providing that the failure to respond in such fifteen (15) Business Day period shall be deemed consent. If the other Party objects, the Parties shall confer pursuant to Section 20.2 and thereafter such disputes (if still unresolved after conferring) shall be referred to arbitration pursuant to this Section 20.3. Notwithstanding the foregoing, if based upon the annual review or at any time during the Term, the Parties become aware that an Arbiter has become unavailable to serve in any prospective Arbitration or has expressed an unwillingness to continue to serve, the Parties shall replace that Arbiter with a new Arbiter mutually agreed-upon by the Parties.

20.3.2 Expedited Dispute Resolution Procedure. The Party(ies) disputing any Expedited Arbitration Matter shall, within fifteen (15) Business Days after submittal of the dispute to arbitration, submit a brief with all supporting evidence to the Arbiter with copies to all Parties. 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 twenty-five (25) Business Days after the initiation of the arbitration, 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 forty-five (45) Business Days after the initiation of the arbitration. The decision of the Arbiter will be final, binding on the Parties and non-appealable.

20.3.3 Arbitration Process.

(a) Election to Participate in Arbitration. For Arbitration Matters and other disputes under this Agreement that the Parties agree to arbitrate in accordance with Section 20.1, the Parties shall submit the dispute to binding arbitration by notifying the Arbiter (selected as described in Section 20.3.1) of the dispute within ten (10) Business Days after expiration of the good faith meet and confer provisions of Section 20.2. Thereafter, within ten (10) Business Days, each Party to the dispute shall submit to the Arbiter and serve on the other Party to the arbitration a short statement of the dispute and a proposed discovery and hearing schedule.

(b) Preliminary Hearing. Within twenty (20) Business Days after notice of the election to participate in arbitration, the Arbiter shall conduct, either telephonically or in-person, a preliminary hearing. At the preliminary hearing the Arbiter shall

decide discovery and briefing issues and set dates, including a hearing date. In resolving discovery issues, the Arbiter shall consider expediency, cost effectiveness, fairness, and the needs of the Parties for adequate information with respect to the dispute.

(c) Retention of Consultants. The Parties by mutual agreement may retain consultants to assist the Arbiter in the course of Arbitration, if requested by the Arbiter. In his or her request, the Arbiter shall provide to all Parties to the dispute an explanation for the need for the consultant, the consultant's identity, hourly rate, and the estimated costs of the service. All Parties to the dispute must approve the retention of the consultant and, if retention of the consultant is approved, how the Parties will share the cost of the consultant. The consultant's cost shall not exceed ten thousand dollars ($10,000) without the prior written consent of the Parties to the dispute.

(d) Commencement of Arbitration. The arbitration hearing shall commence no later than sixty (60) days after the initial preliminary hearing, unless the Parties to the dispute mutually agree to extend the date or the Arbiter extends the date.

(e) Additional Procedural Requirements. The procedural rules of the arbitration under this Section 20.3.3 shall be supplemented by any non-conflicting arbitration procedures of other alternative dispute resolution providers as may be mutually agreed upon by the Parties from time to time, applicable to commercial binding arbitration, and may be modified by agreement of the Parties.

(f) Decision of Arbiter. The Arbiter shall make a written binding decision, specifying the reasons for the decision, within twenty (20) calendar days after the hearing. The Arbiter's decision shall be binding on the Parties.

(g) Time Period to Complete Arbitration. The arbitration shall be completed within eighty (80) calendar days of the preliminary hearing, unless the parties to the dispute mutually agree to extend the date or the Arbiter extends the date.

20.3.4 Additional Provisions Governing Arbitration of Disputes.

(a) Disputes Involving Arbitrability of Disputes. The Arbiter shall decide any dispute involving either the right to have a disputed matter submitted to binding arbitration pursuant to Section 20.3.3 or whether the matter is properly the subject of the expedited dispute resolution procedure pursuant to Section 20.3.2 in accordance with this Section 20.3.4. The Parties to such dispute shall provide notice of the dispute and submit in writing their respective positions regarding the dispute to the Arbiter. No such submission shall exceed ten (10) double-spaced pages. The Arbiter shall make his or her decision within five (5) days of the last submission.

(b) 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.

(c) 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).

21. Event of Default; Remedies.

21.1 General. If a Party breaches any of its obligations under this Agreement, 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 provisions 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 21.2 shall be an "**Event of Default**" by the breaching Party under this Agreement.

21.1.1 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.

21.1.2 If the alleged breach has not been cured or waived within the time permitted for cure in accordance with Section 21.2 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.

21.2 Particular Breaches by the Parties.

21.2.1 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:

(a) 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;

(b) Master Developer does not Take Down Phase 1, Phase 2 or Phase 2A by the applicable Outside Dates therefor in the Schedule of Performance, subject to Excusable Delay;

(c) An Event of Default by the Master Developer has occurred under the Development Agreement that results in its termination; provided, however, that no Event of Default by any transferee under the Development Agreement that results in a termination of the Development Agreement as to the applicable Phase or Partial Phase owned by such transferee shall constitute a default by Master Developer or any Phase Developer with

respect to any other portion of the Project Site hereunder and shall not entitle City to terminate or modify this Agreement with respect to such other portion of the Project Site.

(d) Master Developer fails to perform any of its monetary obligations pursuant to Section 4.8 hereof (subject to the notice and cure periods set forth in Section 21.2.1(e)), fails to perform its obligations under Section 4.8.1(c) to terminate the Phase 2A Lease within the time required, or fails to return the premises to City in the condition required under Section 4.8.1(b)(iii) (subject to the notice and cure periods set forth in Section 21.2.1(f)).

(e) 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;

(f) 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).

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

(a) Such Phase 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 such Phase Developer's receipt of notice thereof from City;

(b) Such Phase Developer Takes Down any Phase but fails to Commence the Infrastructure by the applicable Outside Date for Commencement, subject to Excusable Delay, and the applicable Phase Developer fails to cure by Commencing construction thereof within ninety (90) days following the Phase Developer's receipt of notice thereof from City;

(c) Such Phase Developer causes a Material Breach under this Agreement as set forth in Section 9.1.2(c) (Failure to Meet Outside Dates in Phase Schedule of Performance);

(d) Such Phase Developer Takes Down any Phase but abandons or ceases its work on Infrastructure or Required Buildings without the Approval of City for more than one hundred and twenty (120) consecutive days or a total of one hundred and eighty (180) days (not counting any period of Force Majeure), and such failure, abandonment, or

cessation continues for a period of forty-five (45) days following such Phase Developer's receipt of notice thereof from City;

(e) Such Phase Developer Takes Down a Phase and Commences construction of any Improvements other than the Infrastructure or Required Buildings, but then abandons or ceases its work on such Improvements without the Approval of City for more than one hundred and twenty (120) consecutive days or a total of one hundred and eighty (180) days (not counting any period of Force Majeure), and such failure, abandonment, or cessation continues for a period of forty-five (45) days following such Phase Developer's receipt of notice thereof from City;

(f) The Development Agreement has terminated as to a Phase due to an Event of Default by the Phase Developer;

(g) The Ground Lease has terminated as to a Phase due to an Event of Default by the Phase Developer thereunder;

(h) Such Phase Developer fails to provide Adequate Security as required under this Agreement, or once it has provided Adequate Security fails to maintain the same to the extent required under this Agreement, and such failure continues for forty-five (45) days following receipt of notice from the City to such Phase Developer (provided, that such Phase Developer shall immediately, upon receiving notice from the City Manager to such effect, suspend all activities (other than those needed to preserve the condition of improvements or as necessary for health or safety reasons) on affected portions of the Project Site during any period during which Adequate Security is not maintained as required by this Agreement);

(i) Such Phase Developer fails to pay any amount required to be paid to City under this Agreement, and such failure continues for thirty (30) days following such Phase Developer's receipt of notice thereof from City; and

(j) Such Phase Developer fails to perform any other agreement or obligation to be performed by such Phase Developer under this Agreement, 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 the applicable Phase 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.

21.2.3 No Cross-Default. (A) No Event of Default by Master Developer with respect to its obligations under this Agreement shall be deemed to be an Event of Default by any Phase Developer (including any Affiliate of Master Developer) acting in its capacity as a Phase Developer under this Agreement; and (B) no Event of Default by a Phase Developer (including Master Developer and Affiliates of Master Developer when acting as a Phase Developer) shall be deemed to be an Event of Default by Master Developer, an Affiliate of

Master Developer or any other Phase Developer with respect to its obligations under this Agreement.

21.2.4 Event of Default by City. The Parties agree that each of the following shall be deemed an Event of Default by City under this Agreement:

(a) City fails to perform its obligations under any Project Document to which it is a party, the time given for cure in such Project Document has expired and such failure continues for thirty (30) days following City's receipt of notice thereof from Developer (and, for a failure that is not reasonably susceptible of cure within thirty (30) days, if City fails to promptly commence such cure within thirty (30) days following its receipt of such notice and thereafter diligently prosecutes the same to completion within a reasonable time, but in no event to exceed ninety (90) days from the receipt of such notice); and

(b) City fails to perform any other agreement or obligation to be performed by City under this Agreement, 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 City of notice thereof from 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).

21.2.5 Material Breach. "**Material Breach**" means:

(a) For City, an Event of Default (including a failure of City to comply with its obligations pursuant to Article 14 hereof (Landfill Obligations)) that materially adversely affects the ability of Master Developer or a Phase Developer to proceed timely with the Project or any significant portion thereof without substantially increased costs;

(b) For Master Developer, (i) an Event of Default under Section 21.2.1(a), 21.2.1(b), 21.2.1(c) or 21.2.1(d), or (ii) the failure to pay the Landfill Costs or Indemnification obligations as and when such payments are due and such failure continues for a period of thirty (30) days following receipt of notice of such non-payment from City to Developer. The Parties acknowledge and agree that City shall not be required to obtain a final judgment for a Material Breach under this Section 21.2.5(b) as a condition to pursuing remedies under Section 21.3.3(d);

(c) For a Phase Developer (including Master Developer acting as Phase Developer), an Event of Default under Section 21.2.2(a), 21.2.2(b), 21.2.2(c), 21.2.2(d), 21.2.2(f) and 21.2.2(g). The Parties acknowledge and agree that City shall not be required to obtain a final judgment for a Material Breach under this Section 21.2.5(c) as a condition to pursuing remedies under Section 21.3.3(c); and

(d) For City, Master Developer, and any applicable Phase Developer, an arbitration (including pursuant to Article 20 hereof) or judicial action that results in a final judgment for payment or performance (beyond any applicable appeal period), where the Party against whom the judgment was made fails to make the required payment or perform

the required action in accordance with the judgment within sixty (60) days following the final, unappealable judgment or any longer period as may be specified in the judgment itself.

21.3 Remedies.

21.3.1 Specific Performance. Upon an Event of Default, the aggrieved Party may institute proceedings in a court of proper jurisdiction to compel injunctive relief or specific performance to the extent permitted by law (except as otherwise limited by or provided in this Agreement) by the Party in breach of its obligations. Nothing in this Section 21.3.1 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.

21.3.2 Limited Damages. The Parties have determined that except as set forth in this Section 21.3.2, (i) monetary damages are generally inappropriate, (ii) it would be extremely difficult and impractical to fix or determine the actual damages suffered by any Party as a result of a breach hereunder and (iii) equitable remedies and remedies at law not including damages are particularly appropriate remedies for enforcement of this Agreement. Except as otherwise expressly provided below to the contrary (and then only to the extent of actual damages and not consequential or special damages, each of which is hereby expressly waived by the Parties), no Party would have entered into or become a Party if it were to be liable in damages under this Agreement. Consequently, the Parties agree that no Party shall be liable in damages to any other Party by reason of the provisions of this Agreement, and each covenants not to sue the other for or claim any damages under this Agreement and expressly waives its right to recover damages under this Agreement, except as follows: actual damages only shall be available as to breaches that arise out of (a) the failure to pay amounts as and when due and owing under this Agreement (including under any Exhibit to this Agreement), (b) the failure to make payment due under any Indemnification in this Agreement, including but not limited to any Permit to Enter, (c) the requirement to pay attorneys' fees and costs as set forth in Section 29.32, or when required by an arbitrator or a court with jurisdiction, (d) to the extent damages are expressly permitted under any agreement among or between any of the Parties other than this Agreement, and (e) Master Developer's or a Phase Developer's violation of any of the Project Documents pertaining to the Landfill. For purposes of the foregoing, "actual damages" means the actual amount due and owing under this Agreement, with interest as provided by law, together with such judgment collection activities as may be ordered by the judgment, and no additional amount.

21.3.3 Certain Exclusive Remedies. The exclusive remedy:

(a) Except as otherwise provided for Phases 1, 2 and 2A, for the failure to meet any Phase Outside Date shall be the remedies of City set forth in Section 7.21;

(b) For the failure to provide Adequate Security upon Commencement of any Improvements within Phases 1, 2 or 3 in accordance with the terms of Article 28 hereof (subject to the notice and cure provisions of Section 21.2.2(h) above), shall be the remedy of City set forth in Section 21.4;

(c) For the failure to pay money (other than the Financial Obligations, which failure shall be subject to Section 21.3.3(d)), shall be a judgment (in arbitration or a competent court) to pay such money (with interest as provided by law), together with such costs of collection as are awarded by the judge or arbitrator, subject to Section 21.2.5(c);

(d) For the failure to pay Financial Obligations, Master Developer must make payments under protest while the Parties are pursuing mediation, arbitration or judicial resolution of the dispute. If Master Developer fails to pay any such amounts under protest as required under this Section 21.3.3(d), City shall have the remedies in Section 21.4;

(e) For an Event of Default under Sections 21.2.2(b), 21.2.2(c) and 21.2.2(d), shall be (1) initially, diligent enforcement of the Adequate Security for the applicable Secured Phase Improvements to the extent still available (and further provided that City shall have no right or capacity to terminate this Agreement so long as Adequate Security then remains in effect), and (2) thereafter, the remedies in Section 21.4 (and the City shall return any unused portion of the Adequate Security relating to such Infrastructure following the Authority's exercise of its remedies under Sections 21.4); and

(f) For an Event of Default under Sections 21.2.2(e), shall be an action on the Adequate Security for the applicable Secured Phase Improvements to the extent still available, and thereafter, its rights as a third party beneficiary under the Construction Covenant as set forth in Section 9.1.4 (subject to the notice and cure provisions of Section 21.2.2(h) above).

21.4 Termination. Upon the occurrence of a Material Breach by Master Developer, City may, subject to Section 21.3.3 and the last sentence of Section 21.1, terminate this Agreement in whole or in part as to one or more Phases for which a Ground Lease has not then been executed and delivered upon a City Council determination to terminate following a public meeting. Upon the occurrence of a Material Breach by a Phase Developer, City may, subject to Section 21.3.3, terminate this Agreement and the applicable Ground Lease with respect to such Phase Developer and the applicable Phase. Upon the occurrence of a Material Breach by City relating to an obligation owed to Master Developer, Master Developer may terminate this Agreement. Upon the occurrence of a Material Breach by City relating to an obligation owed to a Phase Developer, such Phase Developer may terminate this Agreement with respect to such Phase Developer and the applicable Phase. In each case, the terminating Party may terminate this Agreement only as to City and the terminating Party. The Party alleging a Material Breach may provide a Notice of Termination to the Party in Material Breach, which Notice of Termination shall state the Material Breach, the portions of the real property covered by this Agreement (or the Phases) to be terminated, and the effective date of the termination (which shall, in no event, be sooner than ninety (90) days from the date of delivery of the Notice of Termination). If such termination occurs, neither the Party in Material Breach nor the Notifying Party shall have any further rights against or liabilities to the other under this Agreement as to the terminated portions of this Agreement except to the extent expressly provided in this Agreement. No Party may terminate this Agreement based on the Material Breach by another Party without first giving a Notice of Termination.

21.5 Conflicting Law; Developer's Right to Terminate.

21.5.1 If a Conflicting Law is enacted, then on request of Master Developer or a Phase Developer affected by such Conflicting Law, such Party and City shall meet and confer in good faith for a period of not less than thirty and not more than ninety (90) days to determine the feasibility of any proposed modification to this Agreement in response to the Conflicting Law. If, after the exercise of good faith efforts and due diligence, any affected Party determines in the exercise of its reasonable judgment that there is no feasible modification that is mutually acceptable, then such affected Party may terminate this Agreement as to itself by giving sixty (60) days' prior notice to City; provided, that if such affected Party does not elect to terminate, then there shall be no change to this Agreement (unless such affected Party's performance is precluded in any material way by the Conflicting Law, in which case City can terminate this Agreement with respect to such affected Party by notice to such Party). Nothing in this Agreement shall preclude either City or any affected Party from challenging the validity of the Conflicting Law, and any termination of this Agreement shall be tolled during the period of such challenge.

21.5.2 If an affected Party so notifies City of is intent to terminate this Agreement and the Conflicting Law is susceptible to satisfaction by the payment of a liquidated sum of money within such sixty (60) day period, then City may, in the exercise of its sole discretion, notify the affected Party that City will pay such sum (which sum shall not constitute a City Cost), in which case the affected Party's Notice of Termination shall be void.

21.5.3 The terminating Party may cause its Notice of Termination to be recorded as provided in Section 29.30.

21.6 Rights and Remedies Cumulative. 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.

21.7 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

22. Assignment.

22.1 Limitations on Master Developer's Right to Transfer. Master Developer represents and agrees that its undertakings pursuant to this Agreement are for the purpose of development of the Project and not for speculation in land holding. Master Developer further recognizes that: (a) the qualifications and identity of Master Developer are of particular concern

to City in light of the importance of the Project to the general welfare of City residents; (b) City is relying upon the qualifications and ability of Master Developer to serve as the catalyst for development of the Project and to assure the quality of the use, operation, and maintenance in the development of the Project; and (c) such qualifications and identity are material considerations inducing City to enter into this Agreement with Master Developer. Therefore, Master Developer's rights to transfer any right or interest under this Agreement shall be governed strictly in accordance with the provisions of this Article 22, and no voluntary or involuntary successor in interest of Master Developer shall acquire any rights or powers under this Agreement except as expressly set forth herein.

22.2 Phase Assignments. To the extent that Master Developer effectively assigns to a Third Party or an Affiliate all of the applicable rights and obligations under this Agreement as to a particular Phase in accordance with the provisions of this Article 22, then except as otherwise specifically set forth in this Agreement, the obligations of Master Developer shall be released as to the applicable Phase and the Third Party or Affiliate (as applicable) identified in the Phase Developer Designation shall be deemed to be the Phase Developer for the applicable Phase. Such assignment shall be pursuant to a Consent Transfer or a Permitted Transfer in accordance with this Article 22. Thereafter, such Phase Developer shall have the same rights to transfer its right or interest under this Agreement in accordance with the same standards set forth in this Article 22 that are applicable to a Consent Transfer or Permitted Transfer by Master Developer.

22.3 Consent Transfers Defined. Except as otherwise specifically provided in this Article 22, or Article 23, Master Developer shall not without the Approval of City (each, subject to the exclusions set forth herein, a "**Consent Transfer**"):

22.3.1 sell, assign, pledge, mortgage or otherwise encumber its interest in this Agreement or in all or any portion of the Project Site (any such action is referred to herein as an "**Assignment**"); or

22.3.2 sell, assign, transfer, pledge, mortgage or otherwise grant a security interest in any interest of Master Developer in this Agreement or in all or any portion of the Project Site, whether by operation of law or otherwise, nor shall any sale, Assignment, transfer, pledge, mortgage, or grant of a security interest be effected of all or any part of the issued or outstanding capital stock of a corporation that is Master Developer or of its Controlling Owner, whether held directly or indirectly, and whether made voluntarily, involuntarily, by operation of law or otherwise, if the same shall result in a Change of Control of Master Developer, nor shall there be any merger or consolidation of Master Developer or of such Controlling Owner into or with another corporation, nor shall any of the same be effected with respect to any interest in a partnership that is Master Developer or in a partnership that is its Controlling Owner, whether directly or indirectly, and whether made voluntarily, involuntarily, by operation of law or otherwise, if the same will result in a Change of Control of Master Developer, nor shall any of the same be effected with respect to any managing member's interest in a limited liability company that is Master Developer or in a limited liability company that is its Controlling Owner, whether directly or indirectly, and whether made voluntarily, involuntarily, by operation of law or otherwise, if the same will result in a Change of Control of Master Developer.

Notwithstanding any provision of this Agreement to the contrary, nothing contained in this Article 22 shall restrict in any manner, prohibit, require notice to, or require the Approval of City for (a) any Assignment or any form of transfer in or of the equity interests in any Person whose common stock is quoted on a recognized securities exchange such as the New York Stock Exchange or NASDAQ or (b) an Assignment or any form of other transfer of any equity interests in Master Developer or any other Person that does not, directly or indirectly, result in a Change of Control of Master Developer or such other Person.

22.4 Conditions Precedent to Consent Transfers. Except as otherwise provided in this Article 22, Master Developer shall only have the right to effect a Consent Transfer subject to and upon fulfillment of the following conditions precedent:

22.4.1 No Event of Default. No Event of Default by Master Developer shall be outstanding and uncured as of the effective date of the proposed Consent Transfer, or in the event of a Consent Transfer to or from a proposed Phase Developer, no Event of Default by Master Developer (or any transferee) shall be outstanding and uncured as to such Phase as of the effective date of the proposed Consent Transfer, unless City has received adequate assurances satisfactory to City in its sole discretion that such Event of Default shall be cured in a timely manner either by Master Developer or the transferee under the Consent Transfer.

22.4.2 Timing.

(a) Unless this Section 22.4.2(a) is waived by the City Council in its sole discretion, Master Developer shall not undertake a Consent Transfer for Phase 1, Phase 2, or Phase 3 in accordance with the provisions of this Article 22 until all of the following conditions are satisfied: (a) the Infrastructure is Substantially Complete; and (b) the earlier of the date that the Minimum Initial Buildings and the Minimum Retail Buildings for the applicable Phase have (x) been open for business for a minimum of thirty six (36) months or (y) have achieved an occupancy rate of at least eighty percent (80%), but in no event earlier than twenty-four months after the Minimum Initial Buildings and the Minimum Retail Buildings for the applicable Phase have been open for business.

(b) Subject to City's approval of the proposed transferee and all other terms of this Agreement, Developer may engage in a Consent Transfer for any of the other Phases at any time on or after the date of execution of the Ground Lease for the applicable Phase.

22.4.3 Notice to City. If Master Developer desires to engage in a Consent Transfer, then at least thirty (30) days prior to the proposed effective date of the Consent Transfer, Master Developer shall submit to City a request for consent by City (a "**Consent Transfer Request Notice**") of the proposed Consent Transfer, which request shall include or attach the following:

(a) A statement that precisely sets forth the rights and obligations to be transferred, including the boundaries of any land area that is the subject of the Consent Transfer Request Notice;

(b) A statement containing: (i) the name and address of the proposed transferee; (ii) the proposed effective date of the proposed Consent Transfer; and (iii) a description of the experience of the proposed transferee (and members of such transferee's team, by contract or otherwise (the "**Transferee Team**")) in the ownership, operation, management and, if applicable, development of real estate assets of the use classes represented by the Buildings then located within the portion of the Project that is the subject of the Consent Transfer Request Notice (and/or then planned to be developed within such area); and

(c) Additional reasonably sufficient information and documentation evidencing that (i) the proposed Transferee Team and/or its Controlling Owner (if such Controlling Owner would be financially liable as part of the proposed Transfer) has the financial standing and/or strength (taking into account all of the proposed transferee's other obligations and liabilities) to perform its rental and other obligations under any applicable Ground Lease that would be entered into for the Phase that is the subject of the proposed Consent Transfer, provided, however, that a transferee that meets the Net Worth Requirement (by itself or by providing a Guaranty) for that Phase shall be deemed to satisfy this subsection (c)(i) (in either case, the "**Financial Requirement**"); and (ii) the proposed Transferee Team and/or its Controlling Owner (a) has a commercially reasonable amount of experience in the ownership, development, operation, leasing and management of real estate assets within the United States of the use classes represented by the then-current Buildings located within the applicable Phase (and, if a material amount of development of the Premises is then planned to occur in the future during the Term, in the development of real estate assets of the use classes then planned to be developed in the Phase in the future during the Term); and (c) has a commercially reasonable amount of experience in the construction and operation of Infrastructure of the same type and quality as that proposed or constructed within the applicable Phase (together, the "**Experience Requirement**"). Such documentation shall include (but may not be limited to) financial statements, references, and examples of prior development projects; and

(d) A copy of the proposed AA&R substantially in the form of Exhibit P attached hereto that sets forth the applicable rights and obligations under this Agreement to be assigned to the transferee and the obligations of Master Developer hereunder to be retained and/or released as to the applicable Phase.

22.5 Procedures for Consent Transfer.

22.5.1 City Approval. Subject to the conditions precedent set forth in Section 22.4, above, the City Manager, within thirty (30) Business Days of receiving the information and documentation above, shall Approve or disapprove the proposed Consent Transfer.

22.5.2 City's Consent; Standards. The withholding or conditioning of City's consent to any proposed Consent Transfer shall be reasonable and shall be based solely on one or more of the following criteria:

(a) The proposed transferee and/or its Controlling Owner (if applicable) do not meet the Financial Requirement;

(b) The proposed transferee and its Transferee Team together do not meet the Experience Requirement; and

(c) The proposed transferee and/or its Controlling Owner have not provided any Adequate Security as and to the extent required under Article 28, which shall apply to the obligations assumed by the Transferee unless replacement Adequate Security is provided by the proposed transferee and Approved by the City Manager.

(d) If approved, the AA&R shall be recorded in the Official Records concurrently with the consummation of the Consent Transfer, and a copy thereof, certified by the County Recorder as a duplicate copy of the approved assumption agreement with recording information, shall be delivered to City within three (3) days after consummation of the Consent Transfer. Upon City's approval, the Consent Transfer shall be effective upon the effective date of transfer under the fully executed AA&R.

22.5.3 Appeal to City Council. If City Manager withholds or conditions its consent to any proposed Consent Transfer, Master Developer may appeal the decision to the City Council in writing within ten (10) days of the City Manager's decision. The City Council shall hear and decide the appeal at its next regularly scheduled meeting (allowing for legally required agenda notice requirements to be met), but in no event more than thirty (30) days after such request; provided, however, that the City Council may continue the matter to a date no more than twenty (20) days past the original hearing. If the City Council disapproves the Consent Transfer, Master Developer may submit the matter as an Expedited Arbitration Matter in accordance with Article 20.

22.6 Permitted Transfers and Procedure.

22.6.1 Permitted Transfers. Notwithstanding anything to the contrary in this Article 22, so long as Master Developer is not in Material Breach of this Agreement, Master Developer shall have the right at any time to Transfer all or a portion of its rights and corresponding obligations under this Agreement without the Approval of City (except as set forth in this Section 22.6) as set forth below (each, a "**Permitted Transfer**"):

(a) Any transaction that would otherwise constitute a Consent Transfer if such transaction is to one or more Affiliates of Master Developer; provided, that in each case where such transaction is a Direct Assignment (as defined in Section 22.6.2(a)) in which the Affiliate does not meet the Financial Requirement, Master Developer shall remain liable as the Master Developer or Phase Developer, as the case may be, under this Agreement;

(b) Any transfer of Phase 1, Phase 2, Phase 2A or Phase 3 to Related-MPG JV, LLC, or an Affiliate of Related-MPG JV, LLC;

(c) any grant by Master Developer, any Affiliate of Master Developer or any Person related to the foregoing (collectively, a "**Developer Related Party**") to equity or debt providers to or directly or indirectly in Master Developer (or any Developer Related Party) of a participation in the profits and/or losses of the business of Master Developer so long as such providers do not acquire Controlling Ownership in Master Developer;

(d) any grant, transfer, creation, amendment, modification, or termination of any Mortgage or Mezzanine Loan by Master Developer or any Master Developer Affiliate;

(e) the exercise by a Mezzanine Lender of (y) any rights it may have under its Mezzanine Loan with respect to obtaining title to the direct or indirect equity interests of Master Developer that may have been pledged to such Mezzanine Lender under its Mezzanine Loan or (z) any foreclosure remedies the Mezzanine Lender may have; provided, that such Mezzanine Loan shall have been made for a valid business purpose and not principally for the purpose of transferring such equity interests and/or the leasehold estate created hereby; and

(f) the exercise by a Mortgagee of any foreclosure or other rights and/or remedies under or with respect to its Mortgage (or related loan documents) (and any transaction entered into by Master Developer and a Mortgagee in lieu of foreclosure or in lieu of the exercise by the Mortgagee of such rights and/or remedies).

22.6.2 All Permitted Transfers that constitute an Assignment shall be subject to the following terms:

(a) In the event of a direct Assignment of this Agreement (for the avoidance of doubt, not including transfers in the equity interests of any Person) (a "**Direct Assignment**"), not later than ten (10) Business Days after the effective date of any such Direct Assignment, Master Developer shall deliver to City (a) a duplicate original or certified copy of the Direct Assignment instrument, (b) evidence that the transferee meets the Financial Requirement, (c) evidence that the transferee meets the Experience Requirement and (d) proof in a form reasonably acceptable to the City Manager that there continues to exist Adequate Security as and to the extent required under Article 28, which shall apply to the obligations assumed by the Transferee unless replacement Adequate Security is provided by the Transferee and Approved by the City Manager;

(b) Any Direct Assignment of less than the entirety of Master Developer's interest under this Agreement shall not be effective for purposes of this Agreement unless and until the Master Developer and proposed Transferee execute, acknowledge and deliver to City an AA&R substantially in the form of Exhibit P attached hereto, in which the applicable rights and obligations under this Agreement as to that Phase are assigned to the Phase Developer, and, if applicable, the obligations of Master Developer hereunder are released as to the applicable Phase.

(c) Any Direct Assignment of the entirety of Master Developer's interest under this Agreement shall not be effective for purposes of this Agreement unless and until the Master Developer and proposed Transferee execute, acknowledge and deliver to City an assignment, assumption and release agreement reasonably satisfactory to City in which all of Master Developer's rights under this Agreement are assigned to the Transferee and all obligations of Master Developer are released as to the applicable Phase (except as to any obligations of Master Developer that arose and were to be performed prior to the effective date of the Transfer, unless also expressly assumed by Transferee), which agreement shall be substantially consistent with Exhibit P attached hereto with such revisions as may be necessary

to effectuate the Transfer and release of the entirety of Master Developer's interest in this Agreement.

(d) Any Transferee under this Section 22.6 shall be deemed an Affiliate of Master Developer, and therefore a Developer Party, under this Agreement, and accordingly, Master Developer's Adequate Security (as and to the extent required to secure the obligations assumed by the Transferee pursuant to Article 28) shall apply to the obligations assumed by the Transferee unless replacement Adequate Security is provided by the Transferee and Approved by the City Manager.

22.7 Release. Except as may otherwise be provided under Section 22.6.1(a) above and the form of AA&R, if, as and when Master Developer enters into a Direct Assignment and the transferee thereunder assumes all of Master Developer's obligations under this Agreement as set forth above, then from and after the date of such Direct Assignment the Master Developer assigning this Agreement as part of such Direct Assignment (and all prior Master Developers) shall automatically and conclusively be released from all obligations under this Agreement, other than (i) any obligations that arose and were to be performed prior to the effective date of such Direct Assignment (unless also assumed in writing, in recordable form, by the transferee); and (ii) any obligations retained by the Master Developer in accordance with the applicable AA&R. Promptly after request by Master Developer, City shall confirm the foregoing release by a writing in form and substance reasonably satisfactory to City and Master Developer.

22.8 Rights of Phase Developers. The rights of and restrictions on each Phase Developer with respect to Transfers of interests in the applicable Ground Lease are governed by the applicable Ground Lease.

22.9 Liability for Default. No Transferee (including any Third Party Transferee) shall be liable for the default by Master Developer or another Transferee in the performance of its respective obligations under this Agreement, and Master Developer shall not be liable for the default by any Transferee in the performance of its respective obligations; provided, that the foregoing provision shall not be applicable to either a Transferee or Master Developer to the extent either has assumed or remains liable for such obligation under the terms of the applicable AA&R. Except as provided in this Section 22.9 and in Section 21.4, an Event of Default by Master Developer or a Transferee shall not entitle City to terminate this Agreement, or otherwise affect any rights under this Agreement, for any portion of the Project Site that is not owned or Controlled by the Person that is in default.

23. Financing; Rights Of Mortgagees.

23.1 Right to Mortgage; Conditions. Notwithstanding any provision of this Agreement to the contrary, Developer shall have the right to mortgage or pledge its interest in this Agreement and its interest in the Development Parcels to one or more Mortgagees and/or to permit the direct or indirect interest in Developer to be pledged to a Mezzanine Lender, in each case without City's consent, at any time and from time to time during the Term; provided, that no holder of any Mortgage or Mezzanine Loan, nor anyone claiming by, through or under any such Mortgage or Mezzanine Loan, shall by virtue thereof acquire any greater rights hereunder

than Developer has, except the right to cure or remedy Developer's defaults as more fully set forth below in this Article 23 and such other rights as are expressly granted to Mortgagees or Mezzanine Lenders hereunder. Notwithstanding the foregoing, however, no Mortgage or Mezzanine Loan shall be effective, unless:

23.1.1 At the time such Mortgage or Mezzanine Loan becomes effective, there are no existing Events of Default; and provided that, unless otherwise notified in writing by City that there is an existing Event of Default, any actual or prospective Mortgagee and Mezzanine Lender may conclusively rely on a statement to the effect that there is no existing Event of Default on the part of Developer given by City with respect to Developer under this Agreement for a period of thirty (30) days after the delivery thereof;

23.1.2 Such Mortgage shall be subject to all the agreements, terms, covenants and conditions of this Agreement;

23.1.3 Such Mortgage shall contain in substance the following provision (and no provisions inconsistent therewith in any material respect): "This instrument and all rights of the mortgagee hereunder are, without the necessity for the execution of any further documents, subject and subordinate to the rights of City under the Agreement hereby mortgaged, as said Agreement may have been previously modified, amended or renewed, or may hereafter be modified, amended or renewed with the consent of the mortgagee, which consent may not be unreasonably withheld, conditioned or delayed. Nevertheless, the holder of this mortgage agrees from time to time upon request and without charge to execute, acknowledge and deliver any instruments reasonably requested by City to evidence the foregoing subordination."

23.2 Notice of Mortgages. Developer or the Mortgagee or Mezzanine Lender shall give to City written notice of the making of any Mortgage or Mezzanine Loan (which notice shall contain the name and office address of the Mortgagee or Mezzanine Lender and shall contain information in reasonable detail demonstrating that the Mortgagee or Mezzanine Lender is a Mortgagee or Mezzanine Lender as defined in this Lease) no later than ten (10) days after the execution and delivery of such Mortgage or Mezzanine Loan and a duplicate original or certified copy thereof after the recording of any Mortgage executed by Developer and upon the written request of City, Developer shall, at Developer's own cost and expense, record in the Official Records a written request, executed and acknowledged by City, for a copy of any notice of default and a copy of any notice of sale under such Mortgage to be mailed to City at the address specified in the request by City.

23.3 Mortgagee Right to Notices. City shall give to each Mortgagee or Mezzanine Lender, at the address of such Mortgagee or Mezzanine Lender set forth in a written notice from such Mortgagee or Mezzanine Lender or from Developer delivered in the manner provided by Section 29.33, a copy of each notice given by City to Developer under Section 21.2 at the same time as and whenever any such notice shall thereafter be given by City to Developer, and, without affecting or extending the commencement of any grace or cure period available to Developer as provided in this Agreement, no such notice by City shall be deemed to have been duly given to such Mortgagee or Mezzanine Lender (and no grace or cure period in favor of such Mortgagee or Mezzanine Lender shall be deemed to have commenced) unless and until a copy thereof shall have been given to each such Mortgagee and Mezzanine Lender. Each Mortgagee

and Mezzanine Lender (i) shall thereupon have a period of ten (10) days more in the case of a default in the payment of any fees due under this Agreement (a "**Monetary Event of Default**") and thirty (30) days more in the case of any other default (each, a "**Non-Monetary Event of Default**"), after the applicable period afforded Developer for remedying the default or causing the same to be remedied has expired and (ii) shall, within such period and otherwise as herein provided, have the right (but not the obligation) to remedy such default or cause the same to be remedied. City shall accept performance by or on behalf of a Mortgagee or Mezzanine Lender of any covenant, condition or agreement on Developer's part to be performed hereunder with the same force and effect as though performed by Developer, so long as such performance is made in accordance with the terms and provisions of this Agreement. City shall not object to and shall cooperate with any entry onto the Project Site by or on behalf of a Mortgagee or a Mezzanine Lender to the extent necessary to effect such Mortgagee's or Mezzanine Lender's cure rights, provided such entry is in compliance with Applicable Law.

23.4 Mortgagee Right to Cure. No Non-Monetary Event of Default shall be deemed to exist as long as a Mortgagee or Mezzanine Lender, in good faith, (i) shall have commenced to cure (or caused to be commenced such cure) such Non-Monetary Event of Default within thirty days after the expiration of the applicable period afforded to Developer for remedying such Non-Monetary Default, and continuously prosecutes or causes to be prosecuted the same to completion with reasonable diligence (subject to Force Majeure) or (ii) if possession or control of the Project Site or any part thereof is required in order to cure such Non-Monetary Event of Default, and Mortgagee or Mezzanine Lender shall have notified City within thirty days after the expiration of the applicable period afforded to Developer for remedying the Non-Monetary Event of Default of its intention to institute foreclosure proceedings to obtain possession or control directly or through a receiver, and thereafter promptly commences such foreclosure proceedings, prosecutes such proceedings with all reasonable diligence and continuity (subject to Force Majeure) and, upon obtaining possession, ownership and/or control of Developer's interest hereunder, commences or causes its designee to commence promptly to cure the Non-Monetary Event of Default and prosecutes the same to completion with all reasonable diligence and continuity (subject to Force Majeure); provided that the Mortgagee or Mezzanine Lender or its designee shall have delivered to City, in writing, within the time periods set forth in subclause (i) or (ii) herein, its agreement, subject to the last sentence of this Section 23.4, to cause the party obtaining possession, ownership and/or control of Developer's estate hereunder to agree to take the action described in subclause (i) or (ii) herein (the "**Lender Notice of Cure**"); and provided, further, that during the period in which the actions comprising the Lender Notice of Cure are being performed, all of the other obligations of Developer under this Agreement (other than those that require possession or control of the Project Site in order to cure) are being duly performed within any applicable notice and cure periods (including any applicable notice and cure rights of Mortgagees and Mezzanine Lenders hereunder). In the event that at any time after the delivery of the Lender Notice of Cure, the Mortgagee or Mezzanine Lender notifies City, in writing, that it has relinquished possession or control of the Project Site or that it will not institute foreclosure proceedings or, if such proceedings have been commenced, that it has discontinued them, thereupon, City shall have the unrestricted right to terminate this Agreement by reason of any Event of Default (and to take any other action it deems appropriate by reason of any Event of Default by Developer).

23.5 Obligation to Construct After Foreclosure. A Mortgagee, Mezzanine Lender, assignee or transferee gaining possession, ownership and/or control of the Project Site under a foreclosure or transfer in lieu of foreclosure shall not be bound by any deadline for completion of any construction or alterations required of Developer under this Agreement; provided, however, that such Person gaining possession, ownership, and/or control of Developer's estate hereunder pursuant to a foreclosure or transfer in lieu of foreclosure shall with all reasonable diligence and continuity prosecute completion of same. Notwithstanding anything in this Article 23.5 to the contrary, a Mortgagee, Mezzanine Lender, assignee or transferee gaining possession, ownership and/or control of the Project Site pursuant to a foreclosure or transfer in lieu of foreclosure shall not be required to cure any Events of Default arising from obligations of Developer that are not capable of being cured, and if any Mortgagee, Mezzanine Lender, successor leasehold owner, assignee or transferee shall acquire the Project Site pursuant to a foreclosure or transfer in lieu of foreclosure, then any such Non-Monetary Events of Default arising from an obligation by Developer that is not capable of being cured shall no longer be deemed an Event of Default or Non-Monetary Event of Default.

23.6 Restrictions on City During Mortgagee Cure Period. With respect to an Event of Default, so long as a Mortgagee or Mezzanine Lender shall be diligently exercising its cure rights under this Agreement, City shall not: (i) re-enter the Project Site; (ii) serve a termination notice; or (iii) bring a proceeding on account of such default to (x) dispossess Developer and/or other occupants of the Project Site, (y) re-enter the Project Site, or (z) terminate this Agreement (such rights described in clauses (i), (ii) and (iii), "**City's Termination Rights**"). In addition, with respect to a Monetary Event of Default, City shall not exercise any of City's Termination Rights so long as a Mortgagee or a Mezzanine Lender shall be diligently exercising its cure rights under this Section 23 within the time periods set forth in this Section 23; provided, however, that (A) nothing contained in this Section 23.6 shall in any way impair the right of City to exercise any of City's Termination Rights or to enforce any other remedy in the event of any other Event of Default by Developer in the performance of its obligations hereunder, subject to a Mortgagees or Mezzanine Lender's rights hereunder with respect to any such Event of Default, and (B) upon any cessation of a Mortgagee or Mezzanine Lender so exercising such rights and undertaking such activities, City may exercise any of City's Termination Rights hereunder. Nothing in the protections to Mortgagees or Mezzanine Lenders provided in this Agreement shall be construed to either (I) extend the Term, or (II) require such Mortgagee or Mezzanine Lender to cure any Event of Default by Developer that is not capable of being cured as a condition to preserving this Agreement.

23.7 Foreclosure Not a Default. The exercise of any rights or remedies of a Mortgagee under a Mortgage or a Mezzanine Lender under a Mezzanine Loan, including the consummation of any foreclosure or transfer in lieu of foreclosure, shall not constitute a default under this Agreement or require the consent of City.

23.8 Limitation on Liability of Mortgagee. No Mortgagee or Mezzanine Lender shall become liable under this Agreement unless and until such time as it becomes, and then only for so long as it remains, the owner of, or has control over, the interest in the Project Site created hereby, and no performance by or on behalf of a Mortgagee or Mezzanine Lender of Developer's obligations hereunder shall cause such Mortgagee or Mezzanine Lender to be deemed to be a "mortgagee in possession" unless and until such Mortgagee shall take possession,

ownership and/or control of the Project Site, or such Mezzanine Lender shall take possession or control of Developer, as applicable.

23.9 More Than One Mortgagee. If there is more than one Mortgagee, the rights and obligations afforded by this Article 23 to a Mortgagee shall be exercisable only by the party whose collateral interest in the Project Site is senior in lien (or that has obtained the consent of any Mortgagees whose Mortgage is senior to the Mortgage of such Mortgagee).

23.10 Bankruptcy. This section shall apply in the event of any proceeding by Developer under the United States Bankruptcy Code (Title 11 U.S.C.) as now or hereafter in effect. If this Agreement is rejected or deemed rejected by Developer or its trustee in bankruptcy, and provided, that, the Mortgagee or Mezzanine Lender cures or causes to be cured all outstanding Developer defaults in accordance herewith, Mortgagee or Mezzanine Lender shall have thirty (30) days following such rejection or deemed rejection to, at Mortgagee or Mezzanine Lender's discretion and to the extent permitted by Applicable Law, enter into an assignment and assumption instrument in form and substance reasonably satisfactory to City and such Mortgagee or Mezzanine Lender pursuant to which Developer shall assign to the Mortgagee or Mezzanine Lender, and the Mortgagee or Mezzanine Lender shall assume, all of Developer's interest and obligations under this Agreement whether arising or accruing before or after the date of such assignment and assumption, and this Agreement shall not terminate and the Mortgagee or Mezzanine Lender shall have all rights of the Mortgagee or Mezzanine Lender under this Section 10 as if such bankruptcy proceeding had not occurred. If any court of competent jurisdiction shall determine that this Agreement shall have been terminated notwithstanding the terms of the preceding sentence as a result of rejection by Developer or the trustee in connection with any such proceeding, the rights of Mortgagee or Mezzanine Lender to a New Agreement from City pursuant to the applicable provisions of Section 23.11 shall not be affected thereby.

23.11 New Agreement. In the event of the termination of this Agreement before the expiration of the Term, including, without limitation, the termination of this Agreement by the City on account of an Event of Default or the rejection of this Agreement by a trustee of Developer in bankruptcy, City shall serve upon the Mortgagee or Mezzanine Lender written notice that this Agreement has been terminated, together with a statement of any and all sums which would at that time be due under this Agreement but for such termination, and of all other defaults, if any, under this Agreement then known to City. The Mortgagee or Mezzanine Lender shall thereupon have the option to the assignment of all of Developer's rights and obligations hereunder, in accordance with and upon the following terms and conditions:

(i) Upon the written request of the Mortgagee or Mezzanine Lender, within thirty (30) days after service of such notice that this Agreement has been terminated, City shall enter into a new Agreement with the most senior Mortgagee or Mezzanine Lender giving notice within such period or its designee; and

(ii) Such new Agreement shall be entered into at the reasonable cost of the Mortgagee or Mezzanine Lender thereunder, shall be effective as of the date of termination of this Agreement, and shall be for the remainder of the Term hereof and upon all the agreements, terms, covenants and conditions hereof. Such new Agreement shall have the same priority as

this Agreement, including priority over any mortgage or other lien, charge or encumbrance on the title to the Project Site. Such new Agreement shall require the Mortgagee or Mezzanine Lender to perform any unfulfilled monetary obligation of Developer under this Agreement that would, at the time of the execution of the new Agreement, be due under this Agreement if this Agreement had not been terminated and to perform as soon as reasonably practicable any unfulfilled non-monetary obligation which is reasonably susceptible of being performed by such Mortgagee or Mezzanine Lender other than obligations of Developer with respect to construction of the Initial Improvements, which obligations shall be performed by Mortgagee or Mezzanine Lender in accordance with the terms of the applicable Ground Lease. Upon the execution of such new Lease, the Mortgagee or Mezzanine Lender shall pay any and all sums which would at the time of the execution thereof be due under this Agreement but for such termination, and shall pay all expenses incurred by City in connection with such defaults and termination and the preparation, execution and delivery of such new Agreement. The provisions of this Section 23.11 shall survive any termination of this Agreement, and shall constitute a separate agreement by the City for the benefit of and enforceable by the Mortgagee or Mezzanine Lender.

23.12 Additional Mortgagee Protections. In addition to the other rights, notices and cure periods afforded to Mortgagees, City further agrees that:

23.12.1 without the prior consent of each Mortgagee (which consent is not to be unreasonably withheld, conditioned or delayed), to the extent required in the Mortgage, City will neither agree to any modification or amendment of this Agreement (other than an immaterial modification or amendment), nor accept a surrender or cancellation of this Agreement;

23.12.2 City shall consider in good faith any modification to this Agreement requested by a Mortgagee as a condition or term of granting financing to Developer, so long as the same does not materially increase City's obligations, diminish Developer's or the Phase Developer's obligations, or diminish City's rights and immunities hereunder;

23.12.3 the Mortgagee whose Mortgage is most senior in lien (or that has obtained the consent of any Mortgagees whose Mortgage is senior to the Mortgage of such Mortgagee) shall have the right to participate in any arbitration proceedings under Article 20, although only one Mortgagee shall have such participation rights at any given time;

23.12.4 at the request of Developer from time to time, City shall execute and deliver an instrument addressed to the holder of any Mortgage or Mezzanine Loan confirming that such holder is a Mortgagee or Mezzanine Lender (provided, that City may require such Mortgagee or Mezzanine Lender to provide such reasonably detailed information as is necessary for City to make such determination) and entitled to the benefit of all provisions contained in this Agreement which are expressly stated to be for the benefit of Mortgagees or Mezzanine Lenders.

23.13 Rights of Phase Developers. The rights of and restrictions on Phase Developers with respect to the subject matter of this Article 23 are governed by the Ground Lease.

24. Force Majeure; Excusable Delay; Extension of Times of Performance

24.1 Force Majeure and Excusable Delay. In addition to the specific provisions of this Agreement, a Party shall not be deemed to be in default under this Agreement, including all Exhibits, on account of any delay in such Party's performance to the extent the delay results from Force Majeure (as defined below). To the extent that a specific provision of this Agreement refers to "**Excusable Delay**," such term shall include both Force Majeure and/or Materially Adverse Economic Conditions (as defined below):

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

24.1.2 "**Materially Adverse Economic Conditions**" means (i) with respect to office product, that the Class A Office vacancy as published in the Cushman & Wakefield's Marketbeat Office Snapshot-Silicon Valley (or such successor or comparable publication reasonably approved by each of the Parties) is fifteen percent (15%) or higher; and

(ii) with respect to retail product, that the comparable vacancy rate is more than ten percent (10%) at Valley Fair Shopping Center and/or Stanford Shopping Center (except that if the vacancy rate is more than ten percent (10%) at only one of those two centers because of circumstances unrelated to market forces, such as bankruptcy, foreclosure or substantial renovation, then such vacancy rate would be required at both centers).

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

24.2 Period of Excusable Delay or Force Majeure. The period of an Excusable Delay or Force Majeure shall commence to run from the time of the commencement of the cause and, subject to Section 24.3 hereof, shall run for the duration of the event of Excusable Delay or Force Majeure. The Party claiming Excusable Delay or Force Majeure shall provide notice to the other applicable Parties of such Excusable Delay or Force Majeure within a reasonable time following the commencement of the cause. If, however, notice by the Party claiming such extension is sent to the other Parties more than sixty (60) days after the commencement of the cause, the period shall commence to run only sixty (60) days before the giving of such notice, provided that the Party claiming the extension gives notice within a reasonable time following the commencement of the cause. No extension for Excusable Delay or Force Majeure shall cause any future dates in the Schedule of Performance applicable to the Party claiming Excusable Delay or Force Majeure, or other date for performance occurring after the date of the notice, to be extended (in each case as they may otherwise be extended). Notwithstanding anything to the contrary in this Article 24, Master Developer or any applicable Phase Developer shall not be entitled (A) to abandon any portion of the Project Site that it has Taken Down or where it has Commenced Initial Improvements without first taking appropriate measures to leave the property in good and safe condition, (B) to extend the Outside Dates for the Completion of Initial Improvements or other Improvements that have Commenced to the extent that Excusable Delay or Force Majeure is not related to such activities, (C) to cease paying taxes or assessments on any real property it owns within the Project Site, (D) to avoid the obligation to maintain in effect Adequate Security or other financial assurances, (E) to avoid or delay its obligations to construct the Initial Improvements, except to the extent an Excusable Delay or Force Majeure relates to Master Developer's or the applicable Phase Developer's obligations for such construction, or (F) to avoid or delay its payment of the Financial Obligations.

24.3 Limitations.

24.3.1 In the event that the period of an Excusable Delay or Force Majeure exceeds twelve (12) months, City and Developer shall meet and confer in good faith regularly for the duration of the event to discuss mutually acceptable changes to the Project that will allow development of the Project to proceed to the extent possible notwithstanding the event or events causing such Excusable Delay or Force Majeure.

24.3.2 Notwithstanding anything to the contrary in this Agreement, in the case of Force Majeure due to litigation, in no event shall an Excusable Delay or Force Majeure extend for a period greater than three (3) months after a final settlement or non-appealable judgment is issued or affirmed; provided, that in the case of litigation that invalidates or voids any existing or future Project Approvals or would otherwise have a material adverse effect on the ability of Developer to Commence or Complete the Improvements (including, without limitation, an adverse ruling under the California Environmental Quality Act), the period of Force Majeure shall extend for such additional time as may be required by the City to prepare additional or revised Project Approvals and/or environmental documents and for the City to consider the revised Project Approvals for re-approval in accordance with the terms of the applicable final settlement or unappealable decision.

24.3.3 Notwithstanding anything to the contrary in this Agreement, no individual event of Excusable Delay due to Materially Adverse Economic Conditions shall extend for more than five (5) years from the date of notice thereof from Developer, provided, however, that City Manager, in his or her reasonable discretion, shall be authorized to approve an additional extension of up to two (2) years for each such event subject to Developer providing reasonable evidence to City that it is diligently pursuing satisfaction of the applicable performance obligations but has been unable to meet the times for performance due to ongoing Materially Adverse Economic Conditions.

24.3.4 Notwithstanding the foregoing provisions of this Article 24, neither Excusable Delay nor Force Majeure shall apply to the Outside Dates for the Take Down of any Phase other than Phases 1 and 2.

25. Representations and Warranties.

25.1 Developer's Representations. Master Developer hereby represents and warrants to City as of the Reference Date that:

25.1.1 Master Developer is a limited liability company duly organized and existing in good standing under the laws of the State of Delaware, and qualified to do business in the State of California;

25.1.2 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;

25.1.3 All actions and consents required by Master Developer to authorize the transactions contemplated by this Agreement have been duly performed and obtained;

25.1.4 All Persons who execute this Agreement and the instruments contemplated by this Agreement on behalf of Master Developer will be duly authorized and empowered on behalf of Master Developer to do so and to enter into all transactions contemplated by this Agreement, and by such instruments;

25.1.5 The execution, delivery and consummation of the transactions contemplated hereby and performance of this Agreement have not and will not conflict with any provisions of any federal, state laws or regulations to which Master Developer is subject, or conflict with, result in any breach of, or constitute a default under, any mortgage, deed of trust, lease, bank loan or credit agreement, corporate charter, bylaws or other instrument to which Master Developer is a party or by which Master Developer or its assets may be bound or affected;

25.1.6 This Agreement is a legal, valid and binding obligation of Master Developer, enforceable against Master Developer in accordance with its terms, except to the extent that such enforcement may be limited by applicable bankruptcy, insolvency and other similar laws affecting creditors' rights generally; and

25.1.7 Master Developer is (i) in compliance with the USA PATRIOT Act, as applicable; (ii) in compliance with the Office of Foreign Assets Control sanctions and regulations promulgated under City granted by the Trading with the Enemy Act, 12 U.S.C. § 95(a) et seq., and the International Emergency Economic Powers Act, 50 U.S.C. § 1701, et seq., in each case as applicable and as amended or replaced from time to time; and (iii) a Person that: (a) is not, and has never been, under investigation by any Governmental Authority for, and has not been charged with or convicted of a crime under, 18 U.S.C. §§ 1956 or 1957 (as amended or replaced from time to time) or any predicate offense thereunder; (b) has never been assessed a civil penalty under, or had any of its funds seized, frozen or forfeited in any action relating to, any anti-money laundering laws or predicate offenses thereunder; (c) has taken such steps and implemented such policies as are reasonably necessary to ensure that it is not promoting, facilitating or otherwise furthering, intentionally or unintentionally, the transfer, deposit or withdrawal of criminally-derived property, or of money or monetary instruments that are (or that Master Developer suspects or has reason to believe are) the proceeds of any illegal activity or that are intended to be used to promote or further any illegal activity; and (d) has taken such steps and implemented such policies as are reasonably necessary to ensure that it is in compliance with all laws and regulations applicable to its business for the prevention of money laundering and with anti-terrorism laws and regulations, with respect both to the source of funds from its investors and from its operations, which steps include the development and implementation of an anti-money laundering compliance program within the meaning of section 352 of the Patriot Act, to the extent Master Developer is required to develop such a program under the rules and regulations promulgated pursuant to section 352 of the Patriot Act.

25.2 City's Representations. City hereby represents and warrants to Developer as of the Reference Date and as of the date of each AA&R that:

25.2.1 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;

25.2.2 All actions and consents required by City to authorize the transactions contemplated by this Agreement have been duly performed and obtained;

25.2.3 All Persons who execute this Agreement and the instruments contemplated by this Agreement on behalf of City will be duly authorized and empowered on behalf of City to do so and to enter into all transactions contemplated by this Agreement, and by such instruments;

25.2.4 The execution, delivery and consummation of the transactions contemplated hereby and performance of this Agreement have not and will not conflict with any provisions of any federal, state laws or regulations to which City is subject, or conflict with, result in any breach of, or constitute a default under, any mortgage, deed of trust, lease, bank loan or credit agreement, corporate charter, bylaws or other instrument to which City is a party or by which City or its assets may be bound or affected; and

25.2.5 This Agreement is a legal, valid and binding obligation of City, enforceable against City in accordance with its terms, except to the extent that such enforcement may be limited by applicable bankruptcy, insolvency and other similar laws affecting creditors' rights generally.

26. Payment of City Costs.

26.1 Payment of City Costs and Administrative Fees. Developer shall pay all City Costs and Administrative Fees, including without limitation, costs for environmental review, in accordance with the Development Agreement, whether or not the Development Agreement then remains in effect.

27. Developer Indemnification.

27.1 General Developer Indemnification. Developer shall Indemnify City and the commissioners, supervisors, 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**") 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, the adoption and implementation of this Agreement, except to the extent such Losses are directly caused by the act or omission of a City Party. Such Losses may include but are not limited to: (a) the death of any person or any accident, injury, loss or damage whatsoever caused to any person or to the property of any person that shall occur in or around the Project Site to the extent caused by the act or omission of Developer or its agents, servants, employees or contractors; (b) City's relocation activities pursuant to Section 18.2 hereof, except to the extent that such Losses are directly caused by the sole negligence or willful act of City; (c) the actual or alleged failure of Developer to comply with all State Labor Code requirements pertaining to public works and payment of prevailing wages; (d) any Losses arising directly or indirectly out of or connected with contracts or agreements (1) to which no City Party is a party

and (2) entered into by Developer in connection with its performance under this Agreement; and (e) for any action taken, or failure to take any action, now or in the future, related to the adoption or Approval of this Agreement, any of the Project Approvals, any of the Project Documents, or CEQA review related to any aspect of the Project. Developer's Indemnification and defense obligations under this Article 27 shall survive expiration or termination of this Agreement.

27.2 Other Remedies. The agreements to Indemnify set forth in Section 27.1 are in addition to, and in no way shall be construed to limit or replace, any other obligations or liabilities that Developer may have to City under this Agreement.

27.3 Defense of Claims. City agrees to give prompt notice to Master Developer or any applicable Phase Developer (as the case may be, the "**Indemnifying Party**") 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 or Phase 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 the Indemnifying Party. The failure of City to give such notice within such timeframes shall not affect the rights of City or obligations of the Indemnifying Party under this Agreement except to the extent that the Indemnifying Party is prejudiced by such failure. The Indemnifying Party 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 the Indemnifying Party'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 any Project Approval or Project Document, at Developer's own expense). If the Indemnifying Party 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 the Indemnifying Party of a properly detailed invoice for such expense.

27.4 Limitations of Liability. It is understood and agreed that no City Party shall be personally liable to Master Developer or any Phase Developer, nor shall any direct or indirect partners, members or shareholders of Master Developer or any Phase Developer or its or their respective officers, directors, agents or employees (or of their successors or assigns) be personally liable to City, in the event of any default or breach of this Agreement by City, Master Developer or any Phase Developer or for any amount that may become due to Master Developer, any Phase 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. Further, notwithstanding anything to the contrary set forth in this Article 27, the Indemnifications by Developer in Article 27 shall exclude any Losses relating to the Landfill, which shall be instead governed by Article 14, Section 17.2 and any other applicable agreements.

28. Adequate Security

28.1 Certain Definitions. As used herein:

"**Adequate Security**" means collateral or other security provided by Master Developer or the Phase Developer, as applicable, in accordance with this Agreement to secure completion of the improvements identified therein and to secure payment of the costs required to do so. For all purposes of this Agreement, Adequate Security for Secured Public Improvements includes, without limitation, the SMA Security Requirements mandated by the City's Subdivision Code. Adequate Security required for Secured Phase Improvements shall conform to the requirements of Section 28.3, below.

"**Completion Guaranty**" means a guaranty which unconditionally and irrevocably obligates the guarantor identified therein to cause the lien-free Completion of the applicable Secured Phase Improvement and constitutes any of (i) a Lender Guaranty (where the Phase Developer has executed a Mortgage to secure a construction loan to finance for all of the applicable Secured Phase Improvement), (ii) a City Guaranty (where the Phase Developer has not executed a Mortgage to secure a construction loan to finance any portion of the applicable Secured Phase Improvement), and (iii) both a Lender Guaranty and a City Guaranty (where the Phase Developer has executed a Mortgage to secure a construction loan to finance only a portion of the applicable Secured Phase Improvement), under Section 28.3 below.

"Secured Phase Improvements" means (i) any Infrastructure to be constructed by a Phase Developer in Phase 1, Phase 2 and Phase 3 pursuant to all applicable Authorizations that is not a Secured Public Improvement; and (ii) Buildings to be constructed by a Phase Developer within Phase 1, Phase 2 and Phase 3 pursuant to all applicable Authorizations.

"Secured Public Improvements" means all on- and off-site Infrastructure for which the Developer or applicable Phase Developer is required to provide improvement security in accordance with the SMA Security Requirements.

28.2 Requirement for Adequate Security for Public Improvements. As discussed in Section 9.3 of this Agreement (Conditions to Commencement of Improvements), as a precondition to Commencing construction for any Secured Public Improvements within a Phase (or Partial Phase), the applicable Phase Developer shall provide Adequate Security for the work of Secured Public Improvements.

28.3 Requirement for Adequate Security for Secured Phase Improvements.

28.3.1 As a condition to Commencing construction of any Secured Phase Improvements in Phase 1, Phase 2 or Phase 3 (or any Partial Phase thereof) (as described in Section 9.3 hereof), the applicable Phase Developer shall submit to City a Completion Guaranty for the applicable Secured Phase Improvements meeting the requirements of this Section 28.3.1. If Phase Developer has executed a Mortgage to secure a construction loan to finance all or any portion of the applicable Secured Phase Improvement, the Completion Guaranty shall constitute the completion guaranty delivered to the applicable Mortgagee for the Secured Phase Improvements so long as the City is identified therein as an express intended beneficiary or obligee (for purposes of clarity, the naming of City as a third party beneficiary is

not sufficient to meet this requirement) (in each case, a "**Lender Guaranty**"). To the extent that any portion of the construction of the applicable Secured Phase Improvements will not be subject to a Lender Guaranty, or during any time prior to the effectiveness of the Lender Guaranty, the Completion Guaranty as to the portion of the construction not subject to a Lender Guaranty, or the Completion Guaranty during any time period prior to the effectiveness of the Lender Guaranty, shall be substantially in the form attached hereto as Exhibit Q (in each case, a "**City Guaranty**"). At least thirty (30) days prior to Commencement of the applicable Secured Phase Improvement, Phase Developer will provide City with the proposed form of Completion Guaranty for its Approval, provided, however, the form of Completion Guaranty shall be Approved if it meets the following criteria: (i) the Completion Guaranty is a Lender Guaranty that identifies the City as a beneficiary or obligee (for purposes of clarity, the naming of City as a third party beneficiary is not sufficient to meet this requirement); or (ii) the Completion Guaranty is a City Guaranty that is (A) substantially in the form of Exhibit Q attached hereto, and (B) the entity or entities providing the Adequate Security has a Net Worth of at least Three Hundred Million Dollars ($300,000,000).

28.4 Substitution of Adequate Security. Developer shall have the right to substitute any Adequate Security provided to the City hereunder, or any portion thereof, for another form of Adequate Security that meets all of the requirements or Approvals needed for it to be Adequate Security as defined in this Agreement.

28.5 Reduction, Return and Release. Any Adequate Security provided by Developer in accordance with this Agreement shall be proportionately reduced upon partial satisfaction of the obligations secured thereby to the extent Approved by the City or provided in such Adequate Security. Any Adequate Security shall be fully released upon the complete satisfaction of the obligation secured thereby, as evidenced by the issuance of a Certificate of Completion with respect to the applicable Secured Phase Improvement; provided that if the City terminates this Agreement with respect to such Phase before the issuance of the applicable Certificate of Completion, the Adequate Security shall be released when the secured construction obligations that relate to the period before such termination have been Completed (or, if applicable, upon and in accordance with a final, unappealable judicial determination). Notwithstanding anything to the contrary set forth in this Agreement, to the extent that any Adequate Security provided herein for a Phase is given in accordance with the City's Subdivision Code for the purpose of securing Infrastructure obligations required under an approved Subdivision Map, such Adequate Security shall be reduced and released by the City in accordance with the City's Subdivision Code. Upon any release of any Adequate Security under this Agreement, the City shall promptly (and in any event within thirty (30) days following such release) return such released Adequate Security and, if requested by Developer or the applicable obligor, provide a written confirmation of such release and return.

28.6 Enforcement of the Phase Security. City will defer enforcement of any Adequate Security for Secured Phase Improvements until notice of default is given to Master Developer or Phase Developer (as applicable), all cure periods under the loan documents have elapsed, and the construction lender (if any) has had an additional two (2) months to commence enforcement of the Completion Guaranty (as such period may be extended by the pendency of litigation being diligently prosecuted to enforce such Completion Guaranty).

29. Miscellaneous Provisions.

29.1 Entire Agreement; Amendment. This Agreement and the other Project Documents contain all of the promises, agreements, conditions, inducements and understandings between City and each Developer relative to the matters set forth herein and therein. The only way to amend or otherwise modify this Agreement is for the Parties that are to be bound by such amendment or modification to sign and deliver a written instrument that expresses the intent to amend or otherwise modify this Agreement.

29.2 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.

29.3 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 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.

29.4 Extensions of Time.

29.4.1 City or Developer may in their 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.

29.4.2 In addition to matters set forth in Section 29.4.1, 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 impart the same notice to third parties as a formal recorded amendment to this Agreement. For the purposes of this Section 29.4, City's authorized representative shall be the City Manager.

29.5 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, any Section, Exhibit or any defined term, the reference shall be deemed to refer to the Table of Contents, 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.

29.6 More than One Person. If more than one Person is named as or becomes Master Developer or any Phase Developer hereunder, City may require the signatures of each sueh Person on any notice given by Master Developer or any such Phase Developer, whichever is applicable, 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 or any Phase Developer shall be fully, and jointly and severally, liable for all of Master Developer's or such Phase Developer's, whichever is applicable, obligations hereunder. Nothing herein shall be construed as giving Master Developer or any Phase Developer the right to enforce any Ground Lease; provided, that the foregoing shall not limit any rights that Master Developer or any Phase Developer has under any such Ground Lease as a party thereunder and/or as an express third party beneficiary thereof. Nothing herein shall be construed as giving Master Developer or any Phase Developer the right to enforce this Agreement against Master Developer or any other Phase Developer.

29.7 Time of Performance.

29.7.1 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.

29.7.2 Where the Outside Date (or other date set forth in this Agreement) set forth in the Schedule of Performance 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, then the Outside Date shall be the last day in such month or year, as applicable.

29.7.3 If the last day of any period to give notice, reply to a notice, meet a deadline or to 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.

29.7.4 Time is of the essence in the performance of all the terms and conditions of this Agreement.

29.8 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.

29.9 No Brokers. Each of the Parties warrants and represents to the other Party that neither it nor any of its Affiliates have dealt with any broker, finder or like entity or agent in connection with this Agreement or the transactions contemplated hereby, or on account of introducing the Parties, the preparation or submission of brochures, the negotiation or execution of this Agreement or the execution of the transactions contemplated hereby. If any Person claims to have acted or dealt with Developer or City in connection with this Agreement and claims that it is entitled to a fee of any kind, the Party through which such Person is claiming such entitlement shall indemnify and hold harmless the other Party against any such claim and shall reimburse such other Party for any costs or expenses (including reasonable attorneys' fees and disbursements) incurred in defending itself against any such claim.

29.10 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 statues as they may be amended from time to time, except to the extent a contrary intent is stated.

29.11 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.

29.12 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.

29.13 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.

29.14 Incorporation of Exhibits. Each Exhibit listed in the List of Exhibits is hereby incorporated into and made a part of this Agreement.

29.15 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.

29.16 Numbers.

29.16.1 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.

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

29.17 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. Developer shall have the right to prevent or prohibit the use of any portion of the property leased by it, including common areas and buildings and improvements, by any Persons for any purpose inimical to the operation of a private, integrated mixed-use project as contemplated by this Agreement.

29.18 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.

29.19 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, the remainder of this Agreement, or the application of such term or provision 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.

29.20 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.

29.21 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.

29.22 Survival. Termination of this Agreement shall not affect (i) the right of any Party to enforce any and all Indemnifications or Adequate Security (including any Guaranty) to the extent they relate to the period before termination, (ii) any provision of this Agreement that, by its express term, is intended to survive the expiration or termination of this Agreement, or (iii) the rights and obligations under any AA&R, including Master Developer's or City's right to receive reimbursements, to the extent they relate to the period before termination or are intended to survive the expiration or termination of the AA&R. Termination of this Agreement shall not affect (a) the right of any Party to enforce any and all Indemnifications set forth herein to the extent they relate to the period before termination or (b) any provision of this Agreement that, by its express term, is intended to survive the expiration or termination of this Agreement.

29.23 Estoppel Certificates.

29.23.1 Developer Estoppels. At any time, and from time to time, upon not less than fifteen (15) days' notice by City, Developer shall execute, acknowledge and deliver to City and to any other Person reasonably requested by City a statement certifying: (a) that this Agreement and each other Project Document specified by City to which Developer is a party 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 Developer to City under this Agreement or the other Project Documents specified by City to which Developer is a party have been paid, (c) whether or not, to Developer's actual knowledge, City is in default in performance of any covenant, agreement or condition contained in this Agreement or the other Project Documents specified by City to which Developer is a party, and, if so, specifying each such default of which Developer has actual knowledge, and (d) as to any other matter with respect to this Agreement or the other Project Documents specified by City to which Developer is a party as City may reasonably request.

29.23.2 City Estoppels. At any time, and from time to time, upon not less than fifteen (15) days' notice by Developer, City shall execute, acknowledge and deliver to Developer and to any other Person reasonably requested by Developer a statement certifying: (a) that this Agreement and each other Project Document specified by Developer to which City is a party 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 Developer to City under this Agreement or the other Project Documents specified by Developer have been paid, (c) whether or not, to City's actual knowledge, Developer is in default in performance of any covenant, agreement or condition contained in this Agreement or the other Project Documents specified by Developer and, if so, specifying each such default of which City has actual knowledge, (d) Developer's satisfaction of the "best efforts" requirement under Sections 5.3.3, 5.3.5 and 5.3.6 hereof, and (e) as to any other

matter with respect to this Agreement or the other Project Documents specified by Developer as Developer may reasonably request.

29.24 Approvals.

29.24.1 As used herein, "**Approval**" and any variation thereof (such as "**Approved**" or "**Approve**") refers 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.

29.24.2 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.

29.24.3 Notwithstanding the foregoing, it is specifically acknowledged by all Parties that Section 29.24.2 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.

29.25 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 Developer's and City's interest in the Project. If this Agreement is terminated in accordance with its terms, Developer or City may record a Notice of Termination as provided in Section 29.30.

29.26 Nondiscrimination.

29.26.1 There shall be no discrimination against or segregation of any person or group of persons on any basis listed in subdivision (a) or (d) of section 12955 of the California Government Code, as those bases are defined in sections 12926, 12926.1, subdivision (m) and paragraph (1) of subdivision (p) of section 12955, and section 12955.2 of the California Government Code, or on the basis of age, race, color, creed, sex, sexual orientation, gender

identity, marital or domestic partner status, disabilities (including AIDS or HIV status), religion, national origin or ancestry by Developer or any occupant or user of the Project in the sale, lease, rental, sublease, transfer, use, occupancy, tenure or enjoyment of the Project, or any portion thereof. Neither Developer itself (nor any person or entity claiming under or through it), nor any occupant or user of the Project or any transferee, successor, assign or holder of any interest in the Project or any person or entity claiming under or through such transferee, successor, assign or holder, shall establish or permit any such practice or practices of discrimination or segregation in connection with the Project, including with reference to the selection, location, number, use or occupancy of buyers, tenants, vendees or others. Notwithstanding the foregoing, no Person shall be in default of its obligations under this Section 29.26 where there is a judicial action or arbitration involving a bona fide dispute over whether such person is engaged in discriminatory practices and such person promptly acts to satisfy any judgment or award against such person.

29.26.2 Any transferee, successor, assign, or holder of any interest in the Project, or any occupant or user thereof, whether by contract, lease, rental, sublease, license, deed, deed of trust, Mortgage or otherwise, and whether or not any written instrument or oral agreement contains the above prohibitions against discrimination, shall be bound by, and shall not violate in whole or in part, directly or indirectly, the nondiscrimination requirements set forth above. The covenants in this Section 29.26 shall be covenants running with the land and they shall be: (i) binding for the benefit and in favor of City, as beneficiary and the owner of any other land or of any interest in any land in the Project, as beneficiary, and their respective successors and assigns; and (ii) binding against Master Developer, its successors and assigns to or of the Project and any improvements thereon or any portion thereof or any interest therein, and any party in possession or occupancy of the Project or the improvements thereon or any portion thereof.

29.27 Successors and Assigns; No Third-Party Beneficiary. Subject to the provisions of Article 22 and Article 23, this Agreement shall be binding upon and inure to the benefit of the Mortgagees and transferees of Master Developer and any transferee of City. 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.

29.28 ENA; Term Sheet; Supplements. After the Reference Date and before the expiration or termination of the ENA, the Term Sheet and the Supplement in accordance with their terms, in the event of a conflict between the ENA, the Term Sheet, the Supplements, and/or this Agreement, the provisions of this Agreement shall prevail. The Parties acknowledge and agree that the ENA, the Term Sheet and the Supplement shall terminate as of the full effectiveness of this Agreement and the expiration of any applicable appeal periods (including any appeal period with respect to the Project EIR) without challenge or appeal, or if a challenge or an appeal is filed, such effectiveness shall have been upheld by a final decision in each such challenge or appeal without any material adverse effect on this Agreement.

29.29 Plans on Record with City. The most recent versions of the Exhibits to this Agreement, as such Exhibits may be amended or supplemented from time to time in accordance with this Agreement or the terms of such Exhibits, shall not be required to be

recorded but shall be kept on file with City. City and Master Developer shall update or supplement the Schedule of Performance, revised Phasing Plan, Phase Schedules of Performance, and/or Allowed Square Footage Table from time to time to reflect changes to the same as permitted in this Agreement. Full color copies of all recorded documents are also on file with City. All documents on file with City that are not otherwise privileged and confidential under applicable laws shall be made available to members of the public at reasonable times in keeping with City's standard practices.

29.30 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 and any applicable Mortgagee 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, Developer, and any applicable Mortgagee. The recordation of a Notice of Termination shall not affect in any manner the rights of City, Developer, or any applicable Mortgagee to contest the terminating Party's right to cause such recordation.

29.31 Extensions of Time.

29.31.1 City or Developer may 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.

29.31.2 In addition to matters set forth in Section 24.1, the Parties may 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 impart the same notice to third-parties as a formal recorded amendment to this Agreement.

29.32 Attorneys' Fees.

29.32.1 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 29.32 shall include attorneys' fees on any appeal.

29.32.2 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.

29.33 Notices.

29.33.1 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, (c) sent by a telephonic facsimile transmitting machine (with the receipt of such transmittal acknowledged in writing or by telephone), with a confirmatory copy to be delivered thereafter by duplicate notice in accordance with any of clauses (a), (b), or (c) of this Section 29.33, in each case to the Parties at their addresses set forth on Exhibit R. 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 29.33. 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.

29.33.2 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, 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 29.33 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).

29.33.3 Notices to Mortgagees. If a Mortgagee or Mezzanine Lender notifies City in writing, any notice of default given by City hereunder to Developer shall also be given contemporaneously to such Mortgagee or Mezzanine Lender with a copy thereof, if requested, to such Mortgagee's or Mezzanine Lender's attorneys and other Persons, in each case to the addresses specified in the request. No such notice of default shall be valid unless City complies with this Section 29.33.3.

29.33.4 Notices for "Deemed Approval" Matters. For purposes of Sections 4.4, 9.1.2(a) and 10.1 hereof, if City fails to respond to a request for an applicable Approval within the times required thereby, Developer may simultaneously give a subsequent request to the City Manager, the Director of Planning and the City Attorney at the addresses set forth in Exhibit R attached hereto (or such substitute address as may be provided by City from time to time) by delivery in the manner specified in Sections 29.33.1(a) or (b), which request shall be labelled prominently: "Second Request: Deemed Approval Matter." If City fails to respond to the subsequent request within fifteen (15) days following the date when given (as determined under Section 28.33.2(a), then the applicable Approval shall be deemed approved.

29.34 Limitations on Disclosure. City acknowledges that each Financing Plan and Detailed Financing Plan (and amendments, revisions or updates thereto) (collectively, "**Confidential Financial Reports**") are being provided to the City for review on the condition that such information is kept confidential due to the fact that such information consists of trade secrets of Developer, including nonpublic technical, financial and other information, the disclosure of which would harm Developer. In the event that City or any of its representatives is legally required or requested, as advised by written opinion of its outside legal counsel, to disclose all or any portion of the Confidential Financial Reports pursuant to a subpoena, court order, civil investigative demand, request under the California Public Records Act or similar judicial process or similar request issued by a court of competent jurisdiction or by a governmental or regulatory authority, City shall promptly notify Developer in writing by email or facsimile and certified mail, of the existence, terms and circumstances surrounding such request, so that Developer may seek a protective order or other appropriate remedy or waive compliance with the applicable provisions of this Agreement. Notwithstanding the provisions of this Section 29.34, City shall not be required to keep confidential any information submitted to City that is related to anticipated public financing pursuant to the requirements of Section 5.1.3 or Section 9.3.2(d), (e) and/or (f).

29.35 Fees and Sales Taxes. The provisions of this Section 29.35 shall survive the termination of this Agreement.

29.35.1 City Development Fees. Developer shall pay City Costs and Administrative Fees pertaining to the Project as set forth in the Development Agreement.

29.35.2 Sales and Use Tax. Master Developer and each Phase Developer shall use commercially reasonable efforts to adopt sales and use tax reporting procedures allowable under Applicable Law that will provide City (in its capacity as a Governmental Authority) the greatest allocation of California sales and use tax revenues feasible, and they shall cause their general construction contractors, vendors and Building occupants to use commercially reasonable efforts to adopt these procedures, including by designating the

Project Site as the place of sale and place of use of materials, goods, and services to be used in connection with the construction and operation of the Project. Master Developer shall propose to City for its Approval a process that will designate the Project Site as the place of sale of fixtures furnished and installed by Master Developer and each Phase Developer for the Project, and to do the same with respect to construction materials used in connection with the Improvements. Notwithstanding the foregoing, the failure of such general construction contractors, vendors and Building occupants to allocate sales and use tax revenues to any location other than City shall not constitute a breach by Master Developer or any Phase Developer under this Agreement. Master Developer and the Phase Developers shall bear all costs associated with their obligations under this Section 29.35.2. Master Developer and each Phase Developer shall comply with the Provisions Relating to Construction Sales and Use Tax Allocations attached hereto as Exhibit U.

29.36 Wages and Working Conditions. The Parties acknowledge that the development of the Project will necessitate many extraordinary and unusual additional on-site and off-site development costs to be incurred by Master Developer and any Phase Developer, including costs on account of the Landfill, the lack of customary infrastructure on the Project Site, and the need to acquire necessary rights and access to Phases 2 through 7 of the Project Site. Given the extraordinary up-front costs, in approving this Agreement, the City Council made findings that the Project Documents, including this Agreement and the Ground Leases, provide the City with fair market value, taking into account the development and market risk, extraordinary up-front costs and reasonable private development return expectations. The rent structure as set forth in this Agreement and the form of Ground Lease includes an initial Base Rent, periodic rent adjustments and fair market value adjustments in years 45 and 70, taking into account the extraordinary and significant up-front costs required of Developer to position the Property as a developable site. As such, the rent structure under the Lease does not involve any fees, costs, rents, loans or other obligations that would normally be paid under the Ground Lease that are reduced, waived or otherwise charged at less than fair market value by the City or otherwise trigger California's Prevailing Wage Law (Cal. Labor Code, §§1720 et seq.).

29.37 Hiring Efforts. Developer and its Contractors and Consultants shall make good faith efforts to (i) recruit, employ, and contract with qualified individuals and businesses that are part of the work force and business community in the City of Santa Clara, and (ii) provide employment, contracting, and business participation opportunities to residents of the City of Santa Clara, including women, minorities, and economically disadvantaged Individuals.

29.37.1 For the purposes of this Section 29.37.1, "good faith efforts" shall be deemed to be satisfied if written notification is provided to community-based organizations with experience in the administration of diversity programs and any other organizations identified for the Developer, Contractor, or Consultant (as applicable) by City when employment opportunities are available, and a record is maintained of each such written notification and the organizations' responses thereto.

29.37.2 Developer, its Contractors, and its Consultants may participate in voluntary associations which assist in fulfilling their diversity obligations under this Section 29.37.2. The efforts of a contractor association, joint contractor-union, contractor-community, or other similar group of which the Developer, Contractor, or Consultant (as relevant) is a member and participant, may be asserted as fulfilling this obligation provided that

the Developer, Contractor, or Consultant (as relevant) actively participates in the group, makes good faith efforts to assure that the group has a positive impact on the employment of minority group persons and women in the industry, ensures that the concrete benefits of the program are reflected in the work force composition of Developer, Contractor, or Consultant (as relevant). The obligation to comply, however, is that of Developer, Contractor, or Consultant (as relevant) and failure of such a group to fulfill an obligation shall not be a defense for the noncompliance of Developer, Contractor, or Consultant (as relevant).

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

IN WITNESS WHEREOF, Master Developer and City have executed this Agreement as of the Reference Date.

CITY:

CITY OF SANTA CLARA, a municipal corporation

By: _____
Name: Rajeev Batra
Title: Interim City Manager

ATTEST:

_____
City Clerk

Approved as to form:

By: _____
Name: RICHARD E. NOSKY, JR.,
City Attorney

Approved on June 28, 2016

City Council Resolution No. 16-8340

[SIGNATURES CONTINUED ON FOLLOWING PAGE]

California All-Purpose Acknowledgment **CIVIL CODE § 1189**

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

STATE OF CALIFORNIA
COUNTY OF SANTA CLARA } ss

On **August 12, 2016**, before me, Jose Armas, a Notary Public, personally appeared **Rajeev Batra** who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

JOSE ARMAS
Commission # 2109740
Notary Public - California
Santa Clara County
My Comm. Expires May 29, 2019

WITNESS my hand and official seal.

Jose Armas

SIGNATURE OF NOTARY PUBLIC

THIS CERTIFICATE MUST BE ATTACHED TO THE DOCUMENT DESCRIBED BELOW:
Disposition and Development Agreement
City Place
Related Santa Clara

MASTER DEVELOPER:

RELATED SANTA CLARA, LLC, a Delaware limited liability company

By: _____
Name: Kenneth A. Himmel
Title: Executive Vice President

[*Signature Page to Disposition and Development Agreement (City Place Santa Clara)*]

ACKNOWLEDGMENT

State of New York)
) ss.
County of New York)

On the 9th day of August in the year 2016 before me, the undersigned, a Notary Public in and for said State, personally appeared Kenneth A. Hamel, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity, and that by his signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

(Notarial Seal)

Yvette Schlesinger
Notary Public

YVETTE SCHLESINGER
Notary Public, State of New York
No. 01SC6175100
Qualified in New York County
Commission Expires October 1, 2019

EXHIBIT A

Definitions

The following terms used in this Agreement shall have the meanings ascribed to them below.

"**AA&R**" means a written consent in the form of Exhibit P attached hereto, with only such changes thereto as may be Approved by Master Developer, the applicable Phase Developer and City.

"**Additional Buildings**" means the Additional Initial Buildings and the Additional Retail Buildings.

"**Additional Initial Buildings**" is defined in Section 5.3.3.

"**Additional Retail Buildings**" is defined in Section 5.3.5.

"**Adequate Security**" is defined in Section 28.1.

"**Administrative Fee**" shall mean a fee imposed City-Wide or Area-Wide in effect at the time and payable upon the submission of an application for any permit or approval or thereafter, which is intended to cover only the estimated actual costs to City of processing that application and inspecting work undertaken pursuant to that application, and is not a Development Fee or Exaction. The term "Administrative Fee" shall not any include City Costs.

"**Affiliate**" means, with respect to any specified Person, any other Person that directly or indirectly, through one or more intermediaries, controls, is controlled by, or is under common control with the specified Person. For purposes of this definition, the term "**control**" means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of a Person, whether through ownership of voting stock, by contract or otherwise. The possession, directly or indirectly, by another Person of a right to approve or consent to (or otherwise restrict) certain business or affairs of the specified Person only through major decision rights or similar protective approval rights shall not, in and of itself, constitute or indicate "control", nor shall a Person be deemed not to have "control" solely because another Person possesses, directly or indirectly, such major decision rights or similar protective approval rights with respect to the specified Person.

"**Agreement**" is defined in the Preamble.

"**Airspace Parcels**" is defined in Recital B.

"**Allowed Square Footage**" is defined in Section 10.1.

"**Allowed Square Footage Table**" is defined in Section 10.1.

"**Alternate Leasing Plan**" is defined in Section 5.3.7(b).

"**Anniversary Date**" is defined in Section 14.2.

"**Annual Landfill Costs**" is defined in Section 14.2.

"**Applicable Law**" means any and all applicable present and future laws, rules, orders, ordinances, regulations, statutes, requirements, directives, permits, consents, certificates, approvals, codes and executive orders of all Governmental Authorities now existing or hereafter created, and of all their departments and bureaus, including City zoning regulations to the extent applicable, and of any applicable fire rating bureau or other body exercising similar functions affecting the Project Site; provided, however, that in all cases the foregoing shall be subject, with respect to the laws, rules, orders, orders, ordinances, regulations, statutes, requirements, directives, permits, consents, certificates, approvals, codes and executive orders of City, to the Development Agreement.

"**Approval**," "**Approve**" and "**Approved**" are defined in Section 29.24.1.

"**Arbitration Matter**" is defined in Section 20.1.1.

"**Arbiter**" is defined in Section 20.3.1.

"**Arbiter's Qualifications**" is defined in Section 20.3.1.

"**Architect**" means the licensed architect of record, if any, for any Building as selected by a Phase Developer.

"**Architect's Certificate**" means a certificate issued by the Architect in accordance with Section 12.1 that is in the form attached hereto as Exhibit S with only such changes thereto as may be Approved by Phase Developer and City.

"**Area-Wide**" shall mean all privately-owned property within any designated geographic district of the City (for example, the "North Bayshore Area") that includes, but does not consist solely of, some or all of the Project Site.

"**Assignment**" is defined in Section 22.3.1.

"**Authorization**" is defined in Section 11.1.

"**Base Rent**" is defined in Section 6.1.8.

"**Best Efforts Report**" is defined in Section 5.3.7(a).

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

"**Building Permit**" means a building permit issued by City.

"**Business Day**" means any day that is not a Saturday, Sunday or a day observed as a holiday by either the State of California or the federal government.

"**CEQA**" means the California Environmental Quality Act, California Public Resources Code section 21000 et seq., and the Guidelines for the California Environmental Quality Act, California Code of Regulations, Title 14 section 15000 et seq., as amended from time to time.

"**Certificate of Completion**" means a certificate issued by City in accordance with Article 12 that is substantially in the form attached hereto as Exhibit K.

"**Certificate of Occupancy**" means an instrument issued by City certifying that a Building or portion thereof is fit for occupancy or use in accordance with City's Building Code.

"**CFDs**" is defined in Section 5.1.3.

"**Change of Control**" means, as to any specified Person, a change in the Controlling Owner of the specified Person.

"**City**" has the meaning set forth in the preamble or, depending on the context, may mean the territorial jurisdiction of the foregoing. Where not otherwise specified, the City Manager (or his or her designee) is authorized to act on behalf of City.

"**City Center Phases**" is defined in Section 1.4.

"**City Costs**" means the actual and reasonable costs incurred by City employees directly, or by third parties hired by City, in performing City's obligations under this Agreement and the other Project Documents, as determined on a time and materials basis, excluding work and fees covered by Administrative Fees. The term "City Costs" shall mean all reasonable and actual costs related to the hiring of third party consultants, attorneys, and/or plan checkers as needed to assist City in performing its obligations under this Agreement and the other Project Documents in order to ensure efficient Project development, including but not limited to the review and (if applicable) Approval of: (i) Premium Costs and Premium Costs Allocations in accordance with Section 16.1 hereof; (ii) financial data and plans submitted as required hereunder; (iii) environmental review relative to a Subsequent Project Approval; (iv) compliance with this Agreement and the other Project Documents, and Project MMRP; and (v) planning, design, building, and/or public works submittals related to the Project. The term "City Costs" shall also include all reasonable and actual costs related to the hiring and ongoing retention of the Priority Project Manager (as described in the DAP Procedures), whether such person is a third party or a City employee.

"**City Council**" means the Santa Clara City Council, or means any successor governing body of City designated by or under law.

"**City Guaranty**" is defined in Section 28.3.1.

"**City Landfill Parcels**" is defined in Recital B.

"**City Manager**" means the City Manager of City, or any successor chief executive officer of City designated by or under law.

"**City Party**" is defined in Section 27.1.

"City Place Park" is defined in Section 4.8.1(e).

"City Place Park Construction Contribution" is defined in Section 4.8.1(e).

"City Place Park Design Contribution" is defined in Section 4.8.1(e).

"City-Wide" shall mean all privately-owned property within (1) the territorial limits of the City or (2) any designated use district or use classification of the City so long as (a) any such use district or use classification includes a substantial amount of affected private property other than affected private property within the Project Site, and (b) the use district or use classification includes all private property within the use district or use classification that receives the general or special benefits of, or causes the burdens that occasion the need for, the new City Regulation or Development Fees or Exactions (as those terms are defined in the Development Agreement).

"City's Termination Rights" is defined in Section 23.6.

"City's Title Covenant" is defined in Section 13.3.

"Commence" and any variation thereof means the commencement of physical construction of Infrastructure or Buildings (as applicable) within the applicable Phase pursuant to an Approved DAP.

"Complete" and any variation thereof means, as applicable, that: (i) a specified scope of work has been completed in accordance with Approved plans and specifications; (ii) Governmental Authorities with jurisdiction have issued all Authorizations required for the contemplated use and, with respect to Buildings, occupancy of the work including, if applicable, Certificates of Occupancy; (iii) the site has been cleaned and all equipment, tools and other construction materials and debris have been removed; and (iv) with respect to Public Property and Public Improvements, (a) all bills for the work have been paid and releases have been obtained from all mechanics and material suppliers or bonds have been provided to secure such liens in a form and amount required by law to cause any such lien to be removed from the applicable portion of the Project Site, (b) no mechanics', materialmen's or other liens have been recorded (unless they have been bonded as provided above) and the period for recording such liens have expired and (c) all as-built plans and warranties, guaranties, operating manuals, operations and maintenance data, certificates of completed operations or other insurance, and all other close-out items required under any applicable Authorization or Approval have been provided to City.

"Completion Guaranty" is defined in Section 28.1.

"Confidential Financial Reports" is defined in Section 29.34.

"Conflicting Law" means legislation enacted by the Congress of the United States, by the legislature of the State or the enactment of a regulation or statute by any Governmental Authority (other than a City Party) with jurisdiction that precludes or substantially increases the cost of performance or compliance with any material provision of this Agreement by Master Developer or a Phase Developer.

"**Consent Transfer**" is defined in Section 22.3.

"**Consent Transfer Request Notice**" is defined in Section 22.4.3.

"**Construction Covenant**" is defined in Section 9.1.4.

"**Consultant**" means a person or business which is a party to a professional services contract in excess of $100,000 for the design or construction of any portion of the Project.

"**Contractor**" means any contractors or subcontractors (regardless of tier) having a an agreement in excess of $100,000 with Developer or other Contractors or Consultants to provide or procure labor, materials, or services for the construction of the Project, including a purchase order that requires installation of materials. A "Contract" does not include a loan transaction.

"**Controlling Owner**" means, as to a specified Person, the Person who holds the ultimate Controlling Ownership in the specified Person.

"**Controlling Ownership**" means, with respect to a specified Person, the ownership, directly or indirectly, of the right to direct the day-to-day business and affairs of the specified Person. The ownership, directly or indirectly, by a Person of a right to approve or consent to (or otherwise restrict) certain business or affairs of the specified Person only through major decision rights or similar protective approval rights shall not, in and of itself, constitute or indicate "Controlling Ownership" in the specified Person, nor shall a Person be deemed not to have "Controlling Ownership" in the specified Person solely because another Person possesses, directly or indirectly, such major decision rights or similar protective approval rights with respect to the specified Person.

"**CPI**" means the Consumer Price Index for All Urban Consumers published by the Bureau of Labor Statistics of the United States Department of Labor or its successors, All Items (1982-84 = 100), or any successor index thereto designated by the Bureau of Labor Statistics or its successor, appropriately adjusted. If the CPI ceases to be published and there is no such successor index, another comparable index selected by City and Master Developer shall be used. If such Parties cannot agree within a reasonable time, the successor index and any appropriate adjustments shall be determined pursuant to Article 20 (Dispute Resolution) and shall be substituted for the CPI.

"**CPI Adjustment**" means an adjustment of each dollar amount that is subject to CPI Adjustment under this Agreement and is made by multiplying the dollar amount being adjusted by the sum of (a) one hundred percent, plus (b) the CPI Increase.

"**CPI Increase**" means the percentage increase, if any (but not decrease, if any) between the CPI for the calendar month that is three months prior to the effective date of adjustment and the CPI for the calendar month that is fifteen months prior to the effective date of adjustment.

"**CSCC**" means the City of Santa Clara Code.

"**DAP**" is defined in Section 1.6.3.

"**DAP Procedures**" is defined in Section 5.

"**Department of Public Works**" means the Department of Public Works of City, or any successor public agency designated by or under law.

"**Detailed Financing Plan**" is defined in Section 9.3.2

"**Developer**" means, individually or collectively as the context requires, Master Developer and each Phase Developer.

"**Developer Party**" is defined in Section 17.1.4.

"**Developer Related Party**" is defined in Section 22.6.1(c).

"**Development Agreement**" means that certain Development Agreement by Developer and City dated for reference purposes as of the Reference Date, as the same may be amended from time to time.

"**Development Obligations**" is defined in Section 5.3.

"**Development Opportunity**" is defined in Section 7.2.

"**Development Parcels**" is defined in Recital C.

"**Direct Assignment**" is defined in Section 22.6.2(a).

"**Easement Actions**" is defined in Section 13.2.2.

"**Effective Date**" means the date that this Agreement becomes effective, which shall be the date this Agreement is executed and delivered by the Parties. Notwithstanding the foregoing, the Parties shall not be required to take any implementation actions in furtherance of the development of the Project Site until the effective date of the Development Agreement and the Master Community Plan.

"**ENA**" is defined in Recital D.

"**Engineer**" means the licensed engineer of record for Infrastructure as selected by Phase Developer and Approved by City Manager.

"**Engineer's Certificate**" means a certificate issued by the Engineer in accordance with Section 12.1 that is in the form attached hereto as Exhibit T with only such changes thereto as may be Approved by Phase Developer and City.

"**Environmental Laws**" means and includes all applicable present and future federal, State and local laws, statutes, rules, regulations, ordinances, standards, directives, and conditions of approval, all administrative or judicial orders or decrees and all permits, license approvals or other entitlements, or rules of common law pertaining to Hazardous Substances, the protection of the environment, natural resources, wildlife, human health or safety, or employee safety or

community right-to-know requirements related to the work being performed pursuant to this Agreement or a Ground Lease.

"**EOS Variant**" is defined in Recital H.

"**Event of Default**" is defined in Section 21.1.

"**Excusable Delay**" is defined in Section 24.1.

"**Expedited Arbitration Matter**" is defined in Section 20.1.2.

"**Experience Requirement**" is defined in Section 22.4.3(c).

"**Final Map**" means a Final Subdivision Map processed in accordance with the City's Development Code.

"**Final Station Site**" is defined in Section 5.3.1.

"**Final Station Site Improvements**" is defined in Section 5.3.1(b).

"**Financial Obligations**" means the reimbursement of Annual Landfill Costs in accordance with Section 14.2 hereof, City Costs in accordance with Article 26 hereof and the City Place Park Design Contribution and City Place Park Construction Contribution in accordance with Section 4.8 hereof.

"**Financial Requirement**" is defined in Section 22.4.3.(c).

"**Financing Plan**" is defined in Section 5.1.3.

"**Fire Protection Assessment Study**" is defined in Section 15.2.2(c)(ii).

"**Fire Protection Services Obligations**" is defined in Section 15.2.2(c)(ii).

"**Fire Station**" is defined in Section 5.3.1.

"**First Final Map**" is defined in Recital B.

"**Force Majeure**" is defined in Section 24.1.1.

"**FTEs**" is defined in Section 15.2.2(c)(1).

"**GAAP**" means generally accepted accounting principles.

"**Governmental Authority**" means all federal, state, local and/or regional governmental and quasi-governmental bodies and authorities including departments, agencies, boards and councils, and any political subdivision, public corporation, district or other political or public entity or department thereof having or exercising jurisdiction over City, Developer or the Project or the Project Site, or such portions thereof as the context indicates.

"**Gross Square Footage**" and any variation thereof shall be calculated in accordance with the definition of "Gross Floor Area" set forth in Section 18.06.010(g) of the CSCC.

"**Ground Lease**" means a ground lease in the form attached hereto as Exhibit G-1 or G-2 as applicable, with only such changes thereto as set forth in Section 6.1 and as the applicable Phase Developer and City shall Approve.

"**Hard Costs**" means out-of-pocket costs actually incurred by the applicable Party, to the extent not included as Soft Costs. Hard Costs include, without limitation, necessary permit fees, bond premiums and similar fees and charges required for the construction of the Infrastructure.

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

"**IMP**" is defined in Recital G.

"**Improvements**" means, with respect to a Phase, individually or collectively as the context requires, all Infrastructure and Buildings required to be included in a DAP for such Phase, or (if a DAP is Approved for the Phase), actually included in the DAP Approved for that Phase.

"**Indemnify**" means reimburse, indemnify, defend and hold harmless. "**Indemnification**" has a correlative meaning.

"**Indemnified Parties**" is defined in Section 4.8.2(a).

"**Indemnifying Party**" is defined in Section 27.3.

"**Infrastructure**" means those items identified in the Infrastructure Master Plan including open space improvements (including park improvements and restrooms), streets, rails, sewer and storm drainage systems, water systems, street improvements (including freeway ramps or other demolition), landfill "podium" (also referred to as a "structural slab" in the IMP), traffic signal systems, dry utilities and other improvements any of which are to be constructed in or for the benefit of the applicable real property or any other matters described in the Infrastructure Master Plan. "Infrastructure" also includes any improvements required to serve the Project that have

been imposed as conditions of approval through the Project Approvals. "Infrastructure" does not include Buildings.

"**Infrastructure Master Plan**" or "IMP" is defined in Recital G, as such document may be amended from time to time in accordance with its terms .

"**Initial Improvements**" means, with respect to a Phase, individually or collectively as the context requires, the Infrastructure, the Required Buildings, and the Additional Buildings.

"**Initial Phase Base Rent**" is defined in Section 6.3.3.

"Institutional Lender" means any one or more of the following, whether acting for its own interest and capacity or in an agency, fiduciary or other representative capacity for one or more Persons none of which need be an Institutional Lenders: (i) a savings bank, a savings and loan association, a commercial bank or trust company or branch thereof, an insurance company, a governmental agency, a real estate investment trust, a religious, educational or charitable institution, an employees' welfare, benefit, pension or retirement fund or system, an investment banking, merchant banking or brokerage firm, or any other Person or group of Persons which, at the time a Mortgage is recorded in favor of such Person or Persons, has or is an Affiliate of a Person which has assets of at least $500 million in the aggregate (or the equivalent in foreign currency), and in the case of any Person or group of Persons none of whom is a savings bank, a savings and loan association, a commercial bank or trust company, an insurance company, a governmental agency, or a real estate investment trust, is regularly engaged or is an Affiliate of a Person regularly engaged in the business of commercial real estate (whether as an owner, investor, lender, sponsor or otherwise), or (ii) any special account, managed fund, department, agency or Affiliate of any of the foregoing, or (iii) any person acting in an agency, fiduciary or other representative capacity for any of the foregoing. For purposes hereof, acting in an "agency, fiduciary or other representative capacity" shall be deemed to include acting as a trustee, agent, or in a similar capacity under a mortgage, loan agreement, indenture or other loan document.

"**Landfill**" means the Santa Clara All-Purpose Landfill, which is that portion of the Project Site located within the Landfill Parcel that was formerly used as a sanitary landfill and comprised an approximately two hundred ten acre site with a waste footprint of approximately one hundred thirty six acres.

"**Landfill Baseline Costs**" is defined in Section 14.2.

"Landfill Operation and Management Agreement" is defined in Section 14.1.

"Landfill O&M Term Sheet" is defined in Section 1.2.1.

"**Landfill Parcel**" is defined in Recital B.

"**LEA**" means the Santa Clara County Department of Environmental Health – Local Enforcement Agency.

"**Lender Guaranty**" is defined in Section 28.3.1.

"**Lender Notice of Cure**" is defined in Section 23.4.

"**Losses**" is defined in Section 27.1.

"**Major Department Store**" is defined in Section 5.3.6.

"**Master CC&Rs**" is defined in Section 6.2.1(c).

"**Master Community Plan**" or "**MCP**" is defined in Recital G.

"**Master Developer**" has the meaning set forth in the preamble or, following a permitted transfer of such Person's rights and obligations under this Agreement, means such transferee (but, for the avoidance of doubt, not including a Phase Developer).

"**Material Breach**" is defined in Section 21.2.5.

"**Materially Adverse Economic Conditions**" is defined in Section 24.1.2.

"**Mezzanine Lender**" means the lender under a Mezzanine Loan.

"**Mezzanine Loan**" means any financing secured by interests in Developer or, if the financing documents so provide, in any Person controlling Developer (and not by a lien on Developer's interest in this Agreement).

"**Minimum Initial Buildings**" is defined in Section 5.3.2.

"**Minimum Retail Buildings**" is defined in Section 5.3.4.

"**Mitigation Measures**" means the mitigation measures identified in the Project EIR that are applicable to the Project and adopted by the City in connection with its approval of the Project, to be implemented as provided in the Project MMRP.

"**Monetary Event of Default**" is defined in Section 23.3.

"**Mortgage**" means any mortgage, deed of trust, pledge or similar instrument, including any modification, amendment, spreader, consolidation or renewal thereof that constitutes a lien on the Developer's interest in the Project Site under this Agreement and the beneficiary of which is an Institutional Lender. Once any mortgage, deed of trust, pledge or similar instrument qualifies as a Mortgage, no transfer by a Mortgagee of all or any interest in such indebtedness and obligations secured thereby shall affect such qualification so long as the transferee is an Institutional Lender except in the case where the transferee is a purchaser in foreclosure or under a sale in lieu of foreclosure of the Mortgage and such purchaser is not an Affiliate of the Mortgagee under such Mortgage.

"**Mortgagee**" means the beneficiary under a Mortgage.

"**MPG**" is defined in Recital E.

"**Neighborhood Parks**" is defined in Section 15.2.2(b).

"**Net Worth**" means net worth calculated using GAAP. In the case of a corporation, "Net Worth" shall mean shareholders' equity calculated in accordance with GAAP. Any reference in this Agreement to a minimum Net Worth or a Net Worth Requirement shall mean that the Net Worth must be satisfied and maintained at all times. Upon City's request, a Person required to maintain a minimum Net Worth under this Agreement shall provide to City reasonable evidence that it satisfies the Net Worth Requirement, including a copy of the most recent audit of such Person (which shall in no event be dated more than thirteen (13) months before the date of City's request). Any such audit must have been performed by an independent third-party auditor and must include the opinion of the auditor indicating that the financial statements are fairly stated in all material respects.

"**Net Worth Requirement**" means: (i) for Transfer of a Phase or portions of a Phase that cumulatively equal or exceed seventy percent (70%) or more of the land area in a Phase, a Net Worth calculated as of the scheduled closing of the proposed Assignee's acquisition of the Ground Lease covering the applicable Phase or Partial Phase, equal to or more than Seventy Five Million Dollars ($75,000,000) increased automatically by ten percent (10%) on each five (5) year anniversary of the Effective Date and (ii) for Transfers of one or more Partial Phases that cumulatively equal less than seventy percent (70%) of the land area in a Phase, a Net Worth calculated as of the scheduled closing of the proposed Assignee's acquisition of the Ground Lease covering the applicable Phase or Partial Phase equal to or more than the higher of (A) Twenty Five Million Dollars ($25,000,000), increased automatically by ten percent (10%) on each five (5) year anniversary of the Effective Date or (B) the amount determined under clause (i) above times the percentage of the total land area in the Phase that is being Transferred. Any entity required to satisfy the Net Worth Requirement can do so either by either meeting the Net Worth Requirement itself or by providing a Guaranty, covering all of that entity's obligations under this Agreement without limitation, from an entity that meets the Net Worth Requirement.

"**Non-Monetary Event of Default**" is defined in Section 23.3.

"**Non-NFL Event Parking Spaces**" is defined in Section 5.5.

"**Non-Water Corrective Action Plan**" means that plan prepared by City and Master Developer and submitted to the LEA addressing non-aqueous components of the corrective actions to be taken at the Landfill, including non-aqueous aspects of the groundwater monitoring and leachate collection system, Landfill gas extraction system, Landfill cover, and pilings into the waste.

"**Notice**" is defined in Section 29.33.1.

"**Notice of Termination**" is defined in Section 29.30.

"**Notifying Party**" is defined in Section 21.1.

"**Official Records**" means the Official Records of City maintained by City's Recorder's Office.

"**Original Phase Boundaries**" is defined in Section 6.1.8.

"**Outside Date**" means the last date by which a particular obligation may be satisfied, as such date is set forth in the Schedule of Performance.

"**Parcel 3 Access Road**" is defined in Section 4.8.1(b)(ii).

"**Park Maintenance**" is defined in Section 15.2.2(b).

"**Parking Management Plan**" is defined in Section 5.5.

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

"**Partial Phase Criteria**" is defined in Section 4.2.1.

"**Party**" or "**Parties**" means, individually or collectively as the context requires, City, Master Developer and each Phase Developer.

"**PCBs**" means polychlorinated biphenyls.

"**Permit to Enter**" is defined in Article 8.

"**Permitted Exceptions**" is defined in Section 13.1.7.

"**Permitted Transfer**" is defined in Section 22.6.1.

"**Person**" means any natural person or a corporation, partnership, trust, limited liability company, limited liability partnership or other entity.

"**Phase**" means, individually or collectively as the context requires, each Airspace Parcel or Parcels designated as a Phase of development by Master Developer from time to time under this Agreement or a Partial Phase thereof as described in Section 4.2. There will be up to eight (8) Phases, as shown in the Phasing Plan, including the Phase 2A.

"**Phase 1**" means Phase 1 as shown on the Phasing Plan.

"**Phase 2**" means Phase 2 is shown in the Phasing Plan.

"**Phase 2A**" is defined in Section 4.8 and shown as Phase 2A on the Phasing Plan.

"**Phase 2A Lease Termination Notice**" is defined in Section 4.8.1(c).

"**Phase 3**" means Phase 3 as shown on the Phasing Plan.

"**Phase Developer Designation**" is defined in Section 4.5.

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

"**Phase Option**" is defined in Section 3.2.

"**Phase Option Notice**" is defined in Section 4.1.

"**Phase Outside Dates**" is defined in Section 7.1.

"**Phase Schedule of Performance**" is defined in Section 9.1.2(a).

"**Phase Termination Notice**" is defined in Section 7.1.

"**Phase Title Policy**" is defined in Section 6.2.1(d).

"**Phasing Criteria**" is defined in Section 4.1.2.

"**Phasing Information**" is defined in Section 4.1.1.

"**Phasing Plan**" means the document attached hereto as Exhibit E, as such document may be amended from time to time.

"**Police Beat**" is defined in Section 15.2.2(c)(1).

"**Police Services**" is defined in Section 15.2.2(c)(1).

"**Post-Closure Land Use Plan**" means that plan prepared by City and Master Developer and submitted to the LEA demonstrating that post-closure activities will not pose a threat to health and safety and the environment.

"**Post-Closure Permit**" means the permit issued by the LEA following approval of the Revised Post-Closure Maintenance Plan.

"**Pre-Approved Arbiters List**" is defined in Section 20.3.1.

"**Preliminary Title Report**" is defined in Section 13.1.1.

"**Premium Costs**" is defined in Section 16.1.1.

"**Premium Costs Allocation**" is defined in Section 16.1.3(a).

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

"**Project Approvals**" is defined in Recital J and as listed in Exhibit D.

"**Project Documents**" means collectively, this Agreement, the MCP, the IMP, the MMRP, the CC&Rs, the Development Agreement, the Revised Closure Plan, the Post-Closure Land Use Plan, the Revised Post-Closure Maintenance Plan, the Post-Closure Permit, the Non-Water Corrective Action Plan, the Water Corrective Action Plan, the Waste Discharge Requirements, the Landfill Operation and Management Agreement (once executed), the Ground Leases and any other Authorizations received for any portion of the Project and agreements

entered into pursuant to this Agreement, together with all exhibits thereto, all as may be lawfully amended from time to time.

"**Project EIR**" is defined in Recital F.

"**Project MMRP**" is defined in Recital F and attached hereto as Exhibit C.

"**Project Site**" is defined in Recital C.

"**Public Improvements**" means Infrastructure that is required under Article VII of City's Subdivision Code, plus any other Infrastructure that is required to be dedicated to the City pursuant to the Project Approvals.

"**Public Streets**" is defined in Section 15.2.2(a).

"**Reference Date**" is defined in the Preamble.

"**Release**" means any accidental or intentional spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, or disposing into the air, soil gas, land, surface water, groundwater or environment (including the abandonment or discarding of barrels, containers, and other closed receptacles containing any Hazardous Substance). The term includes a threatened "Release" but does not include any passive migration of a Hazardous Substance through the air, soil gas, land, surface water or ground water after the Hazardous Substance has been previously spilled, leaked, pumped, poured, emitted, discharged, injected, escaped, leached, dumped or disposed into the air, soil, gas, land, surface water or groundwater.

"**Relocation Act**" is defined in Section 18.2.

"**Requested Change Notice**" is defined in Section 4.7.

"**Required Buildings**" means the Minimum Initial Buildings and the Minimum Retail Buildings that are Approved in the DAP for the applicable Phase.

"**Retail**" as that term is defined under the Master Community Plan.

"**Revised Closure Plan**" means the plan prepared by City and Master Developer and submitted to the LEA detailing closure of the groundwater monitoring and leachate collection system, Landfill gas extraction system, Landfill cover, and pilings into the waste.

"**Revised Post-Closure Maintenance Plan**" means the plan prepared by City and Master Developer and submitted to the LEA detailing the maintenance of the Landfill following completion of the Revised Closure Plan.

"**Schedule of Performance**" means the schedule of performance attached hereto as Exhibit F, as such schedule of performance may be updated under the terms of this Agreement, amended upon the Approval by Developer and City, or extended by any delay permitted under Section 29.31.

"**Secured Phase Improvements**" is defined in Section 28.1.

"**Secured Public Improvements**" is defined in Section 28.1.

"**SMA Security Requirements**" is defined in Section 9.3.5.

"**Shared Infrastructure Costs**" is defined in Section 16.2.

"**Soft Costs**" means Developer's out-of-pocket costs actually incurred and paid to Third Parties for (i) Project approvals (including, without limitation, environmental review and obtaining Project entitlements from applicable Governmental Authorities), (ii) architectural, engineering, consultants, attorney and other professional services fees, and (iii) tenant relocations from the Project Site, including, without limitation, relocation site acquisition costs and tenant relocation costs.

"**State**" means the State of California.

"**Station Area**" is defined in Section 15.3.

"**Street and Utility Easements**" is defined in Section 13.2.2.

"**Subdivision Map**" means a subdivision or parcel map as defined in the Subdivision Map Act.

"**Subdivision Map Act**" means the Subdivision Map Act, sections 66410 et seq. of the California Government Code.

"**Subsequent Project Approvals**" shall mean any additional project approvals required to implement the Project after the initial Project Approvals, including, without limitation, Development Area Plans, site permits and building permits and all Subdivision Maps.

"**Substantial Completion**" (and any reasonable variation thereof) means, with respect to the construction of any of the Initial Improvements, that the Architect (or the general contractor, if there is no Architect) or Engineer therefor certifies in writing that the Improvement is sufficiently complete that it may be occupied or otherwise used for the purpose for which it is intended.

"**Take Down**" or "**Taken Down**" means the City and Master Developer or a Phase Developer designated by Master Developer entering into a Ground Lease for the Development Parcel(s) within a particular Phase.

"**Tasman Parcels**" is defined in Recital C.

"**Temporary Station Site**" is defined in Section 5.3.1.

"**Temporary Station Site Improvements**" is defined in Section 5.3.1(a).

"**Tentative Map**" is defined in Recital B.

"**Term**" is defined in Article 2.

"**Term Sheet**" is defined in Recital D.

"**Third Party**" is defined in Section 7.1.

"**Title Company**" means First American Title Company, or such other title company determined by Phase Developer.

"**Transferee**" means any Person to whom Master Developer effectuates an Assignment of any rights and corresponding obligations under this Agreement to the extent permitted, including Transfers to Affiliates of Master Developer.

"**Transferee Team**" is defined in Section 22.4.3(b).

"**Waste Discharge Requirements**" means the requirements for discharge of waste materials at the Landfill issued by the California Regional Water Quality Control Board, San Francisco Bay Region on January 23, 2002, as such requirements may be amended or revised from time to time.

"**Water Corrective Action Plan**" means that plan prepared by City and Master Developer and submitted to the LEA addressing aqueous components of the corrective actions to be taken at the Landfill, including aqueous aspects of the groundwater monitoring and leachate collection system, Landfill gas extraction system, Landfill cover, and pilings into the waste.

EXHIBIT B-1

CITY LANDFILL PARCEL

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 a Northwesterly boundary of the lands conveyed to Jules Eshner and Margaret Harkins Eshner by Grant Deed recorded in Book 3804, at Page 23 of the Official Records of Santa Clara County; thence along the Northwesterly and Westerly boundaries of said lands the following three courses
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 Book 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, 861.77' feet to a point on an Easterly prolongation of a Northerly sideline of Stars and Stripes Drive; thence leaving the Westerly sideline of the UPRR, and along said Easterly prolongation

35. South 63° 57' 01" West, 365.15 feet to a point on said Northerly sideline at a point of tangency of said sideline, at the end of a curve, concave to the Southwest, having a radius of 334.28 feet; thence along said sideline

36. South 63° 57' 01" West, 1053.06 feet to a point on a Northeasterly boundary of Parcel Three as shown in the Lease Agreement recorded in Document No. 18721549, Santa Clara County Records ; thence leaving said Northerly sideline, and along said Northeasterly boundary

37. North 26° 03' 52" West, 50.19 feet to the Northerly most corner of said Parcel Three; thence along the Northwesterly line of said Parcel Three

38. 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

39. North 30° 38' 56" West, 530.37 feet to the beginning of a tangent curve to the left; thence

40. 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

41. North 56° 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

42. North 1° 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 227.28 acres, more or less.

The distances as shown in this description are Grid distances. To obtain ground level distances multiply any distance shown above by the factor 1.00005310.

Description prepared by BKF Engineers, in June, 2016.

Signed David Darling 6/16/2016
Date

PROFESSIONAL LAND SURVEYOR
DAVID S. DARLING
L.S. 7625
STATE OF CALIFORNIA

EXHIBIT B-2

Legal Description of the Airspace Parcels

[To be inserted upon recordation of the first Final Map]

EXHIBIT B-3

TASMAN PARCEL

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

BEGINNING at the point of intersection of the Westerly sideline of the Union Pacific Railroad (UPRR) with an Easterly prolongation of a Northerly sideline of Stars and Stripes Drive, from which the intersection of said Westerly sideline of UPRR with the Northerly sideline of Tasman Drive (as said last-mentioned intersection is shown on the Record of Survey map recorded in Book 345 of Maps, at Pages 1 through 8, Santa Clara County Records) bears, South 27° 23' 56" East, 260.41' feet distant; thence along the Westerly sideline of the UPRR

1. South 27° 23' 56" East, 260.41' feet, to said intersection of the Westerly sideline of UPRR with the Northerly sideline of Tasman Drive; thence leaving the Westerly sideline of the UPRR and along the Northerly sideline of Tasman Drive as shown on the Record of Survey map recorded in Book 345 of Maps, at Pages 1 through 8, Santa Clara County Records the following five courses
2. South 62° 58' 45" West, 60.69 feet to an angle point; thence
3. South 49° 35' 12" West, 172.69 feet to an angle point; thence
4. South 55° 17' 27" West, 403.61 feet to an angle point; thence
5. South 62° 59' 29" West, 162.15 feet to the beginning of a tangent curve to the left; thence
6. 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
7. South 63° 11' 39" West, 150.97 feet to an angle point; thence
8. South 63° 10' 24" West, 14.76 feet to an angle point; thence
9. South 60° 42' 14" West, 120.03 feet to an angle point; thence
10. South 46° 39' 25" West, 41.19 feet to an angle point; thence
11. 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
12. North 26° 03' 52" West, 394.25 feet to an angle point; thence
13. South 63° 56' 08" West, 15.50 feet to an angle point; thence
14. North 26° 03' 52" West, 9.17 feet to the Northerly sideline of Stars and Stripes Drive as said sideline is shown on that certain Record of Survey map recorded in Book 570 of

Maps, at Page 5, Santa Clara County Records; thence leaving the Easterly boundary of said Parcel Three, and along said Northerly sideline of Stars and Stripes Drive

15. North 63° 57' 01" East, 1053.06 feet to the beginning of a tangent curve to the right, having a radius of 334.28 feet, as shown on said Record of Survey map; thence leaving said sideline and along an Easterly prolongation of said sideline

16. North 63° 57' 01" East, 365.15 feet to the POINT OF BEGINNING.

Containing 11.29 acres, more or less.

The distances as shown in this description are Grid distances. To obtain ground level distances multiply any distance shown above by the factor 1.00005310.

Description prepared by BKF Engineers, in June, 2016.

PROFESSIONAL LAND SURVEYOR
DAVID S. DARLING
L.S. 7625
STATE OF CALIFORNIA

Signed David Darling 6/16/2016
Date

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.

PROFESSIONAL LAND SURVEYOR
DAVID S. DARLING
L.S. 7625
STATE OF CALIFORNIA

David Darling

EXHIBIT B-4
CITY LANDFILL & TASMAN PARCELS

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

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Subject EXHIBIT B-4
CITY LANDFILL & TASMAN PARCELS
Job No. 20156041
By DSD Date 6-08-16 Chkd. DRT
SHEET 1 OF 1

DDA EXHIBIT C
Mitigation Monitoring and Reporting Program
[attached]

MITIGATION MONITORING & REPORTING PROGRAM
City Place Santa Clara Project
Planning/CEQA File # PLN2014-10554/CEQ2014-01180
State Clearinghouse # 2014072078

Mitigation and Avoidance Measures	Action	Implementing Party	Monitoring Party	Timing [1]
LAND USE				
LU-1.1: Increase Residential Density in the City's General Plan. During the next General Plan Update cycle, the City shall explore permitting higher residential densities in the City as well as allowing residential land uses in existing non-residential areas. Where feasible, the City shall target strategic areas of the City, specifically those closest to major employment and transit hubs, for new residential land uses and/or increased residential density. In order to maintain projected 2035 jobs/housing ratios, the City shall explore permitting up to 11,000 units.	City to explore permitting higher residential densities in the City.	Director of Planning and Inspection	Director of Planning and Inspection	During the next General Plan Update cycle
AESTHETICS				
AES-1.1: Imported Material Storage. Soils from other parcels that are imported to Parcel 2 shall be stored in areas that are not within view of the Guadalupe River Trail. Alternatively, imported soils within view of the Guadalupe River Trail shall be distributed across Parcel 2 at a depth of 2 feet or less.	Project Developer to provide applicable provisions of construction contracts to the City incorporating requirement.	Project Developer/ Project Contractor	City Planning & Inspection Division	Prior to issuance of grading and building permits
AES-1.2: Early Implementation of Master Community Plan Landscaping Plan for Parcels 1 and 2. The existing golf course trees along the eastern edge of Parcel 2 shall be retained (leaving the view from the Guadalupe River trail unchanged) until such time as development on the eastern portion of Parcel 2 would necessitate their removal. The Project Developer shall implement the Landscaping Plan, as presented in the Master Community Plan, at the earliest feasible period, given the constraints and pacing of the development. Prior to planting and installation, the Landscaping Plan shall be submitted to the Planning Director for approval.	Project Developer to submit a landscape plan to replace removed trees to the City for review and approval.	Project Developer/ Project Contractor	City Director of Planning & Inspection	Prior to issuance of grading and building permits for Parcel 2
AES-2.1: Installation of Low-Profile Lighting. The Project Developer shall install low-profile, low-intensity lighting directed downward to minimize light and glare.	Project Developer to submit catalog cuts of the fixtures proposed to the City demonstrating compliance.	Project Developer	City Planning & Inspection Division	Concurrent with Architectural Review submittal,

[1] Where the timing of an action is specified as taking place before a permit is issued, that action must be taken with respect to the action underlying the permit, except where otherwise specifically noted.

Mitigation and Avoidance Measures	Action	Implementing Party	Monitoring Party	Timing [1]
				which may be included within Development Area Plans
AES-2.2: Installation of Shielded Fixtures. The Project Developer shall use shielded fixtures for street lighting and park lighting to minimize spill onto the public right-of-way and glare produced by the lighting on the Project site.	Project Developer to submit catalog cuts of the fixtures proposed to the City demonstrating compliance.	Project Developer	City Planning & Inspection Division	Concurrent with Architectural Review submittal, which may be included within Development Area Plans
AES-2.3: Treat Reflective Surfaces. The Project Developer shall ensure application of low-emissivity glass at exterior surfaces of the proposed structures for the purpose of reducing reflection of visible light that strikes the glass exterior and reduction in the amount of interior light being emitted through the glass.	Project Developer to provide evidence that low-emissivity glass at exterior surfaces will be used.	Project Developer	City Planning & Inspection Division	Concurrent with Architectural Review submittal, which may be included within Development Area Plans
AES-2.4: Provide Obstruction for Glare from Vehicle Headlights in the Proposed Garages. The Project Developer shall ensure that through the architectural design of the parking garages and through or in combination with landscaping or physical screening at the parking structures glare from vehicle headlights shall be screened from off-site viewers.	Project Developer to provide garage sections to City showing how vehicle headlights in the proposed garages will be obstructed.	Project Developer	City Planning & Inspection Division	Concurrent with Architectural Review submittal, which may be included within Development Area Plans
TRANSPORTATION				
TRA-1.1: Vehicle Trip Reduction with Transportation Demand Management (TDM). The Project Developer shall prepare and implement a TDM Plan approved by the Santa Clara Director of Planning and Inspection. The TDM Plan shall include trip reduction measures necessary to achieve an overall target of reducing Project office-	Project Developer to submit a TDM Plan to the City for each Development Area Plan	Project Developer / TMA	Department of Public Works Director of Planning and	Prior to the issuance of a certificate of occupancy for

Mitigation and Avoidance Measures	Action	Implementing Party	Monitoring Party	Timing [1]
generated daily traffic by a minimum of 4 percent and peak-hour traffic by a minimum of 10 percent, with an overall target of reducing Project residential-generated daily traffic by a minimum of 2 percent and peak-hour traffic by a minimum of 4 percent, compared to the traffic estimates used in this EIR. The TDM Plan shall also include and implement TDM Best Management Practices (BMPs) for the retail uses. The TDM Plan shall include measures to reduce the amount of vehicle traffic generated by City Place by shifting employees, customers, and residents from driving alone to using transit, carpooling, cycling, and walking modes through TDM measures, strategies, incentives, and policies. The TDM obligation in this measure is to apply for the lifetime of the Project. The TDM Plan may specify a phased implementation approach that provides initially for implementation of the TDM measures that are appropriate for multi-tenant offices (e.g., measures aimed at increased transit use and carpooling), which are expected to be developed during the first three phases of development, and then provide for TDM measures that are appropriate for large corporate office tenants in the remaining phases (such as shuttles). The Santa Clara Director of Planning and Inspection shall have the authority and discretion to permit modification of the measures provided that the modifications continue to achieve the overall trip reduction objective and/or the Santa Clara Director of Planning and Inspection is satisfied that all feasible TDM measures are being implemented if the overall trip reduction objective is not being met. Specific requirements as to the TDM Plan, its contents, target reductions, monitoring and remedial action are as follows: A. *Vehicle Trip Thresholds.* Vehicle trip reductions will be measured through counts of vehicles that enter and exit the site and by comparison of the results to established trip thresholds. As part of the annual TDM Plan monitoring process, as described below, vehicle trip generation estimates, based on the land uses and their sizes, will be prepared by a transportation professional funded by the Transportation Management Association described below, and working under the direction of the City, who will use the trip generation rates and internalization and public transit ridership reductions used in the EIR transportation analysis. The TDM reduction targets will be applied to create the thresholds. The estimates and thresholds will be reviewed and approved by the City's Traffic Engineer. While no thresholds are established for retail uses because it is difficult to enforce trip reductions for retail customers, this measure requires implementation of TDM BMPs for retail portions of the Project, as described below. B. *Transportation Management Association* Some TDM measures and strategies shall be incorporated into the design of the site and the buildings. A Transportation	and prior to each subsequent Development Area Plan, submit a TDM Plan reviewed by the third party. Submit an annual report documenting compliance with the TDM Plan.		Inspection	first building under each DAP for TDM Plan (or expansion of TDM Plan) associated with development under the DAP; obtain approval prior to certificate of occupancy; undertakes annual reporting, surveys and revisions to TDM Plan in accordance with mitigation measure.

Mitigation and Avoidance Measures	Action	Implementing Party	Monitoring Party	Timing [1]
Management Association (TMA) is a non-profit, organization that provides transportation services in a particular area, such as a commercial district, medical center or office park, controlled by members that are building owners or tenants in that area. A TMA shall be formed to oversee and coordinate implementation of the TDM measures to be implemented for the Project, including coordinating activities of the various employers and tenants. The TDM Plan shall identify the vehicle trip-reducing measures and strategies to be provided and implemented directly by the Project Developer, those to be implemented directly by the TMA and those to be implemented directly by individual tenants/employers, and any to be implemented directly by the City. The TDM Plan shall describe the roles and responsibilities of the TMA and its members, which shall be codified in a binding agreement with the City of Santa Clara, approved by the Director of Planning and Inspection, and recorded with the County of Santa Clara Clerk Recorder.				
C. *Office TDM Measures.* TDM measures that target office employees shall be described in detail in the TDM Plan, including information regarding the direct implementing party (e.g., Project Developer, TMA, City, and tenants and employers.), The following TDM measures shall be considered for inclusion in the TDM Plan for some or all portions of the office development, to the extent feasible and appropriate, either as part of an initial TDM Plan or as options for enhanced or remedial measures if trip reduction targets are not being met:				
• On-site Support Facilities: shuttle bus stops with shelters, bicycle paths and lanes, pedestrian paths linking buildings and transit stations, priority parking for carpools and vanpools				
• In-building Support Facilities: showers and changing rooms, bicycle storage rooms and bicycle racks, and bicycle repair stands, cafes, and fitness centers				
• Private shuttles for both long distance commute and last-mile service from nearby public transit				
• Ridesharing options for long distance commuters such as carpool and vanpool matching services				
• Guaranteed ride home services for commuters who carpool, take transit, or bicycle to work				
• Financial incentives such as pre-tax benefits for transit and bicycle expenses (e.g., Commuter Check) or subsidized transit passes (e.g., Commuter Checks, Clipper Cards or VTA EcoPass) for all employees				
• Additional support services for employees who use transit or rideshare, such as flexible work hours				
• A website and marketing program to disseminate information on commute				

Mitigation and Avoidance Measures	Action	Implementing Party	Monitoring Party	Timing [1]
options; access to TMA management services • A TDM information packet to be provided to all new City Place employees upon commencement of work at City Place and, the benefits of alternative commute methods stressed during new employee orientation programs • Incentives for employees to live in locations well served by transit or shuttles • Bike share pods to enable trips on-site and to nearby destinations to be made by bicycle • Car share services with cars on-site for use by employees (or others) who use alternative modes to travel to the site but need a car to run an errand, travel to a meeting, etc. • Multi-passenger demand responsive ride services for local employees that are competitive with drive alone including transportation network/ride-sharing services such as Uber Pool, Lyft Line and Chariot on-demand and crowd-sourced bus services • Yet-to-be developed new services, programs, strategies and emerging technologies • Congestion cordon (boundary) pricing scheme[2] • Parking management strategies such as paid parking and unbundled parking to restrict the parking supply[3] D. *Residential TDM Measures*. TDM measures that target residents shall be described in the TDM Plan, including information regarding the direct implementing party (e.g., Project Developer, TMA, City, tenants and employers). The following TDM measures shall be considered for inclusion in the TDM Plan for some or all portions of the residential development, to the extent feasible and appropriate, either as part of an initial TDM Plan or as options for enhanced or remedial measures if trip reduction targets are not being met: • Bicycle infrastructure improvements • Bicycle parking room or lockers • Bicycle riders guide • On-site bicycle repair facilities				

[2] Cordon pricing would entail charging vehicles a fee as they enter an area. The fees would be higher during congested periods. This type of strategy is most effective with limited access points and requires a high quality transit system to accommodate travel by a non-automobile mode.

[3] These parking management strategies can be paired with a residential permit parking program (RPPP) to ensure that Project residents seeking parking do not park in nearby neighborhoods.

Mitigation and Avoidance Measures	Action	Implementing Party	Monitoring Party	Timing [1]
• Financial subsidies for residents who commute by carpool, transit, walking or bicycle, such as VTA EcoPasses • A website and marketing program to disseminate information on commute options; access to TMA management services • Rideshare matching services • On-site shuttle services, shuttle bus stops with shelters, pedestrians path linking buildings and transit stations • Bus stops located near buildings • Pedestrian-oriented site design • Congestion cordon (boundary) pricing scheme • Parking management strategies such as paid parking and unbundled parking to restrict the parking supply. E. *Retail Site Design BMPs.* BMPs that target retail employees and customers shall be described in the TDM Plan, including information regarding the direct implementing party (e.g., Project Developer, TMA, City, tenants and employers). The following BMPs shall be considered for inclusion in the TDM Plan for some or all portions of the retail development, to the extent feasible and appropriate: • Bicycle infrastructure improvements • Bicycle rider encouragement program • Bicycle parking, showers and lockers • Bicycle riders guide • On-site bicycle repair facilities • Pre-tax commuter incentives • Rideshare matching services • On-site shuttle services, shuttle bus stops with shelters, pedestrians path linking buildings and transit stations • A website and marketing program to disseminate information on commute options; access to TMA management services • Bus stop locations near building entrances • Pedestrian-oriented site design • Congestion cordon (boundary) pricing scheme F. *Monitoring and Reporting.* The TDM Plan shall be monitored annually to gauge its effectiveness in meeting the thresholds; while general guidelines are provided here, the monitoring and reporting process shall be explained in detail in the				

Mitigation and Avoidance Measures	Action	Implementing Party	Monitoring Party	Timing [1]
TDM Plan. A transportation professional working at the City's direction and pursuant to a scope of work approved by the City's Traffic Engineer shall conduct traffic counts annually using mechanical counters or other devices approved by the City of Santa Clara to measure the daily and peak-hour entering and exiting vehicle volumes for a 72-hour period, Tuesday through Thursday. The counts shall include traffic counts at all City Place driveways, traffic counts at the driveways to office parking locations, and traffic counts at the driveways to residential parking locations. The counts shall be conducted when schools are in session and during non-holiday weeks with fair weather. The individual driveway volumes will be summed to provide the total site traffic volumes. The volumes at the driveways to the office and residential parking locations will be summed to provide the office- and residential-generated traffic volumes. The volumes will be compared to the trip thresholds to determine whether the reduction in vehicle trips is being met. The TMA will assist with the monitoring activities that will be conducted. In addition to monitoring driveway volumes, a survey will be developed by the transportation professional and administered in coordination with the TMA and individual office employers to determine actual mode splits for employees. The survey will also gather information on usage of individual TDM Plan components as well as gauge employee perception of the overall TDM Plan After an initial survey is conducted, subsequent surveys shall be conducted in years where the previous year's annual report has concluded that trip thresholds and trip reduction targets are not being met. The results of the annual vehicle counts and survey (if one is conducted that year) will be reported in writing by the transportation professional to the Santa Clara Director of Planning and Inspection. The report will include descriptions of the TDM measures in place, highlighting new or modified measures, summarize the results of the counts, summarize the results of the employee survey (if one is conducted that year), and conclude whether the trip thresholds and trip reduction targets are being met. The report (as well as any remedial action taken as a result) will be summarized in an annual informational report to the Planning Commission on the progress of TDM efforts throughout the City of Santa Clara. G. *Remedial Action*. If TDM Plan monitoring results show that the trip reduction targets are not being met, the TDM Plan shall be updated to identify replacement and/or additional feasible TDM measures to be implemented. The updated TDM Plan shall be submitted to the City and approved by the Santa Clara Director of Planning and Inspection. The updated TDM Plan shall also identify other TDM measures that were considered but determined to be infeasible or ineffective.				

Mitigation and Avoidance Measures	Action	Implementing Party	Monitoring Party	Timing [1]
The TMA shall oversee and coordinate the implementation of the feasible additional TDM measures and continue to explore methods of making other potential TDM measures feasible.				
TRA-1.2: Intersection Improvements. The intersection improvements and off-setting mitigation measures summarized in Table 3.3-20 shall be implemented, and Project Developer shall pay the fair-share contributions for the mitigation measures summarized in Table 3.3-20. The intent of the table is to identify, based on a preliminary feasibility determination, physically feasible intersection mitigation measures (e.g., lane additions) that increase the intersection's vehicle carrying capacity and reduce vehicle delay while fully mitigating the impacts. As described below, feasible mitigation measures that fully mitigate the impacts were identified at some locations. However, at other locations, measures that provide only partial mitigation were identified because of physical constraints. Although these mitigation measures do not fully address the impact, they do help reduce the severity of the impact. For intersections where there are no feasible physical improvements, off-setting mitigation measures were investigated. These measures would provide improvements to other modes of travel, thereby increasing the capacity of the transportation system. At some intersections no feasible improvement or off-setting mitigation measures were identified. The four potential entries are: • Full Mitigation: At the affected intersection, a physical modification to the intersection that would fully mitigate the impact was identified. This could be accomplished by adding vehicle lanes or upgrading an intersection to an interchange or "fly-over." These improvements would reduce vehicle delays and fully mitigate Project impacts at several intersections by allowing the intersections to operate at acceptable levels, with delays that would be lower than they would be under no-project conditions, or with less than a 4-second increase in critical delay at intersections that operate at unacceptable levels. • Partial Mitigation: At the affected intersection, a physical modification to the intersection that would partially mitigate the impact was identified. The proposed measure mitigates the impact during one peak hour but not the other or reduces the delay but not enough to mitigate the impact. • Off-setting Mitigation: In the North San José Deficiency Plan area, off-setting local street network, transit, bicycle, or pedestrian improvements were identified to accommodate future travel growth but not directly mitigate the intersection with the identified impact. • No Feasible Mitigation: No physical improvements or off-setting mitigation	Implement intersection improvements included in Table 3.3-20 of the Draft EIR and pay fair share contribution in accordance with Exhibit MMRP-1.	Project Developer (as noted in Table 3.3-20 of Draft EIR)	Department of Public Works	In accordance with Exhibit MMRP-1

Mitigation and Avoidance Measures	Action	Implementing Party	Monitoring Party	Timing [1]
measures were identified, typically because of physical limitations, costs, and/or right-of-way constraints.				

Some of the intersection improvements would require right-of-way (ROW) acquisition. A preliminary review of ROW constraints was done by viewing aerial photography as a part of the mitigation measure feasibility assessment. An intersection was identified as having ROW constraints if the mitigation measure would include widening the roadway or relocating aboveground utilities. (Use of the center median and "pork-chop" islands was not considered as roadway widening.) If the removal of bicycle facilities was required, the ROW required was defined as "possible." If the City makes a final determination that a portion or all of an improvement is not feasible because ROW cannot be acquired or for other reasons, the improvement, or infeasible portion, shall not be implemented and, if none of the improvement is feasible, and no off-setting mitigation measure is identified, that intersection shall be considered to have "no feasible mitigation."

The Project Developer's responsibility is included in Table 3-3.20, which indicates if the Project Developer would be wholly or partially responsible for the mitigation measure.

- As seen in the table, "100 percent" indicates that the cost and construction of the proposed mitigation measure is the full responsibility of the Project Developer. These are discrete mitigation measures that either fully or partially mitigate significant Project impacts.
- "Percent of total traffic" indicates that the Project Developer shall pay a fair-share contribution to the proposed mitigation measure, which is typically a larger transportation improvement, such as an expressway interchange, that has been identified in an adopted plan. Twelve of the intersections are on the County expressway system and are identified in the County's Expressway Plan to be upgraded to an interchange or "fly-over." The Project Developer shall pay its fair share toward these interchange upgrades per agreements between Santa Clara County and the City of Santa Clara.
- "Pay the North San José fee or fair-share contribution of alternative or off-setting mitigation" is identified for affected intersections in the North San José area. There are two options for these locations. The Project Developer can pay the North San José fee or a fair-share contribution for the mitigation measure or off-setting mitigation measure based on the Project's percent contribution of added traffic at the intersection.
- Where there is no feasible mitigation measure, no fair share is identified (0 percent).

Mitigation and Avoidance Measures	Action	Implementing Party	Monitoring Party	Timing [1]
The City-preferred mitigation measure is identified where there is more than one mitigation option.				
TRA-1.3: Prepare and Implement a Multimodal Improvement Plan. The Project Developer shall fund the preparation of (including CEQA review for) a Multimodal Improvement Plan (MIP) addressing at least the Congestion Management Program (CMP) intersections within the City of Santa Clara that are forecasted to operate at Level of Service F with the Project, either on a project level or cumulative basis. City shall reimburse the Project Developer for any cost of preparation of the MIP that exceeds the Project Developer's fair share of such cost. Such MIP shall be prepared in accordance with the guidelines and regulations of the Valley Transportation Authority (VTA) and shall be adopted by the City Council for submission to the VTA for consideration and approval no later than one year after approval of the Project. Once the MIP is adopted by the VTA, it shall be implemented in accordance with its terms and commensurate with the phasing of the development that its measures are intended to offset.	Provide requisite funding for City preparation of the MIP as City Costs under Development Agreement. City to prepare and approve MIP for submission to VTA, and implement MIP once it is approved.	Project Developer/ City	Department of Public Works and Division of Planning and Inspection	City to submit approved MIP to VTA within 1 year of project approval, and implement MIP according with its terms.
TRA-2.1: Traffic Signal Installation. Install a traffic signal at Intersection 109, Liberty Street/Taylor Street once the traffic volumes meet the warrant requirements. The intersection of Liberty Street/Taylor Street is located in San José; the installation of a traffic signal would need to be approved by the City of San José.	Project Developer shall provide funding for traffic signal installation at Liberty Street/Taylor Street in the City of San José and submit evidence of compliance to City.	Project Developer	Department of Public Works	Prior to issuance of building permits for the building that triggers improvement in accordance with Exhibit MMRP-1.
TRA-2.2: Traffic Signal Installation. Install a traffic signal at Intersection 114, Calle Del Sol/Calle De Luna, once the traffic volumes meet the warrant requirements.	Project Developer to install a traffic signal at Intersection 114, Calle Del Sol/Calle De Luna.	Project Developer	Department of Public Works	Prior to issuance of certificate of occupancy for the building that triggers improvement in accordance with Exhibit MMRP-1.

Mitigation and Avoidance Measures	Action	Implementing Party	Monitoring Party	Timing [1]
TRA-3.1: Freeway Segment Improvements. The Project Developer will make a voluntary contribution toward the VTP's 2040 Express Lane Projects (VTP 2040 project numbers H2, H3, H4, H5, H6, H7, and H15) and Countywide Freeway Traffic Operation System and Ramp Metering Improvements (VTP 2040 project number S83). These VTP 2040 projects (H2, H3, H4, H5, H6, H7, H15, and S83), once fully funded and constructed, will enhance travel choices for Project travelers and make more efficient use of the transportation network.	Project Developer shall pay per trip fee to the City in accordance with Exhibit MMRP-1.	Project Developer	Department of Public Works	Prior to issuance of certificate of occupancy for a new or expanded structure.
TRA-1a.1: Intersection Improvements for Existing with Project Phases 1, 2, and 3. The intersection improvements and off-setting mitigation measures summarized in Table 3.3-26 shall be implemented, and Project Developer shall pay the fair-share contributions for the mitigation measures summarized in Table 3.3-26. (This table also includes impacts and mitigation measures for the full Project for comparison purposes.) These improvements will reduce vehicle delays and fully mitigate Project impacts at several intersections by allowing the intersections to operate at acceptable levels, with delays that would be lower than they would be under no-project conditions, or with less than a 4-second increase in critical delay at intersections that operate at unacceptable levels. Table 3.3-26 also contains physical improvements for select intersections that will reduce the delay, but not to a level that mitigates the impact. Some of the intersection improvements would require ROW acquisition. A preliminary review of ROW constraints was done by viewing aerial photography as a part of the mitigation measure feasibility assessment. An intersection was identified as having ROW constraints if the mitigation measure would include widening the roadway or relocating aboveground utilities. (Use of the center median and "pork-chop" islands was not considered as roadway widening.) If the removal of bicycle facilities was required, the ROW required was defined as "possible." If the City makes a final determination that a portion or all of an improvement is not feasible because ROW cannot be acquired or for other reasons, the improvement, or infeasible portion, shall not be implemented and, if none of the improvement is feasible, and no off-setting mitigation measure is identified, that intersection shall be considered to have "no feasible mitigation."	See TRA-1.2	Project Developer	Department of Public Works	In accordance with Exhibit MMRP-1
TRA-5.1: Transportation Design Review. The site plans for Parcels 1 and 2 will undergo a design review by the City to ensure that City design standards are adhered to prior to construction. This review shall include an on-site intersection analysis prior to development plan approval. The on-site analysis shall include an intersection operations analysis to develop intersection traffic controls and lane geometries that	Project Developer to prepare site plans for Parcels 1 and 2 to be submitted to the City to ensure that City street	Project Developer	Department of Public Works	Concurrent with Development Area Plan submittal for

Mitigation and Avoidance Measures	Action	Implementing Party	Monitoring Party	Timing [1]
meet City of Santa Clara traffic standards. These parcels shall also be reviewed for: • Inbound queuing at parking facilities to ensure that queues do not block public streets and local streets • Emergency vehicle access and circulation • Vehicular circulation • Parking layout and circulation within the site • Bicycle access and circulation • Pedestrian access and circulation • Pedestrian access to and from transit stops • Truck circulation and loading dock access for commercial parcels	design and traffic standards are accommodated in each Development Area Plan.			each phase to the extent that data is available and with Architectural Review to the extent minor details are not known at DAP
TRA-6.1: Intersection Improvements With Access Variant Scheme. The intersection improvements summarized in Table 3.3-35 shall be implemented. These improvements will reduce vehicle delays and fully mitigate Project impacts at several intersections by allowing them to operate at acceptable levels, with delays that would be lower than they would be under no-project conditions, or with less than a 4-second increase in critical delay for intersections that operate at unacceptable levels. Table 3.3-35 also contains physical improvements for select intersections that will reduce the delay, but not to a level that fully mitigates the impact. Some of the intersection improvements would require ROW acquisition. A preliminary review of ROW constraints was done by viewing aerial photography as a part of the mitigation measure feasibility assessment. An intersection was identified as having ROW constraints if the mitigation measure would include widening the roadway or relocating aboveground utilities. (Use of the center median and "pork-chop" islands was not considered as roadway widening.) If the removal of bicycle facilities was required, the ROW required was defined as "possible." If the City makes a final determination that a portion or all of an improvement is not feasible because ROW cannot be acquired or for other reasons, the improvement, or infeasible portion, shall not be implemented and, if none of the improvement is feasible, that intersection shall be considered to have "no feasible mitigation."	Implement intersection improvements summarized in Table 3.3-35 of the Draft EIR and pay fair share contribution in accordance with Exhibit MMRP-1.	Project Developer	Department of Public Works	In accordance with Exhibit MMRP-1
TRA-6.2: Intersection Improvements for Phases 1, 2 and 3. The intersection improvements summarized in Table 3.3-36 shall be implemented. These improvements will reduce vehicle delays and fully mitigate Project impacts at several intersections by allowing the intersections to operate at acceptable levels, with delays that would be lower than they would be under no-project conditions, or with less than a 4-second increase in critical delay for intersections that operate at	Implement the intersection improvements for Phases 1, 2, and 3, as summarized in Table 3.3-36 of the Draft EIR	Project Developer	Department of Public Works	In accordance with Exhibit MMRP-1

Mitigation and Avoidance Measures	Action	Implementing Party	Monitoring Party	Timing [1]
unacceptable levels. Table 3.3-36 also contains physical improvements for select intersections that will reduce the delay, but not to a level that mitigates the impact. Some of the intersection improvements would require ROW acquisition. A preliminary review of ROW constraints was done by viewing aerial photography as a part of the mitigation measure feasibility assessment. An intersection was identified as having ROW constraints if the mitigation measure would include widening the roadway or relocating aboveground utilities. (Use of the center median and "pork-chop" islands was not considered as roadway widening.) If the removal of bicycle facilities was required, the ROW required was defined as "possible." If the City makes a final determination that a portion or all of an improvement is not feasible because ROW cannot be acquired or for other reasons, the improvement, or infeasible portion, shall not be implemented and, if none of the improvement is feasible, that intersection shall be considered to have "no feasible mitigation."	and pay fair share contribution in accordance with Exhibit MMRP-1.			
TRA-7.1: Sidewalk Gap Closure on Tasman Drive on the Lafayette Street overcrossing extending east to Calle Del Sol. The Project Developer shall construct a sidewalk on the north side of Tasman Drive on the Lafayette Street overcrossing and extending east to Calle Del Sol. The Project Developer shall fully fund the construction of this sidewalk segment between the Project frontage on Tasman Drive and Calle Del Sol.	Project Developer to construct a sidewalk on the north side of Tasman Drive on the Lafayette Street overcrossing, extending east to Calle Del Sol.	Project Developer	Department of Public Works	Prior to the issuance of certificate of occupancy for first building within Phase 1
TRA-14.1: Signalized Intersection Improvements. The intersection improvements and off-setting mitigation measures summarized in Table 3.3-20 shall be implemented and Project Developer shall pay the fair-share contributions for the mitigation measures summarized in Table 3.3-20, The Project Developer shall also pay the fair-share contribution for the additional intersections or off-setting mitigation measure identified in Table 3.3-50. The improvements will reduce vehicle delays and fully mitigate cumulative impacts at several intersections by allowing the intersections to operate at acceptable levels, with delays that would be less than they would be under no-project conditions, or with less than a 4-second increase in critical delay for intersections that operate at unacceptable levels. Table 3.3-50 also contains physical improvements for select intersections that will reduce the delay, but not to less than no-project conditions such that the Project's effects would remain cumulatively considerable. Some of the intersection improvements would require ROW acquisition. A preliminary review of ROW constraints was done by viewing aerial photography as a part of the mitigation measure feasibility assessment. An intersection was identified	Project Developer to implement intersection improvements mitigation measures summarized in Table 3.3-20 of the Draft EIR and pay the fair-share contributions for the mitigation measures in accordance with Exhibit MMRP-1.	Project Developer	Department of Public Works	In accordance with Exhibit MMRP-1

Mitigation and Avoidance Measures	Action	Implementing Party	Monitoring Party	Timing [1]
as having ROW constraints if the mitigation measure would include widening the roadway or relocating aboveground utilities. (Use of the center median and "pork-chop" islands was not considered as roadway widening.) If the removal of bicycle facilities was required, the ROW required was defined as "possible." If the City makes a final determination that a portion or all of an improvement or mitigation is not feasible because ROW cannot be acquired or for other reasons, the improvement, or infeasible portion, shall not be implemented and, if none of the improvement is feasible, that intersection shall be considered to have "no feasible mitigation."				
TRA-16.1: Intersection Improvements for Cumulative with-Project Access Variants. The intersection improvements summarized in Table 3.3-54 shall be implemented. Some of the intersection improvements would require ROW acquisition. A preliminary review of ROW constraints was done by viewing aerial photography as a part of the mitigation measure feasibility assessment. An intersection was identified as having ROW constraints if the mitigation measure would include widening the roadway or relocating aboveground utilities. (Use of the center median and "pork-chop" islands was not considered as roadway widening.) If the removal of bicycle facilities was required, the ROW required was defined as "possible." If the City makes a final determination that a portion or all of an improvement or mitigation is not feasible because ROW cannot be acquired or for other reasons, the improvement, or infeasible portion, shall not be implemented and, if none of the improvement is feasible, that intersection shall be considered to have "no feasible mitigation."	Project Developer to implement the intersection improvements summarized in Table 3.3-54 of the Draft EIR and pay the fair-share contributions for the mitigation measures in accordance with Exhibit MMRP-1.	Project Developer	Department of Public Works	In accordance with Exhibit MMRP-1
TRA-18.1: Construction Management. Prior to the issuance of each building permit, the Project Developer and construction contractor shall meet with the Public Works Department to determine traffic management strategies to reduce, to the maximum extent feasible, traffic congestion during construction of the Project and develop acceptable detour routes for emergency vehicles and for shuttles to the Great America ACE/Capitol Corridor station. The City will coordinate with appropriate transit agencies. The Project Developer shall prepare a Construction Management Plan for review and approval by the Public Works Department, which shall share the plan with interested the Capitol Corridor Joint Power Authority, the VTA, and ACE for review and comment. The plan, which shall be implemented during construction, shall include at least the following items and requirements: • A set of comprehensive traffic control measures, including detour signs if required, lane closure procedures, sidewalk closure procedures, signs, cones for drivers, and designated construction access routes. • Notification procedures for adjacent property owners, the public, transit operators,	Project Developer to prepare and submit a Construction Management Plan for the purpose of managing traffic and reducing traffic congestion during construction. City to review and approve Plan.	Project Developer/ Project Contractor	Department of Public Works	Prior to issuance of each building permit

Mitigation and Avoidance Measures	Action	Implementing Party	Monitoring Party	Timing [1]
and public safety personnel regarding when detours and lane closures will occur. • Location of construction staging areas for materials, equipment, and vehicles (must be located on the Project site). • Identification of haul routes for movement of construction vehicles that would minimize impacts on vehicular, pedestrian, and transit vehicle traffic, circulation and safety; and provision for monitoring surface streets used for haul routes so that any damage and debris attributable to the haul trucks can be identified and corrected. Construction vehicles shall be required to use designated truck/haul routes. • Provisions for removal of trash generated by Project construction activity. • A process for responding to and tracking complaints pertaining to construction activity. • Construction vehicles and construction workers shall not be allowed to park in adjacent residential neighborhoods. Construction vehicles will be required to park either in the construction zone or in the temporary parking lots.				
TRA-19.1: Modified City's Traffic Management and Operations Plan (TMOP) and Prepare a Project-Specific Traffic and Parking Management Plan. Modify the City's TMOP to include plans to direct stadium traffic to the new parking locations on the site. (Some of the office parking areas will be used during special events.) A separate traffic and parking management plan shall be developed for the Project by the Project Developer and approved by the Director of Planning and Inspection and/or the Director of Public works. This plan would address: • Parking areas to be used by office employees (versus stadium parking); • Project customer/employee parking (versus stadium parking); • Access and egress routes for vehicles to the site, taking into consideration the lane and roadway segment closures used to direct stadium traffic; • A communications plan to inform customers and employees of game-day operations; and • Operational improvements such as signal timing and coordination to maximize efficiency of the streets during peak periods. Performance goals that reflect a successful traffic and parking management plan would be contained in the plan and may include items such as: • Maintaining vehicular access to the Project with acceptable increases in travel times compared to non-game day conditions; • Limited vehicle queuing within the Project site such that no internal circulation roadways are blocked; and	Project Developer to modify the City's TMOP to include plans to direct stadium traffic to the new parking locations on the site, and a site traffic and parking management plan for review and approval by City.	Project Developer	Director of Planning and Inspection and/or Director of Public Works	Prior to the issuance of first certificate of occupancy within each DAP area

Mitigation and Avoidance Measures	Action	Implementing Party	Monitoring Party	Timing [1]
• Limited vehicle queuing extending from parking facilities within the Project onto external public roadways. Even with mitigation, the local streets near the Project site would operate at an unacceptable LOS due to vehicle demand exceeding capacity. Widening roadways or intersections to increase capacity was considered as mitigation but rejected due to utility and secondary impacts. Street widening would provide capacity that would be needed only on game days and not at other times. The City of Santa Clara General Plan has policies to discourage the widening of existing roadways without first considering operational improvements such as the items included in the existing TMOP and items that will be included in the TDM Plan.				
AIR QUALITY				
AQ-2.1: Utilize Clean Diesel-Powered Equipment during Construction to Control Construction-Related Reactive Organic Gas (ROG) and Oxides of Nitrogen (NO_X) Emissions. The Project Developer shall ensure that all off-road diesel-powered equipment used during construction between 2017 and 2022 is equipped with the U.S. Environmental Protection Agency (EPA) Tier 3 or cleaner engines, except for specialized construction equipment for which an EPA Tier 3 engine is not available. Consistent with advancements of the statewide fleet average, the Project Developer shall ensure that all off-road diesel-powered equipment used during construction between 2023 and 2030 is equipped with EPA Tier 4 engines, except for specialized construction equipment for which an EPA Tier 4 engine is not available. This requirement will ensure construction equipment remains cleaner than the fleet-wide average.[4]	Project Developer to provide to City applicable provisions of construction contracts requiring that all off-road diesel-powered equipment used for construction between 2017 and 2022 is equipped with the U.S. EPA Tier 3 or cleaner engines and that all off-road diesel-powered equipment used for construction between 2023 and 2030 is equipped with EPA Tier 4 engines.	Project Developer/ Project Contractor	City Planning & Inspection Division	Prior to grading or building permit issuance
AQ-2.2: Use Modern Fleet for On-Road Material Delivery and Haul Trucks during Construction. The Project Developer shall ensure that all on-road heavy-duty diesel trucks with a gross vehicle weight rating of 19,500 pounds or greater used at	Project Developer to provide to City applicable provisions of	Project Developer/ Project	City Planning & Inspection Division	Prior to grading or building permit issuance

[4] As explained in MM AQ-6.1, below, as necessary to reduce cancer risk to on-site sensitive receptors related to construction diesel particulate matter emissions to a level below the BAAQMD, the Project Developer may need to use Tier 4 equipment after occupancy of on-site residences or daycare centers, or may use other appropriate measures (see AQ-6.1). If Tier 4 equipment is used earlier than 2023, this may reduce the amount of mitigation required in MM AQ-2.4.

Mitigation and Avoidance Measures	Action	Implementing Party	Monitoring Party	Timing [1]
the Project site comply with EPA 2007 on-road emissions standards for PM10 and NO_X (0.01 grams per brake horsepower-hour [g/bhp-hr] and 0.20 g/bhp-hr, respectively).	construction contracts requiring the use of modern fleet for on-road material delivery and that haul trucks comply with EPA 2007 on-road emissions standards for PM10 and NOX.	Contractor		
AQ-2.3: Implement Bay Area Air Quality Management District (BAAQMD) Additional Construction Mitigation Measures to Reduce Construction-Related Dust and Exhaust Emissions. The Project Developer shall require all construction contractors to implement the specific construction mitigation measures below to reduce fugitive dust and equipment exhaust emissions. Emission reduction measures shall include, at a minimum, the following measures. Alternative measures may be identified by the Project Developer or its contractor, as appropriate, provided that they are as effective as the measures below. Alternative measures shall be submitted to the City of Santa Clara for approval. • All exposed surfaces shall be watered at a frequency adequate to maintain minimum soil moisture of 12 percent. Moisture content can be verified by lab samples or moisture probe. If water infiltration into landfill refuse layers is a concern, non-toxic soil stabilizers may be used instead. • All excavation, grading, and/or demolition activities shall be suspended when average wind speeds exceed 20 miles per hour (mph) for a period of 2 hours or more. • Windbreaks (e.g., fences) shall be installed on the windward side(s) of actively disturbed areas of construction. Windbreaks shall have at maximum 50 percent air porosity. • Exposed ground areas that are to be reworked more than 1 month after initial grading should be sown with fast-germinating native grass seed and watered appropriately until vegetation is established. If grass seeding is not feasible, then non-toxic soil stabilizers may be used. • All construction trucks and equipment, including tires, involved in ground disturbance or transit through loose soil areas shall be washed off prior to leaving the site. • Site accesses to a distance of 25 feet from the paved road shall be treated with a 6- to 12-inch compacted layer of wood chips, mulch, or gravel. Alternatively, a rumble plate may be used in place of chips, mulch, or gravel.	Project Developer to provide to City applicable provisions of construction contracts requiring the use of BAAQMD additional construction mitigation measures to reduce construction-related dust and exhaust emissions.	Project Developer/ Project Contractor	City Planning & Inspection Division	Prior to grading and building permit issuance

Mitigation and Avoidance Measures	Action	Implementing Party	Monitoring Party	Timing [1]
• Sandbags or other erosion control measures shall be installed to prevent silt runoff to public roadways from sites with a slope greater than 1 percent. • Idling time of diesel powered construction equipment shall be limited to 2 minutes. • All construction equipment, diesel trucks, and generators shall be equipped with Best Available Control Technology for emission reductions of PM and NOX. • All contractors shall use equipment that meets the California Air Resources Board's (ARB's) most recent certification standard for off-road heavy-duty diesel engines.				
AQ-2.4: Offset NO_X Emissions Generated during Construction that Are above BAAQMD NOX Average Daily Emission Threshold. The Project Developer shall track construction activity, estimate emissions, and enter into a construction mitigation contract with BAAQMD to offset NO_X emissions that exceed BAAQMD NOX average daily threshold of 54 pounds per day. The average daily emissions shall be calculated on an annual basis by determining total construction-related NO_X emissions in each calendar year and dividing by the number of actual workdays in that calendar year. BAAQMD will use the mitigation fees provided by the Project Developer to implement emissions reduction efforts that offset Project NO_X emissions that exceed BAAQMD threshold. Implementation of this mitigation measure shall apply only to Phase 1 through Phase 4 construction on Parcels 4 and 5 because only construction on Parcels 4 and 5 has the potential to exceed the BAAQMD average daily NO_X threshold on an annual basis, depending on construction sequencing and overlapping activity. This mitigation includes the following specific requirements: • The Project Developer shall require construction contractors to provide annual construction activity monitoring data for Phases 1 through 4 to estimate actual construction emissions, including the effect of equipment emissions reduction measures. The Project Developer shall submit the annual construction activity monitoring data and an estimate of actual annual construction emissions to the City and BAAQMD for review by February 1 of each year for the prior construction year. The City shall examine the construction activity monitoring to ensure it is representative, and BAAQMD shall examine the emissions estimate to ensure it is calculated properly. • After acceptance of the emissions estimates by BAAQMD for the prior year, the Project Developer shall submit mitigation fees to BAAQMD to fund offsets for the portion of annual emissions that exceed the average daily NOX threshold. The mitigation fees shall be based on the mitigation contract with BAAQMD (see discussion below) but shall not exceed the emissions-reduction project cost-effectiveness limit set for the Carl Moyer Memorial Air Quality Standards	City construction mitigation contracts with BAAQMD. Project Developer to provide to City annual construction activity monitoring data for City verification that the data is representative.	Project Developer/ Project Contractor	City Planning & Inspection Division	Approval of agreement prior to grading and building permit issuance, annual submittal of evidence documenting compliance and of construction activity monitoring data during construction of Phases 1 through 4 on Parcels 4 and 5..

Mitigation and Avoidance Measures	Action	Implementing Party	Monitoring Party	Timing [1]
Attainment Program (Carl Moyer Program) for the year in which mitigation fees are paid. The current Carl Moyer Program cost-effectiveness limit is $18,030 per weighted ton of criteria pollutants (NOX + ROG + [20*PM]). An administrative fee of 5 percent shall be paid by the Project Developer to BAAQMD to implement the program. • The mitigation fees shall be used by BAAQMD to fund projects that are eligible for funding under the Carl Moyer Program guidelines or other BAAQMD emissions-reduction incentive programs that meet the Carl Moyer Program cost-effectiveness threshold and are real, surplus, quantifiable, and enforceable. • The Project Developer shall enter into a mitigation contract with BAAQMD for the emissions-reduction incentive program. The mitigation contract shall include the following: o Identification of appropriate off-site mitigation fees required for the Project. o Timing for submission of mitigation fees. o Processing of mitigation fees paid by the Project Developer. o Verification of emissions estimates submitted by the Project Developer. o Verification that off-site fees are applied to appropriate mitigation programs within the SFBAAB. The mitigation fees shall be submitted within 4 weeks after BAAQMD accepts an emissions estimate provided by the Project Developer showing that the average daily NOX threshold was exceeded (when measured on an annual basis).				
AQ-6.1: Assess Construction Diesel Particulate Matter (DPM) Emissions Potential Prior to Construction, Utilize Clean Diesel-Powered Equipment, Filtration Systems, and/or other Measures as Necessary to Reduce Cancer Risks Associated with DPM during Construction. The Project Developer shall implement the following measures, as necessary, to reduce cancer risks associated with DPM during construction to a level less than BAAQMD incremental cancer risk threshold of 10 in 1 million: • Revised Health Risk Assessment (HRA): The Project Developer may choose to assess the potential construction DPM emissions later in the design phase, but prior to construction, and to prepare a revised HRA using updated construction equipment activity data and submit to the City for review. If the revised HRA demonstrates, to the satisfaction of the City, that the cancer risk for construction of the entire Project at all potentially exposed on-site and off-site sensitive receptors will be less than BAAQMD threshold cited, then no additional mitigation is necessary. If the revised HRA demonstrates, to the satisfaction of the City, that the cancer risk for construction of the entire Project at some of the on-site or off-site	Project Developer to provide revised HRA (optional) or provide updated modeling and applicable provisions of construction contracts and/or building plans including measures to reduce cancer risks. City to review and approve revised HRA (optional to project Developer) or approve applicable provisions of construction contracts and building plans if no	Project Developer/ Project Contractor	City Planning & Inspection Division	Prior to construction that is planned to occur after the first occupancy of on-site residences or daycare centers and/or prior to residential or day care building permit issuance if Project Developer

Mitigation and Avoidance Measures	Action	Implementing Party	Monitoring Party	Timing [1]
sensitive receptors will be less than presented in the EIR but still over the BAAQMD threshold, then some of the mitigation below may not be necessary. • As necessary to reduce cancer risks below the BAAQMD threshold in light of projected DPM emissions and exposure and other mitigation (MM AQ-2.1 through MM AQ-2.3 and MM GHG-1.1), one or more of the following measures shall be implemented and the Project Developer will provide updated modeling to the City demonstrating that all on-site risks are reduced to below the BAAQMD threshold level: o Tier 4 Construction Equipment. If on-site and residences and daycare centers are occupied, the Project Developer shall ensure that all off-road diesel-powered equipment used during construction after occupancy of on-site residences or on-site daycare centers is equipped with EPA Tier 4 or cleaner engines, except for specialized construction equipment for which an EPA Tier 4 engine is not available. This requirement would be in addition to the clean diesel requirements in Mitigation Measure AQ-2.1. o Install Filtration Systems on Ventilation and Recirculation Systems. Filtration systems shall be installed on ventilation and recirculation systems within on-site residences and for the heating, cooling, or ventilation systems serving daycare centers. All filters must be rated MERV-13 or higher. The Project Developer shall submit a plan for installation and maintenance of all filters in accordance with the manufacturer's recommendations to the City prior to approval of the first building permits. o If on-site and residences and daycare centers are occupied, the Project Developer shall employ other reduction measures, such as High Performance Renewable (HPR) Diesel Fuel, that would reduce DPM. Proposals for alternative reduction measures shall be submitted to the City for review and approval, including evidence of the particulate reduction and/or risk reduction effectiveness of the proposed alternative measures.	HRA is prepared or if revised HRA shows that cancer risks would not be below regulatory thresholds.			desires to incorporate measures into structure
GREENHOUSE GAS EMISSIONS				
GHG-1.1: Utilize Alternative Fuels during Construction. Require construction contractors to use alternative fuels in at least 30 percent of the construction equipment that uses diesel fuel. Alternative fuels may include electricity, compressed natural gas (CNG), biodiesel (B-20), or renewable diesel, such as diesel high-performance renewable (HPR).	Developer to provide to City applicable provisions of construction contracts requiring adequate use of alternative fuels.	Project Developer/ Project Contractor	City Planning & Inspection Division	Prior to grading and building permits.

Mitigation and Avoidance Measures	Action	Implementing Party	Monitoring Party	Timing [1]
GHG-1.2: Operational GHG Emissions Reduction Measures. The Project Developer shall implement the operational GHG emissions reduction strategies described below: 1. Energy Efficiency: The Project's energy efficiency shall be 15 percent better than the base case energy model developed pursuant to the 2013 Title 24 requirements or shall meet the Title 24 requirements that are applicable at the time of issuance of the building permits for individual phases, whichever is more stringent (Climate Action Plan [CAP] Measure 2.1).[5] 2. On-site Solar Energy: The Project already includes on-site photovoltaics (PV) solar to meet 10 percent of electricity demand. The Project shall obtain renewable energy electricity corresponding to 50 percent[6] of on-site electricity demand by 2030 through a combination of on-site solar, purchase of renewable energy or other measures (CAP Measure 2.4). This requirement may be phased in as follows: 2020 – 15%; 2025 – 29%; 2030 – 50%. If the Project Developer can demonstrate, to the City's satisfaction, that through Project design, adopted State or federal regulations, or other assured actions that the Project's emissions overall will meet the 2030 metric identified in this document without the implementation of this particular measure of its full implementation, then this measure (or its full implementation) may be waived by the City. 3. Food Waste: All retail restaurants shall be required to participate 100 percent in any extant City food waste and composting programs and any that may be developed in the future (CAP Measure 4.1). 4. Electrical Landscaping Equipment: The Project shall include installation of electrical outlets near all maintained landscaping areas to allow for the use of electrical landscaping equipment (CAP Measure 5.1). In the landscaped City Center, only electrical landscape equipment shall be used. Use of electrical landscaping equipment shall not be required for the extensive natural landscaping contemplated at the edges of the City Center and at Parcels 1, 2, and 3. 5. Electrical Vehicle Charging/Preferential Parking (CAP Measure 6.3). The Project shall provide preferential parking in all parking lots for electric vehicles and shall also provide charging equipment, as follows:	#1, 4, 5, 6, 7, 11, 12: Building and landscape plans. #2: Annual reporting unless Project Developer demonstrates at building permit issuance that goal will be met. #10, 13: Ground leases to require implementation of measures and incorporation of operational measures into subleases.	Project Developer	City Planning & Inspection Division	#1, 4, 5 6, 7, 11, 12: Prior to building permit issuance #2: Prior to building permit issuance unless the developer wishes to demonstrate that emissions will meet the 2030 metric. #3, 8, 9, 10: Prior to execution of ground leases; provisions must be included in each applicable ground lease.

[5] The CEC intends for residential buildings in 2020 and later to be zero net energy (ZNE) and commercial buildings in 2030 or later to be ZNE, but because pending regulations are not yet adopted, this cannot be assumed in this analysis.

[6] CAP measure 1.1 requires the City's utility (SVP) to replace coal power within its portfolio with natural gas by 2020 and includes a stretch goal to replace the coal power with a combination of 50% natural gas and 50% renewable energy by 2035. Thus the CAP stretch goal is to increase renewable energy within its portfolio from 2020 to 2035. The 29 percent value for the mitigation above was calculated as the difference between the CAP Measure 1.1 reduction amount for the stretch goal for 2035 (71%) and the CAP Measure 1.1 reduction amount for 2020 (42%). As discussed in text, the Project has less than significant impact in comparison to the BAAQMD service population efficiency threshold based on the AB 32 target for 2020. Since the EIR finds that the project's emissions are significant for the period after 2020, the use of the difference in the CAP Measure 1.1 between 2020 and 2035 is appropriate to the impact identified for the Project.

Mitigation and Avoidance Measures	Action	Implementing Party	Monitoring Party	Timing [1]
a. Residential Use: A total of 10 percent of the required parking spaces shall be provided with a listed cabinet, box, or enclosure and connected to a conduit that links the parking spaces to the electrical service in a manner approved by the building and safety official. Of the listed cabinets, boxes, or enclosures provided, 50 percent shall have the necessary electric vehicle supply equipment installed to provide active charging stations that are ready for use by residents. The remainder shall be installed at such time as they are needed for use by residents. Electrical vehicle batteries and charging technology may change substantially over the next 15 years. As such, the City shall have the discretion to modify the specific requirements for this measure over time, provided that 10 percent of the spaces have electrical service and 5 percent have active charging, depending on what the technology at the time requires.				
b. Commercial Use: New commercial uses shall provide the electrical service capacity necessary as well as all conduits and related equipment necessary to serve 2 percent of the parking spaces with charging stations in a manner approved by the City's Building Official. Of these parking spaces, 50 percent shall initially be provided with the equipment necessary to function as online charging stations upon completion of the Project. The remainder shall be installed at such time as they are needed for use by customers, employees, or other users. Electrical vehicle batteries and charging technology may change substantially over the next 15 years. As such, the City shall have the discretion to modify the specific requirements for this measure over time, provided that two percent of the spaces have electrical service and one percent have active charging, depending on what the technology at the time requires.				
6. Shade Trees: Where surface parking lots are not covered by PV solar, shade trees shall be planted to reduce urban heat island effects on adjacent buildings (CAP Measure 7.1).				
7. Urban Cooling: Any uncovered parking lots or spaces shall use light-colored pavement (CAP Measure 7.2).				
8. Leases for businesses that base a diesel truck fleet within the Project site: Ensure those fleets meet the highest CARB engine-tier standard in place at the time of issuance of the building permits for the building that such businesses occupy, or the execution of a lease, whichever comes first.				
9. Electrical hook-ups at loading docks for businesses that will receive deliveries from refrigerated diesel trucks: Stipulate in the lease agreement for such businesses a requirement to use the hook-ups if the trucks will be idling for more than two minutes.				

Mitigation and Avoidance Measures	Action	Implementing Party	Monitoring Party	Timing [1]
10. Leases for business receiving deliveries: Prohibit all diesel-powered trucks from idling for more than 2 minutes. 11. Solar hot water heating systems: Incorporate for appropriate applications, including any swimming pools and buildings with swimming pools. 12. Electric heat pumps, or other energy-efficiency techniques, including radiant systems: Include for space heating and cooling, under appropriate circumstances.				
NOISE				
NOI-1.1: Prepare and Implement a Construction Noise Control Plan to Reduce Construction Noise at Adjacent Land Uses. The Project Developer shall develop a noise control plan that requires that the Project construction activities comply with the City Code noise limits. The requirements and limitations specified in the plan shall be determined by phase and/or parcel and/or subsections of a parcel or phase. The construction noise control plan shall require the following: • The Project Developer shall appoint a Project noise coordinator who will serve as the point of contact for noise-related complaints during Project construction. The Project noise coordinator shall transmit all construction noise-related complaints to the construction contractor, and the construction contractor shall enhance or refine the noise best management practices discussed herein to address the received noise complaints to the extent feasible. The contact information for the Project noise coordinator shall be sent to residents in the greater vicinity of the Project site that could be affected by Project noise and municipalities affected by Project construction noise. • Construction activities that have the potential to generate noise that is detectable at adjacent residential land uses or within 300 feet of a residentially zoned property shall occur only during the times listed below. Activities that would result in no detectable noise at adjacent land uses, such as interior painting, would not be limited by the hours below. o Between 7:00 a.m. and 6:00 p.m. Monday through Friday. o Between 9:00 a.m. and 6:00 p.m. on Saturdays. o No duration in time on holidays or Sundays. • Construction contractors shall specify noise-reducing construction practices that will be employed to reduce construction noise for construction activities that would occur outside of the prohibited hours specified in the City Code and that would have the potential to exceed the receiving zone noise limits specified in the City Code. The measures determined by the Project Developer shall be reviewed and approved by the City prior to the issuance of building permits. Measures that can be used to limit noise include, but are not limited to, those listed below.	Project Developer to provide noise control plan for City review and approval.	Project Developer/ Project Contractor	City Planning & Inspection Division	Prior to issuance of the first building permit within each Development Area Plan area

Mitigation and Avoidance Measures	Action	Implementing Party	Monitoring Party	Timing [1]
o Locating construction equipment as far as feasible from noise-sensitive uses. o Requiring that all construction equipment powered by gasoline or diesel engines have sound-control devices that are at least as effective as those originally provided by the manufacturer and that all equipment be operated and maintained to minimize noise generation. o Not idling inactive construction equipment for prolonged periods (i.e., more than 2 minutes). o Prohibiting gasoline or diesel engines from having unmuffled exhaust systems. o Using noise-reducing enclosures around noise-generating equipment that has the potential to disturb nearby off-site land uses, or where otherwise necessary, to comply with the City Code noise limits for receiving zones.				
NOI-1.2: Implement Off-Site Traffic Noise Reduction Measures. The Project Developer shall implement off-site traffic noise reduction measures along the east side of Lafayette Drive between Tasman Drive and Hogan Drive such that the Project-related increase in traffic noise for noise receptors is less than 3 dBA. The Project Developer shall construct a solid barrier between the roadway and adjacent residential uses along Lafayette Drive between Tasman Drive and Hogan Drive unless deemed infeasible for any reason including unavailability of sufficient right of way or inability to secure design review/architectural approval. The Project Developer shall implement off-site traffic noise reduction measures along the south side of Tasman Drive between Lafayette and Calle del Sol such that cumulative with project-related increase in traffic noise for noise receptors is less than 3 dBA or the project contribution to traffic noise is less than 1 dBA. The Project Developer shall construct a solid barrier between the roadway and adjacent residential uses along Tasman Drive between Lafayette and Calle del Sol unless deemed infeasible for any reason including unavailability of sufficient right of way or inability to secure design review/architectural approval. The barriers shall be designed to provide shielding between areas of frequent human use (i.e., residence backyards) and the roadway. This would result in approximately 1,000 feet of noise barriers along this the Lafayette segment (between Tasman Drive and Hogan Drive) and up to 800 feet along the Tasman segment (between Lafayette and Calle del Sol). One effective approach would be to replace the existing privacy fences at single family residences with a solid barrier that is at least 6 feet high. The Project Developer shall prepare an off-site noise control plan that identifies the location, design, and effectiveness of the specific treatments to be implemented. This plan shall be submitted to the City for review and approval prior to the issuance of building permits. The off-site noise improvements shall be completed before Project	Qualified professional to determine which Phase of the Project triggers the need for the reduction measures. Project Developer to provide noise control plan for City review, determination of feasibility and approval.	Project Developer	City Planning & Inspection Division	Qualified professional to determine which phase triggers noise barrier during Phase 1 of DAP approval. City to determine feasibility of noise barriers, and approve design if feasible, as part of DAP approval. If feasible, barriers to be constructed as part of construction for the Phase triggering the need for the barrier.

Mitigation and Avoidance Measures	Action	Implementing Party	Monitoring Party	Timing [1]
operations commence.				
NOI-2.1: Restrict Pile Driving. Pile driving occurring 175 feet or less from new residential or commercial buildings shall be conducted prior to those buildings being occupied by future occupants.	City will not approve building permits that include pile driving within 175 feet of occupied residential.	Project Developer/ Project Contractor	City Planning & Inspection Division	Prior to issuance of building permits if driven pile foundations are planned and prior to occupancy of proximate residential or commercial buildings
NOI-5.1: Prepare and Implement a Noise Control Plan to Reduce Interior Noise at Sensitive Land Uses. The Project Developer shall conduct a design-level acoustic study that identifies exterior noise levels for residential and commercial uses on the Project site. This study shall take into account existing airport noise, Project, and reasonably foreseeable future noise sources (such as proposed increases in passenger rail service along the Lafayette Street corridor). Where this study finds that the exterior noise level would exceed the residential compatibility standard of 55 dBA Ldn or the commercial incompatibility standard of 65 dBA Ldn, the Project Developer shall prepare a design-level operational noise control plan to provide acceptable interior noise levels. This plan shall identify all Project features and treatments that will be implemented to ensure that the Project is in compliance with the interior noise standards listed in the City's General Plan and City Code as well as the standards specified for new construction within the CLUP for SJC. The study and plan shall be developed by an acoustical design professional. Design features and treatments will be identified to ensure that interior noise levels at new proposed uses are in compliance with the noise standards. The report shall be submitted to the City for review and approval prior to the issuance of building permits for the Project. Depending on the noise exposure for a particular site, such treatments may include, but are not limited to, those listed below, as recommended by the acoustical design professional. • Construction of enclosures around noise-generating mechanical equipment at commercial uses. • Use of setbacks from noise sources to maximum attenuation of noise over distance.	Project Developer to provide design-level acoustic study for City review and approval and to incorporate necessary measures into building design when exterior noise levels exceed residential and commercial incompatibility standards.	Project Developer/ Acoustical Design Professional	City Planning & Inspection Division	Prior to issuance of building permits for residential and commercial buildings

Mitigation and Avoidance Measures	Action	Implementing Party	Monitoring Party	Timing [1]
• Installation of noise-reducing treatments in new buildings, including: o High-performance, sound-rated double-glazed windows, o Sound-rated doors, o Sound-rated exterior wall construction, o Special acoustical details for vents, o Acoustical caulking at all exterior façade penetrations, o Sound-rated roof and ceiling constructions, and o Adequate mechanical ventilation so that windows and doors may be kept closed at the discretion of the building occupants to control environmental noise intrusion.				
CULTURAL RESOURCES				
CR-1.1: Conduct Extended Phase I (XPI) Archaeological Investigations within the Project Site near Recorded Resources and within an Area of Archaeological Sensitivity. Prior to construction, if it is determined that Project-related ground-disturbing activities may extend into native soil within 100 feet of a previously recorded archaeological site, the Project Developer shall retain the services of a qualified archaeologist to conduct XPI investigations within the Project site. The XPI investigations shall consist of subsurface trench excavations to determine the presence or absence of buried features associated with the known archaeological site. If feasible, at least two trenches shall be placed in recorded location P-43-000025/CA-SCL-5, which is recorded as partially in the Project site, to ensure adequate investigations in this area. If the XPI investigations reveal resources, additional trenches or testing may be necessary. Mitigation Measure CR-1.3, described below, shall be followed.	Project Developer to submit XPI Archaeological Investigation(s) to City.	Project Developer/ Qualified Archaeologist	City Planning & Inspection Division	Prior to issuance of grading permits that would disturb native soils within 100 feet of a previously recorded archaeological site
CR-1.2: Provide Archaeological Monitoring of the Project Site When in Native Soil. Prior to construction, if it is determined that Project-related ground-disturbing activities may extend into native soil, within 100 feet of a previously recorded archaeological site, the Project Developer shall retain the services of a qualified archaeologist to monitor earthmoving activities within the Project site. Monitoring shall consist of coordinating subsurface work to allow for the careful examination of vertical and horizontal soil relationships for the purpose of seeking positive archaeological finds (prehistoric and/or historic). The monitor shall maintain a field log of their presence and observations, carefully noting soil conditions. The archaeological monitor shall be pre-approved by the Director of Planning and Inspection. After written approval, the Planning Division shall be notified at least 48 hours prior to any grading or other subsurface work on the site, and the Project	City to approve monitor, ensure monitor is in place, and approve monitoring protocol, which shall include requirements of CR-1.3.	Project Developer/ Qualified Archaeologist	City Planning & Inspection Division	Monitoring protocol prior to the issuance of grading and building permits that would disturb native soils within 100 feet of a previously recorded archaeological

Mitigation and Avoidance Measures	Action	Implementing Party	Monitoring Party	Timing [1]
Developer shall provide a written protocol for the City's review and approval that stipulates the manner in which the Project Developer shall comply with the monitoring requirements. In the event that cultural resources are encountered, Mitigation Measure CR-1.3, described below, shall be followed.				site; monitoring shall occur during earthmoving activities
CR-1.3: Stop Work if Cultural Resources Are Encountered during Ground-Disturbing Activities. In the event that cultural resources are encountered during ground disturbing activities, all work within proximity of the find shall temporarily halt so that the archaeological monitor can examine the find and document its provenience and nature (drawings, photographs, written description). The archaeological monitor shall then direct the work to either proceed if the find is deemed to be insignificant, or instruct the work to continue elsewhere or cease until adequate mitigation measures are adopted. If the find is determined to be potentially significant, the archaeologist, in consultation with the Planning Division, shall develop a Treatment Plan that could include site avoidance, capping, or data recovery. If data recovery is determined to be appropriate, excavation shall target recovery of an appropriate amount of information from archaeological deposits to determine the potential of the resource to address specific research questions. If it occurs, data recovery shall emphasize the understanding of the archaeological deposit's structure, including features and stratification, horizontal and vertical extent, and content, including the nature and quantity of artifacts.	Archaeological monitor (retained by the Project Developer), as necessary, and in consultation with the City, develop a Treatment Plan. See also CR-1.2.	Project Developer/ Qualified Archaeologist	City Planning & Inspection Division	During construction if cultural resources are encountered
CR-2.1: Paleontological Resource Mitigation Plan. Prior to any deep excavations below an elevation of -30 feet (North American Vertical Datum of 1988 [NAVD] 88) at the Project site on areas not underlain by landfill refuse, the Planning Division shall be notified at least 48 hours prior to the excavation, and a qualified professional paleontologist shall prepare a Paleontological Resource Mitigation Plan (PRMP) in consultation with the Planning Division. The PRMP shall describe the tasks necessary to monitor, assess, and recover (if present) significant paleontological resources during Project excavation activities. The PRMP shall be implemented by the qualified paleontologist during the deep Project excavations below an elevation of -30 feet (NAVD 88).	Project Developer to submit to City PRMP prepared by paleontologist (retained by the Project Developer).	Project Developer/ Qualified Professional Paleontologist	City Planning & Inspection Division	Prior to issuance of grading permits for excavations below an elevation of -30 feet at Parcel 5 and areas of Parcel 4 not underlain by landfill.
CR-2.2: Paleontological Resource Monitoring. In accordance with the PRMP, a qualified paleontologist shall monitor for fossils in Pleistocene deposits during Project excavations below an elevation of -30 feet (NAVD 88) on areas not underlain	Project Developer to provide to City contract with paleontologist for	Project Developer/ Qualified	City Planning & Inspection Division	Prior to issuance of grading

Mitigation and Avoidance Measures	Action	Implementing Party	Monitoring Party	Timing [1]
by landfill refuse or below other elevations confirmed in the field by the qualified paleontologist. The qualified paleontologist shall be present initially for 100 percent of the excavation activities within the Pleistocene deposits. After 50 percent of the excavation is completed within the rock unit and if no fossils of any kind have been discovered, then the level of monitoring can be reduced or suspended entirely at the Project paleontologist's discretion. If the paleontologist discovers potential paleontological resources, all ground disturbance within 50 feet of the find shall stop immediately until the qualified professional paleontologist can assess the nature and importance of the find and recommend appropriate salvage, treatment, and future monitoring and mitigation actions.	implementing PRMP, which shall include requirements of CR-2.3.	Professional Paleontologist		permits for excavation below an elevation of -30 feet at Parcel 5 And areas of Parcel 4 not underlain by landfill
CR-2.3: Paleontological Resource Reporting. If significant paleontological resources are identified, the Project qualified paleontologist shall prepare a report summarizing the field and laboratory methods, site geology and stratigraphy, faunal/floral list(s), and a brief statement of the significance and relationship of the fossils discovered to similar fossils found elsewhere. The final report should emphasize the discovery of any new or rare taxa, or paleoecological or taphonomic significance. A complete set of field notes, geologic maps, stratigraphic sections, and a list of identified specimens must be included in or accompany the final report. This report should be finalized only after all aspects of the PRMP are completed, including preparation, identification, cataloging, and curatorial inventory. Full copies of the final report shall be deposited with both the Lead Agency and the repository institution with the request that all locality data remain confidential and not made available to the general public.	Paleontologist to prepare final report for submission to City. See also CR-2.2.	Project Developer/ Qualified Professional Paleontologist	City Planning & Inspection Division	After a significant paleontological resource is identified during construction
CR-3.1: Stop work if human remains are encountered during ground-disturbing activities. When human remains are discovered (in either an archaeological or construction context), all work within proximity of the remains shall stop so that the archaeological monitor can examine the remains. The County Coroner shall be notified, who shall make a determination as to whether the remains are of Native American origin. If the remains are determined to be Native American, the Coroner shall notify the Native American Heritage Commission (NAHC) immediately. The NAHC shall notify those persons it believes are most likely descended from the deceased Native American. Once the 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 State CEQA Guidelines.	Project Developer to submit to City applicable provisions of construction contracts including applicable requirements.	Project Developer/ Project Contractor	County Coroner/ NAHC	Prior to issuance of grading and building permits

Mitigation and Avoidance Measures	Action	Implementing Party	Monitoring Party	Timing [1]
BIOLOGICAL RESOURCES				
BIO-1.1: Protect Nesting Birds. The Project Developer and its contractors shall avoid conducting vegetation removal during the migratory bird nesting season (February 1–August 31). If Project-related activities must commence during the migratory bird nesting season, the Project Developer shall retain a qualified wildlife biologist to conduct a survey for nests of migratory birds. Surveys for nesting migratory birds shall occur within 3 days prior to the commencement of ground disturbance and vegetation removal in areas that will be affected by Project construction activities. Multiple nest surveys shall be required if construction is phased or when construction work stops for more than 2 weeks at a portion of the site where suitable nesting habitat remains. If construction is ongoing for multiple years, these surveys shall be conducted each year prior to construction in areas that have not yet been disturbed and are scheduled to be disturbed during the nesting season. In addition to nesting-season surveys, surveys shall be conducted during the non-nesting season (September 1–January 31) for overwintering burrowing owls in areas scheduled for initial disturbance during the upcoming season. The surveys shall also be conducted as described above, with a goal of identifying overwintering owls so they can be appropriately avoided during construction. If an active nest is discovered, a no-disturbance buffer zone around the nest tree or shrub (or, for ground-nesting species, the nest itself) shall be established. The no-disturbance zone shall be marked with flagging or fencing that is easily identified by the construction crew and shall not affect the nesting bird or attract predators to the nest location. In general, the minimum buffer zone widths shall be as follows: 50 feet (radius) for non-raptor ground-nesting species, 50 feet (radius) for non-raptor shrub- and tree-nesting species, and 300 feet (radius) for raptor species. Buffer widths may be modified based on discussion with DFW. Buffers shall remain in place as long as the nest is active or young remain in the area and are dependent on the nest. If a burrowing owl nest is identified during pre-construction surveys, no-activity buffers will adhere to the recommendations in the 2012 California Department of Fish and Game Staff Report on Burrowing Owl Mitigation.[7] Most Project activities would result in a high level of disturbance, constituting a 1,640-foot (500-meter) required buffer around occupied nests during any time of year.[8]	Project Developer to provide to City applicable provisions of construction contracts including pertinent requirements. If construction will occurs in the nesting season, Project Developer to submit to City agreement with qualified wildlife biologist requiring surveys and protective measures under BIO-1.1 and requirement that wildlife biologist report to City if conditions triggering BIO-2.2 exist.	Project Developer/ Project Contractor/ Qualified wildlife biologist	City Planning & Inspection Division	Prior to the issuance of grading and building permits for construction contracts; prior to commencement of grading for biologist agreements; and prior to ground disturbance for surveys

[7] California Department of Fish and Game. 2012. Staff Report on Burrowing Owl Mitigation. State of California Natural Resources Agency. March 7. Available: http://www.dfg.ca.gov/wildlife/nongame/survey_monitor.html#Mammals.

[8] Scobie, D., and C. Faminow. 2000. Development of Standardized Guidelines for Petroleum Industry Activities that Affect COSEWIC Prairie and Northern Region Vertebrate Species at Risk. Environment Canada, Prairie and Northern Region, Edmonton, Alberta, Canada.

Mitigation and Avoidance Measures	Action	Implementing Party	Monitoring Party	Timing [1]
BIO-1.2: Implement Bird-Safe Design Standards into Project Buildings and Lighting Design. Each Development Area Plan (DAP) approved by the City shall include a set of specific standards for minimizing hazards to birds, to be implemented by the Project Developer. The development of the specific bird safety standards for each Development Area Plan shall be tailored to the specific potential hazards to birds in that development area, taking into account the specific locations, types and heights of buildings, lighting, and landscaping. In addition, the DAP shall require enhanced protective measures for buildings within 300 feet of the retention pond, the Guadalupe River, and San Tomas Aquino Creek, such as siting buildings in relation to existing landscape features to reduce conflicts with existing features that may serve as attractive bird habitat; minimizing the reflection of existing vegetation on building facades; or using soil berms, furniture, landscaping, or architectural features to prevent reflection of water in glazed building facades. The specific bird safety standards in each DAP shall be based on the following bird-friendly building principles, to the extent applicable to the particular development area: • Reduce mirrors and large areas of reflective glass. • Avoid transparent glass skyways, walkways, or entryways, free-standing glass walls, and minimize transparent building corners, or utilize glazing treatments to mitigate the hazard. • Minimize funneling of open space toward a building façade. • Strategically place landscaping to reduce reflection and views of foliage inside or through glass. • Reduce potential light and glare by implementing Mitigation Measures AES-2.1 (requiring low-profile, low-intensity lighting directed downward), AES-2.2 (requiring shielded fixtures for outdoor lighting), and AES-2.3 (requiring low-emissivity reflective coating on exterior glass surfaces). • To the extent consistent with the normal and expected operations of the uses planned for the particular development area, take appropriate measures to avoid use of unnecessary lighting at night, especially during bird migration season (February-May and August-November) through the installation of motion sensor lighting, automatic lighting shut-off mechanisms, or other effective measures to the extent feasible. The specific bird safety standards shall also provide for a monitoring program, and placing signs around the buildings with phone numbers for authorized bird conservation organizations.	City review and approve each Development Area Plan to ensure adequate measures are included.	Project Developer	City Planning & Inspection Division	Approval of each Development Area Plan

Mitigation and Avoidance Measures	Action	Implementing Party	Monitoring Party	Timing [1]
BIO-2.1: Detection of Burrowing Owls. The Project Developer shall allow access to the Project site or off-site areas for biologists who participate in the annual burrowing owl nest survey coordinated by the Santa Clara Valley HCP/NCCP. Burrowing owl surveys are conducted between March and August of each year. As many as four surveys may be conducted each year, in accordance with the Staff Report on Burrowing Owl Mitigation[9] to determine whether burrowing owls are nesting and whether nests are successful. Access to the site for burrowing owl surveys shall be granted until the Project site or off-site area is completely built out. The Project Developer shall not, however, be required to postpone planned development activities to provide such access, except to the extent such postponement is necessary to meet regulatory requirements.	The ground lessee shall allow such access until certificate of completion for the phase.	Project Developer/City	City Planning & Inspection Division	Concurrent with execution of each phase ground lease
BIO-2.2: Mitigation for Loss of Burrowing Owl Habitat during Construction. Should burrowing owls begin nesting on developable portions of the Project site or off-site areas that remain undeveloped as phases of the Project are constructed, or suitable habitat within 600 meters of an active nest is removed from the Project site, then lost burrowing owl habitat shall be replaced at a ratio of at least 1:1 prior to ground-disturbing activities in the area of the Project site or off-site area with an active nest. Affected habitat shall be defined as suitable habitat (based on the habitat mapping completed for this EIR) within a 600 meter radius of an active burrowing owl nest. Suitable land cover types include annual grassland, ruderal, or barren areas. Mitigation sites shall have documented nesting occurrences from at least 1 year within the previous 3 years. If burrowing owls move onto undeveloped portions of the Project Site or off-site area, including the Retention Basin, once the site is fully constructed, there shall be no requirement to provide replacement habitat, unless that undeveloped habitat is developed in the future.	If required, Project Developer to submit certification to the City that habitat has been replaced at the specified ratio. City to review and approve certification.	Project Developer	City Planning & Inspection Division	Prior to ground-disturbing activities until the Project site or off-site areas are completely built-out in the event that wildlife biologist detects circumstance triggering BIO-2.2
BIO-3.1: Protect Western Pond Turtles. Prior to the start of construction activities in or within 50 feet of aquatic habitats, the Project Developer shall retain a qualified biologist to conduct preconstruction surveys for western pond turtles in all suitable habitats (aquatic and upland) in the vicinity of the work site. Surveys shall take place no more than 72 hours prior to the onset of site preparation and construction activities with the potential to disturb turtles or their habitat. If preconstruction surveys identify active nests on the Project site, the biologist shall establish no-disturbance buffer zones around each nest using temporary orange construction fencing. The demarcation shall be permeable to allow young turtles to move away	Project Developer to submit to City agreement with qualified biologist and applicable provisions of construction contracts, including requirement that biologist submit to City certification that	Project Developer/ Qualified Biologist	City Planning & Inspection Division	Prior to the issuance of grading or building permits for biologist and construction agreements; and 72 hours

[9] CDFW 2012. Staff Report on Burrowing Owl Mitigation. State of California Natural Resources Agency.

Mitigation and Avoidance Measures	Action	Implementing Party	Monitoring Party	Timing [1]
from the nest following hatching. The radius of the buffer zone and the duration of exclusion shall be determined in consultation with DFW. The buffer zones and fencing shall remain in place until the young have left the nest, as determined by the qualified biologist. If western pond turtles are found on the Project site, the Project Developer shall still retain a qualified biologist to monitor construction activities in the vicinity of suitable habitat and implement appropriate measures to protect the western pond turtle. Such measures may include removal and relocation of western pond turtles in proposed construction areas to suitable habitats outside the Project limits, consistent with DFW protocols and permits. Relocation sites shall be subject to DFW approval.	preconstruction surveys have been conducted and protective measures taken.			prior to site construction activities in or within 50 feet of aquatic habitats
BIO-4.1: Protect Central California Coast Steelhead, Critical Habitat, and Chinook Salmon. Construction, operations, and maintenance on the riverbank, as well as areas within 200 feet of the Guadalupe River, that could result in disturbed sediment depositing within the banks of the channel shall be limited to the summer low-precipitation period (June 1 to October 15), unless otherwise approved by appropriate resource agencies. Limiting riverbank disturbance during these months would reduce the likelihood of adverse effects on adult and juvenile salmonid migration.	Project Developer to provide to City applicable provisions of construction contract ensuring work on the riverbank as well as within 200 feet of the Guadalupe River that could result in disturbed sediment depositing within the banks of the channel is limited to summer low precipitation periods.	Project Developer/ Project Contractor	City Planning & Inspection Division	Prior to issuance of grading and building permits
BIO-5.1: Protect Retention Pond and Eastside Retention Drainage Swale, and San Tomas Aquino Creek and the Guadalupe River Aquatic Habitat during Construction. For construction activities within 50 feet of the aquatic habitat associated with the retention pond and drainage swale, San Tomas Aquino Creek, and Guadalupe River, protective measures shall be put in place to ensure that impacts on those aquatic features shall be avoided and minimized. The following measures shall be deployed during construction: • A qualified biologist shall determine the locations where orange construction barrier fencing shall be installed around aquatic resources (USACE and the Regional Water Board jurisdictional wetlands/waters and DFW jurisdictional lakes and streams) that are to be avoided prior to initiation of construction activities. • Designate the protected area an Environmentally Sensitive Area and clearly identify the area in the construction specifications. • Maintain jurisdictional wetlands/water protection fencing throughout the grading	Project Developer to provide to City applicable provisions of construction contract and agreement with qualified biologist that include the specified protective measures.	Project Developer/ Qualified Biologist	City Planning & Inspection Division	Prior to issuance of grading and building permits for construction activities within 50 feet of the pertinent aquatic habitat

Mitigation and Avoidance Measures	Action	Implementing Party	Monitoring Party	Timing [1]
and construction period. • Prohibit grading, construction activity, traffic, equipment, or materials in fenced wetland areas.				
BIO-5.2: Compensate for Loss of Waters of the U.S. and State (including Wetlands). If impacts to jurisdictional waters of the U.S. or State cannot be avoided, the Project Developer shall obtain permits or approvals to develop from the USACE, the Regional Water Board, and DFW, as appropriate and required. Both the Guadalupe River and San Tomas Aquino Creek are subject to both State and federal jurisdiction because of their connection to the Bay. To ensure that the Project results in no net loss of wetland habitat functions and values, the Project Developer shall compensate for the loss of jurisdictional wetlands/waters through one of the following options. • Purchase of agency-approved mitigation credits from a suitably located mitigation bank prior to construction (ground disturbance that impacts wetlands/waters); • On-site wetland/waters restoration (re-establishment or rehabilitation) establishment (creation) prior to or concurrent with construction impacts; • Off-site wetland/waters restoration (re-establishment or rehabilitation)/establishment (creation) prior to or concurrent with construction; or • A combination of two or more of the above. The amount of agency approved mitigation credits required from a suitably located mitigation bank and/or size and location(s) of the area(s) to be restored (re-established)/established (created) shall be based on appropriate mitigation ratios, as derived in consultation with DFW, USACE, and the Regional Water Board. The Project Developer shall prepare and implement a mitigation and management plan (MMP) as part of the permitting process in conformance with the USEPA/USACE 2008 Mitigation Rule. The mitigation ratios shown in the initial draft MMP submitted to the permitting agencies during Project permitting shall be a minimum of 2:1, as determined through the CEQA process. The MMP, if other than sole purchase of mitigation bank credits, shall include the requirements listed below: • Mitigation implementation plan; • Performance (success) standards or criteria to be met in order to determine that the mitigation has successfully replaced the impacted wetlands/waters in terms of "no net loss" of the impacted functions and values; • 5-year monitoring plan for determining that performance criteria have been successfully met through the collection of wetlands/waters vegetation survival and cover field data; hydrology flooding, ponding, and/or soil saturation field data; and	Project Developer to provide to City wetland delineation, copies of permits obtained as and if required from USACE, the Regional Water Board and DFW, and the MMP, all satisfying the requirements of BIO-5.2 Project Developer to provide to City annual monitoring reports.	Project Developer/ Qualified Wetland Biologist	DFW, USACE, Regional Water Board, City Planning & Inspection Division	Prepare wetland delineation prior to first grading or building permit for the Project. Obtain requisite agency permits and prepare MMP prior to issuance of grading or building permits for construction activities that will impact jurisdictional wetlands. Monitor plan for a minimum of 5 years.

Mitigation and Avoidance Measures	Action	Implementing Party	Monitoring Party	Timing [1]
habitat area data; • Adaptive management plan to be implemented if mitigation performance is found through annual monitoring not to be progressing towards success within the 5-year monitoring period; • Conservation plan to ensure in-perpetuity land use protection of the mitigation site; • Long-term (in-perpetuity) conservation management plan; and • Funding plan for mitigation implementation, 5-year mitigation performance monitoring and maintenance, and an endowment (non-wasting fund) for long-term conservation management. The final MMP shall be determined in consultation with DFW, USACE, and the Regional Water Board. The mitigation plan shall include measure to avoid and minimize the effects of construction on surrounding native habitats. The required performance standard is no net loss of wetland and waters habitat function and values. Monitoring shall occur for a minimum of 5 years, at which time, if the success criteria are met, wetland compensation shall be deemed complete.				
BIO-C.1: Make a Fair-Share Nitrogen Deposition Fee Contribution to the Santa Clara Habitat Agency's Voluntary Fee Payment Program. Consistent with its voluntary commitment to contribute a nitrogen deposition fee through the fee program of the Santa Clara Habitat Agency, the Project Developer shall make a pro-rated per-vehicle-trip nitrogen deposition fee contribution, which will be based on the amount charged by the Santa Clara Valley Habitat Agency under its Voluntary Fee Payments Policy (http://scv-habitatagency.org/DocumentCenter/View/345). Specifically, the per-vehicle trip fee shall be adjusted as set forth below to take into account the different dispersion characteristics of the Project vs. the average dispersion characteristics for development in the HCP/NCCP area. The Project is located farther from serpentine grassland habitat than average development within the Santa Clara Valley HCP/NCCP area. Thus, the required fair-share contribution shall be figured as 38 percent (based on the ICF analysis) of the established fee of the habitat agency for the year in which the building permits are issued for the Project. The fee may be paid up front or in installments in proportion to mitigated vehicle trip generation for the phase of the Project for which the building permits are issued. For fiscal year 2015–2016, the adopted HCP/NCCP nitrogen deposition fee was $4.20 per new vehicle trip. Using Scheme B's estimated trip generation (140,730 trips/day), taking into account the trip reduction effect of Mitigation Measure TRA-1.1 (reduction to 137,910 trips/day), and the 38 percent adjustment factor, if all fees were paid in 2015, the estimated total would be $220,104.	Project Developer to provide to City proof of payment.	Project Developer	City Planning and Inspection Division	Prior to issuance of building permits: to be paid up front or in installments in proportion to mitigated vehicle trip generation for the phase of Project for which the building permits are issued.

Mitigation and Avoidance Measures	Action	Implementing Party	Monitoring Party	Timing [1]
GEOLOGY AND SOILS				
GEO-1.1: Detailed Grading and Erosion Control Plan. A detailed grading and erosion control plan shall be prepared and submitted to the City Building Department. The plan shall cover all Project parcels (not just the landfill portions) and off-site areas and include all information required to demonstrate that earthwork activities will be in compliance with CCR 21190 et seq. and incorporate by reference the Project's Storm Water Pollution Prevention Plan, as required by the Construction General Permit.	Project Developer to provide detailed grading and erosion control plan for review and approval by City.	Project Developer	City Planning and Inspection Division	Prior to the issuance of demolition and grading, permits
GEO-2.1: Design-Level Geotechnical Investigation. Prior to the issuance of demolition, grading, or construction permits at the Project site, a design-level geotechnical investigation shall be conducted by a qualified professional (the qualified professional shall be retained by the Project Developer). The investigation shall include further field exploration (e.g., borings, cone penetration tests, test pits and/or geophysical surveys) to develop design-level recommendations to address erosion and other geotechnical concerns for the Project. The design-level geotechnical investigation shall include: • Evaluation of anticipated settlement. Additional soil borings shall be installed to determine the depth to the refuse layer for aid in preparing grading plans. Additional samples shall be analyzed to determine potential settlement and determine the likely final post-settlement surface elevation. The potential magnitude of differential settlements between improvements supported by a combination of structural slab and deep foundations and those that are supported by other foundation systems shall be fully analyzed and detailed in the design-level geotechnical report. • Evaluation of liquefaction potential. Additional borings shall be drilled at the Project site and off-site areas to fully characterize the liquefaction hazard associated with the Project. • Evaluation of slope instability. A detailed slope stability analysis for all existing slopes that would remain under the Project, including the perimeter landfill slopes, and all proposed new slopes shall be prepared. • Evaluation of expansive soils. Additional borings shall be drilled at the Project site and off-site areas to fully characterize the expansive soil hazard associated with the Project. • Evaluation of corrosive soils. Project site and off-site soils and, in those areas where foundation components would come into contact with landfill materials, refuse shall be evaluated for corrosion potential.	Project Developer to provide design-level geotechnical investigation for review and approval by City. City and Developer to submit such investigation to regulatory agencies per GEO-2.6 with respect to areas underlain by landfill and secure approval as required. Project Developer to incorporate resulting measures into project plans.	Project Developer/ City	City Planning and Inspection Division	Prior to the issuance of demolition, grading, and building permits

Mitigation and Avoidance Measures	Action	Implementing Party	Monitoring Party	Timing [1]
The design-level geotechnical investigation work plan shall be submitted for review and approval in accordance with Mitigation Measure GEO-2.6.				
GEO-2.2: Final Geotechnical Report Review. A final geotechnical report shall be prepared by a qualified professional based on the findings of the design-level geotechnical investigation (the qualified professional shall be retained by the Project Developer). The final report shall be submitted for review and approval in accordance with Mitigation Measure GEO-2.6. The final geotechnical report shall include: Measures to address anticipated settlement: • Specifications of methods to address differential settlement between improvements supported by a combination of structural slab foundations and those that are supported by other deep foundation systems or unsupported areas. • Exterior slabs and ramps attached to buildings shall be hinged to allow the end of the slab or ramp not attached to the building to move downward as settlement occurs. The design shall not allow building entrance slabs to exceed a 5 percent grade, in compliance with ADA access requirements, and vehicular entrances shall not be allowed to exceed an 11 percent grade to prevent vehicles from scraping during entry or exit. • Settlement vaults and flexible connections shall be required at locations where utilities transfer from a pile-supported building to a non-supported area for all phases of construction. • Roadway and other paving at the Project site not located above an area-wide structural slab shall be constructed with flexible materials, such as asphalt or interlocking pavers. The use of concrete and other non-flexible materials shall be minimized. Where non-flexible material is used, expansion and spacing joints that allow rigid materials to shift without breaking shall be used to allow for anticipated settlement. Measures to address liquefaction: • In those areas not supported by the structural slab foundation (which would effectively mitigate the liquefaction hazard), other measures shall be developed to mitigate the hazard, such as shallow footings constructed over ground improvement. Foundations for structures shall be designed to completely mitigate settlement hazards associated with liquefaction (i.e., no liquefaction-induced settlement damage shall be accepted for the final design). Measures to address slope instability: • Measures (e.g., reducing slope steepness, providing structural support, or ground improvement) to ensure that an appropriate factor of safety (both static and	Project Developer to provide final geotechnical report for review and approval by City. City and Developer to submit such report to regulatory agencies per GEO-2.6 and secure approval as required. Project Developer to incorporate resulting measures into project plans.	Project Developer/ City	City Planning and Inspection Division	Prior to the issuance of grading and building permits

Mitigation and Avoidance Measures	Action	Implementing Party	Monitoring Party	Timing [1]
seismic) is achieved for each slope. Measures to address expansive soils: • In those areas not supported by the structural slab foundation (which would effectively mitigate the hazard), other measures shall be developed to mitigate the hazard, such as removal of the problematic soils, treatment of the soils, or specification of appropriate foundation design. If any soils characterized as highly or moderately expansive (linear extensibility of 3.0 percent or more) are to remain at the surface or be used as fill in the upper 5.0 feet, these soils shall be treated (using calcium-based treatment or similar approach) such that the soils are reduced to a low expansion potential (linear extensibility of less than 3.0 percent). Measures to address corrosive soils: • A corrosion consultant shall be retained to provide specific recommendations regarding the long-term corrosion protection of pile elements and other subsurface materials. The recommendations of the corrosion consultant, which may include use of specific corrosion-resistant materials and/or treatment of corrosive soils, shall be implemented during construction.				
GEO-2.3: Construction Quality Assurance Plan. A Construction Quality Assurance (CQA) Plan that covers both the Project site and off-site areas shall be prepared by the Project Developer for review and approval by the Director of Public Works. The CQA Plan shall establish procedures for testing final cover materials, detail the responsibilities of construction monitoring personnel, and provide procedures for addressing unexpected geologic conditions during grading activities.	Project Developer to provide a CQA Plan that covers both the Project site and off-site areas for review and approval by City. City and Developer to submit CQA to regulatory agencies per GEO-2.6 with respect to areas underlain by landfill and secure approval as required. Project Developer to submit to City applicable provisions of construction contracts incorporating requirements of CQA.	Project Developer	Director of Public Works	Prior to the issuance of grading, and building construction permits
GEO-2.4: Final Project Design Review. Final Project design plans that cover both Project site and off-site areas shall be prepared by the Project Developer and submitted for review and approval in accordance with Mitigation Measure GEO-2.6.	Project Developer to provide final Project design plans meeting	Project Developer/ City	City Planning and Inspection Division	Prior to issuance of grading and

Mitigation and Avoidance Measures	Action	Implementing Party	Monitoring Party	Timing [1]
Project site structures shall be designed to accommodate predicted ground settlement, as determined in the design-level geotechnical investigation for the Project improvements (see Mitigation Measure GEO-1.1). For the portion of the Project overlying the Landfill, the Post-Closure Land Use Plan shall demonstrate that Project design will be protective of public health and safety and the environment, as required by 27 CCR 21190. Because of the potential for encountering buried obstructions, contingencies for relocating Auger Cast-in Place Piles and Drilled Displacement Columns during construction shall be included in the foundation design. The Project design plans shall be subject to review and approval by the City Building Department prior to initiation of field activities.	criteria of GEO-2.4 for review and approval by City. City and Developer to submit such Project design plans to regulatory agencies per GEO-2.6 with respect to areas underlain by landfill and secure approvals as required.			building permits
GEO-2.5: Site Operation, Monitoring, and Maintenance Plan. A Site Operation, Monitoring, and Maintenance Plan that covers both the Project site and off-site areas shall be prepared by the Project Developer and submitted for review and approval in accordance with Mitigation Measure GEO-2.6. The Site Operation, Monitoring, and Maintenance Plan shall establish procedures for inspecting structures and improvements as well as evaluating the effects of settlement. It will also establish a mechanism for funding and implementing the Plan's activities throughout the life of the Project. Inspections that focus on documenting settlement, particularly at locations where different support systems meet, shall take place at least quarterly during the first 2 years following the completion of each phase of Project construction. Documentation of each inspection shall be submitted to for review and approval in accordance with Mitigation Measure GEO-2.6 within 30 days of inspection completion. After 2 years, the frequency of inspections may be adjusted with written consent from each agency that approved the Site Operation, Monitoring, and Maintenance Plan Site Operation, Monitoring, and Maintenance Plan. The Site Operation, Monitoring, and Maintenance Plan shall detail the qualifications and responsibilities of monitoring personnel, including immediate notification of the City Building Department of any settlement that could affect the structural integrity of a building and/or structure or settlement that could create a hazard for the public (e.g., separations that create trip hazards for pedestrians). If the types of settlements are observed that could compromise structural integrity or cause hazards for the public, based on the judgment of the qualified inspector, remedial action shall be promptly completed. The Plan shall designate financial responsibility for remedial actions should the effects of settlement be identified and provide timetables for any required remedial action. All remedial action shall be overseen by the qualified geotechnical consultant designated by the Plan and approved by each agency that approved the Site Operation, Monitoring, and	Project Developer to provide Site Operation, Monitoring, and Maintenance Plan for review and approval by City. City and Developer to submit Site Operation, Monitoring, and Maintenance Plan to regulatory agencies per GEO-2.6 for areas underlain by landfill and secure approvals as required. Project Developer to submit inspections to City for review and approval, and to regulatory agencies as specified in GEO02.6 for areas underlain by landfill, within 30 days or inspections.	Project Developer/ City	City Planning & Inspection Division	Plan approval prior to issuance of grading and building permits. Inspections at least quarterly during the first 2 years following the completion of each phase of construction. Documentation of each inspection shall be submitted within 30 days of inspection.

Mitigation and Avoidance Measures	Action	Implementing Party	Monitoring Party	Timing [1]
Maintenance Plan. Quarterly reports detailing inspection and remedial activities shall be submitted to each agency that approved the Site Operation, Monitoring, and Maintenance Plan following each inspection for review and approval.				
GEO-2.6: Review and Approval by Relevant Regulatory Agencies. To the extent reports and plans required by Mitigation Measures GEO-2.1, -2.2, -2.3, -2.4 or -2.5 address the portion of the Project site overlying the Landfill, they shall be submitted jointly by the City (as owner and operator of the landfill) and the Project Developer for review and approval to the following: (i) the Local Enforcement Agency as principal landfill regulator; (ii) the Regional Water Board for approval of the issues related to the low permeability layer of the final landfill cover pursuant to 27 CCR 21990 (d) and pilings installed in or through the bottom liner of the landfill liner pursuant to 27 CCR 21990 (e)(6), and for review but not approval of other aspects of the plans and reports; (iii) to Cal Recycle for review, but not approval; and (iv) any other agency which is specifically required by applicable law to approve a particular report, plan or component thereof. To the extent reports and plans required by this mitigation measure relate to other portions of the site not overlying the Landfill, they shall be submitted by the Developer to the City, and to any agency which is specifically required by applicable law to approve a particular report, plan or component thereof, for review and approval.	Refer to GEO-2.1 through GEO-2.5	Refer to GEO-2.1 through GEO-2.5	Refer to GEO-2.1 through GEO-2.5	Refer to GEO-2.1 through GEO-2.5
HYDROLOGY AND WATER QUALITY				
WQ-1.1: Design and Implement Stormwater Control Measures. In compliance with Provision C.3 of the San Francisco Bay MS4 Permit and the Santa Clara Valley Water District's 100-year peak flood requirements, post-construction stormwater controls shall be implemented to reduce total runoff rates and associated pollutant discharges. According to the Santa Clara Valley Urban Runoff Pollution Prevention Program's C.3. Stormwater Handbook, the three methods for hydraulically sizing flow-based stormwater treatment control measures are (1) volume-based, (2) flow-based, or (3) a combination of volume-/flow-based hydraulic sizing criteria. The simplified method for sizing bioretention areas and flow-through planters, known as the "4 percent method," is based on a runoff inflow of 0.2 inch per hour, with an infiltration rate through biotreatment soil of 5 inches per hour. The 4 percent method requires the treatment measure to be 4 percent of the impervious area that drains to it. The design of the stormwater treatment measures is currently at the conceptual level and further details will be addressed as part of the planning, construction, and operation of the development. The treatment measures shall be designed to remove	Project Developer to provide to City Stormwater Management Report.	Project Developer	Department of Public Works	Prior to issuance of building permits

Mitigation and Avoidance Measures	Action	Implementing Party	Monitoring Party	Timing [1]
pollutants from stormwater using filtration, infiltration, and sedimentation. Because infiltration is not feasible due to the landfill, the treatment measures must be built into the structure of the development above the landfill itself. The stormwater treatment measures that provide infiltration shall be lined with an impermeable liner on the bottom and sides. Just above the liner there must be a layer of clean gravel and a network of perforated piping (underdrains). These underdrains must connect to solid drain piping at the exit of the treatment area and ultimately be connected to the storm drainage infrastructure. All of these components shall exist above the podium structure. The impermeable liner would prevent any leaks or ruptures into the landfill and structures. There shall also be perforated underdrain piping connected to solid piping at the exit of the treatment measure/planter solid piping that will connect to the storm drain infrastructure at manholes where leak monitoring can be performed. More information on the potential hazards of a leak or rupture of the stormwater treatment measures causing flooding of the landfill gas venting lines is provided in Section 3.11, *Hazards and Hazardous Materials*. The following stormwater treatment (or Low Impact Development [LID]) measures are examples that will be considered and carefully selected as part of the final design process for the different sections of the proposed development: • Bioretention Areas (impermeable liner with underdrain—no infiltration into landfill) • Flow-through Planters • Tree Well and Media Filters • Infiltration Trenches (impermeable liner with underdrain—no infiltration into landfill) • Rainwater Harvesting and Reuse • Green Roofs • Green Streets (with bioretention, impermeable liner, and underdrain) • Pervious Pavements (impermeable liner with underdrain—no infiltration into landfill) As noted above, a minimum of 4 percent of the site area shall be used for the stormwater treatment measures. As part of final design, these treatment measures for the Project site shall be incorporated into the aesthetics of the landscape. Some attenuation of the peak flows can be recognized, depending on the measures selected. The measures shall include an overflow to safely convey the more intense, less frequent rainfall events. The stormwater treatment measures shall capture sufficient flows so that 100-year peak flood elevations or existing design flows within San Tomas Aquino Creek and the				

Mitigation and Avoidance Measures	Action	Implementing Party	Monitoring Party	Timing [1]
Guadalupe River will not increase as part of the Project. The exact reduction in 100-year peak runoff volumes and flows that the stormwater management measures will need to accommodate will be determined during the design process for the stormwater management measures and will be provided in the detailed Project Stormwater Management Plan. Due to construction phasing, construction of interim treatment measures may be required once the 40-acre concrete pad has been constructed and before the surface of the pad is developed with new structures with their own associated post-construction stormwater treatment features. These interim measures will be reported to the San Francisco Bay Water Board. The stormwater management measures for each parcel shall be modeled during final design for buildings, parking garages, site landscaping, etc. Dynamic hydraulic modeling shall be used. Dynamic hydraulic modeling tracks the quantity and quality of runoff generated within each subcatchment as well as the flow rate, flow depth, and quality of water in each pipe and channel during a simulation period with multiple time steps. The results of the modeling shall be used to compare the proposed "permanent" stormwater peak flows and volumes for the Project with the existing peak flows and show compliance with the jurisdictional regulations. The dynamic hydraulic modeling shall consider the potential runoff volumes and rates coming from the top of the landfill. The resulting design of stormwater management measures shall be required to be sufficient to protect water quality and habitat resources along receiving waterways. A Stormwater Management Report, including detailed hydrologic and hydraulic calculations, analysis, and conclusions, shall be prepared to document the final design of the stormwater management and storm drain system and obtain the requisite approvals.				
WQ-3.1: Design New Bridge and Outfall Structures to Avoid Increase in 100-year Flow and Channel Erosion. In compliance with the Santa Clara Valley Water District's (SCVWD's) 100-year peak flood requirements, any new bridge and new outfalls in San Tomas Aquino Creek shall be designed to avoid increases in the 100-year flow and to avoid creek bed/channel erosion. The design shall also consider erosive action or redirection of flow during more frequent flood events in compliance with the City of Santa Clara's storm drainage design criteria[10] and consistent with SCVWD's	Project Developer to provide design for any new bridge or outfalls in San Tomas Aquino Creek or the eastside drainage channel for review and approval by City and	Project Developer	Department of Public Works	Prior to the issuance of the building permit for the development that triggers the need for the

[10] City of Santa Clara. 2015. Design Criteria for Improvements in Public Right-of-Ways and City Easements. Public Works Department. April. Available: http://santaclaraca.gov/home/showdocument?id=14345. Accessed: 12/29/15.

Mitigation and Avoidance Measures	Action	Implementing Party	Monitoring Party	Timing [1]
guidance.[11] The outfalls will be set at elevations high enough to ensure the location of outfalls are above sediment levels within the bottom of the creek.[12] The design shall be provided to the City of Santa Clara and the SCVWD for review and approval for the Project. Construction would be done in phases. For example, the new bridge over the San Tomas Creek would not be needed until Phase 2 and outfalls to the eastside drainage ditch would not be needed until later phases. The design review approval of outfalls shall occur prior to the issuance of the building permit for the development that triggers the need for the outfall or associated construction activity, and on a schedule similar to the phases of construction.	submit to City evidence of approval from SCVWD.			outfall or associated construction activity
WQ-3.2: Vegetation Removal from the Retention Basin Drainage Swale. In accordance with the Retention Basin Drainage Swale Vegetation Clearing Project, and prior to the placement of new impervious surfaces on Parcels 1 or 2, overgrown tule and cattails shall be removed from the entire length of the drainage swale to restore the swale's flood protection capacity and protect residents and businesses. Vegetation in the drainage swale shall be mowed by hand using rotary mowers, and tule and cattails shall be cut down to 3 to 4 inches above the ground surface. The clippings shall be loaded by hand and hauled from the drainage swale to the Retention Basin where the vegetation will dry out. Once dry, the vegetation shall be transported to the Newby Island Landfill. It is estimated that initial removal of overgrown vegetation will generate approximately 300 cubic yards of debris. Prior to performance of this work, all necessary permits shall be obtained from environmental regulatory agencies for this vegetation removal, including any required compensation for loss of wetland/riparian vegetation.	City and Project Developer to execute an agreement to reimburse City for the one-time costs of removing vegetation from the swale (including compliance with any permit conditions requiring onsite actions to do so) as needed to restore flood protection capacity suitable to support the Project. City to be responsible for obtaining any necessary permits and for any maintenance of the swale thereafter.	Project Developer	Department of Public Works	Agreement executed prior to issuance of grading and building permits on Parcels 1 or 2. Vegetation removal complete prior to issuance of a certificate of occupancy for the first building on Parcels 1 or 2.
HAZARDS AND HAZARDOUS MATERIALS				
HAZ-2.1: Finalize Waste Management Plan for Construction. Prior to Project construction, a final Waste Management Plan shall be prepared and implemented. This plan shall be submitted to the LEA, CalRecycle, Regional Water Board, and	Project Developer to provide to City final, approved Waste	Project Developer	Department of Public Works	Plan approved by pertinent agencies must

[11] Santa Clara Valley Water District. 2006. *User Manual: Guidelines & Standards for Land Use Near Streams*. A Manual of Tools, Standards, and Procedures to Protect Streams and Streamside Resources in Santa Clara County. Prepared by the Santa Clara Valley Water Resources Protection Collaborative. Originally adopted in August 2005. Revised: July 2006.

[12] Outfalls and work within the SCVWD right-of-way are subject to approval and issuance of permits by the SCVWD.

Mitigation and Avoidance Measures	Action	Implementing Party	Monitoring Party	Timing [1]
BAAQMD for review and approval. Specifically, the final Waste Management Plan shall contain, at a minimum, the following requirements, which are included in the draft Waste Management Plan: • Waste excavation shall be performed in accordance with a Health and Safety Plan (HASP) designed to minimize impacts from dust, odor, and other nuisances, and assure waste is handled in a safe and environmentally responsible manner. • During waste excavation and relocation, the worksite shall be monitored for dust, odor, or other nuisances in accordance with general landfill construction practices and the HASP. • At the end of the working day, any exposed waste shall be covered with soil or an alternative material, such as a geosynthetic blanket, (i.e., interim cover). • Odors, should they occur, shall be controlled by application of a deodorant, masking agent, neutralizing agent, or lime, and an interim landfill cover at the end of each working day. • A "Project Contact" shall be designated who will be responsible for responding to any local complaints about dust, odors, or other nuisances associated with the waste excavation and regrading operations. • During excavation activities, excavation areas shall be monitored using a hand-held instrument calibrated to measure combustible gases (including methane), hydrogen sulfide, oxygen, and VOCs. • No hot work (e.g., welding) shall be allowed in the vicinity of excavation activities unless methane concentrations are sufficiently below the lower explosive limit of 8 percent. If methane concentrations approach 5 percent, excavation activities shall be stopped until the landfill gas collection system can be modified to reduce the methane concentrations in the excavation area. If methane levels are persistent in areas where earthwork and/or hot work activities are necessary, inert gases (e.g., nitrogen) can be introduced into affected subsurface materials to lower oxygen and methane concentrations. By introducing an inert gas into the affected area, methane and oxygen can be displaced to create insufficient oxygen concentrations to support combustion.	Management Plan. City to verify that final Waste Management Plan includes all required components and all necessary approvals.			be submitted to City prior to issuance of demolition, grading, and building permits
HAZ-4.1: Landfill Closure, Monitoring, and Maintenance Plans.[13] Prior to issuance of building permits for structures within the area of the Landfill (Parcels 1, 2, 3, and 4), a revised Closure Plan and Post-Closure Maintenance Plan (PCMP) shall be prepared in accordance with the regulatory requirements described in 27 CCR	Project Developer to provide to City for its review and approval revised Closure Plan,	Project Developer/City	Department of Public Works	Prior to issuance of grading or building

[13] To the extent the implementation of this mitigation measure at Parcel 3 is made necessary by, or altered by, the City's park development activities, the City shall be responsible for implementation.

Mitigation and Avoidance Measures	Action	Implementing Party	Monitoring Party	Timing [1]
21790–21840 and submitted to the LEA, CalRecycle, and Regional Water Board (as required) for review and approval. In addition, a PCLUP shall be prepared in accordance with the regulatory requirements described in 27 CCR 21190 and submitted to the LEA and Regional Water Board (as required) for review and approval. Collectively, these plans shall incorporate the requirements of Mitigation Measures HAZ-4.2 through 4.6, below. In addition, the Project Developer shall continue to work with the regulatory agencies (Regional Water Board, LEA, or CalRecycle) and ensure the implementation of all elements and measures necessary to mitigate Project-related health risks to residents and commercial workers to a level below the Regional Water Board's cumulative incremental cancer risk threshold of 1E-06 and hazard index (HI) (i.e., adverse non-cancer risk) of 1.0 established for the Project are implemented.	Post-Closure Maintenance Plan and Post Closure Land Use Plan that include evidence that health risks can be mitigated to identified levels and contain all elements of HAZ 4.2 through 4.6. City to submit these Plans to the Regional Water Board, LEA, and CalRecycle for their approval. City and Project Developer/Master Owner Association to implement the actions required by these Plans in accordance with the allocation of responsibilities set forth in the Landfill O&M Agreement attached to the DDA.			permits within the area of the Landfill (Parcels 1, 2, 3, and 4)
HAZ-4.2: Landfill Gas Collection and Removal System.[14] During Project construction, the existing landfill gas collection and removal system (i.e., wells and conveyance lines) shall be systematically abandoned and replaced in conjunction with the phased Project site development while complying with applicable regulatory requirements that govern the performance of these systems. The new system shall be designed to effectively draw landfill gases (e.g., methane, hydrogen sulfide, and volatile COPCs) away from building sub-slab areas. The system design shall be submitted to the City for review and approval, taking into account an evaluation of the following criteria: effective vacuum influence (based on	Project Developer to submit to City system design for review and approval . City to submit system design to the Regional Water Board, LEA, and/or CalRecycle for their approval, as required by the relevant	Project Developer/City	Department of Public Works	Prior to the issuance of grading or building permits within the area of the Landfill (Parcels 1, 2, 3, and 4)

[14] To the extent the implementation of this mitigation measure at Parcel 3 is made necessary by, or altered by, the City's park development activities, the City shall be responsible for implementation.

Mitigation and Avoidance Measures	Action	Implementing Party	Monitoring Party	Timing [1]
pilot testing and pneumatic modeling), vacuum distribution control, oxygen management (for subsurface fire prevention), ease of maintenance, well location, effect of landfill settlement, mitigation of vapor intrusion risk, and the proposed development on the Project site. The system design shall incorporate temperature- and corrosion-resistant materials. The landfill gas collection and removal system shall be designed, operated, and maintained to control excessive gas concentrations as specified in 27 CCR 20939. The monitoring of landfill gases is described under Mitigation Measures HAZ-4.4, below.	regulations and approved plans. City to operate and maintain the system in accordance with the allocation of responsibilities set forth in the Landfill O&M Agreement attached to the DDA.			
HAZ-4.3: Landfill Gas Protection Systems.[15] During Project construction, landfill gas protection systems shall be constructed beneath the sub-slabs of structures located on Parcels 1, 2, 3, and 4 to remove landfill gases (e.g., methane, hydrogen sulfide, and volatile COPCs) that could otherwise accumulate and/or migrate through the sub-slab. The systems may include active gas collection or passive ventilation mechanisms and shall meet the minimum design requirements described in 27 CCR 21190. The landfill gas protection systems shall be designed, operated, and maintained to control excessive gas concentrations as specified in 27 CCR 20939. The monitoring of landfill gases is described under Mitigation Measures HAZ-4.4, below.	Project Developer to provide plans to City for review and approval and "as built" drawings to City once work is complete. System will be operated by Project Developer until a Master Owners Association is formed, after with system will be operated by Master Owners Association..	Project Developer/Master Owner Association	Department of Public Works	Prior to issuance of building permits for Parcels 1, 2, 3, and 4, with "as built" drawings submitted prior to any certificates of occupancy on such sites
HAZ-4.4: Landfill Gas Monitoring and Control System Maintenance.[16] During Project construction and operation on Parcels 1-4, a landfill gas monitoring and control program shall be implemented in accordance with 27 CCR 20921-20939. The gas monitoring network shall be designed by a registered civil engineer or a certified engineering geologist and shall ensure detection of the presence of landfill gas migrating beyond the disposal site permitted facility boundary and also into on-site structures. The monitoring network design shall include provisions for monitoring all structures on the Project site, including but not limited to, buildings, large subsurface vaults, or any other areas where potential landfill gas buildup may cause adverse	Project Developer to provide landfill gas monitoring network plans and Operations and Maintenance Plan to City for review and approval. City to submit these Plans to the Regional Water Board,	Project Developer/ Master Owners Association / City	Department of Public Works	Prior to issuance of grading and building permits for Parcels 1, 2, 3, and 4

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[16] To the extent the implementation of this mitigation measure at Parcel 3 is made necessary by, or altered by, the City's park development activities, the City shall be responsible for implementation.

Mitigation and Avoidance Measures	Action	Implementing Party	Monitoring Party	Timing [1]
impacts on the public health or safety or the environment. Methods for monitoring on-site structures may include, but are not limited to: periodic monitoring, utilizing either permanently installed monitoring probes or gas surveys, and continuous monitoring systems. A methane monitoring system shall be installed inside all buildings on the Project site. If methane gas concentrations exceed a threshold of 1.25 percent by volume in air, as described under 27 CCR 20921, the methane monitoring system shall automatically alert the Santa Clara Fire Department, who shall assess the methane conditions and, if necessary, trigger an audible fire alarm to initiate a building evacuation. In the event of an evacuation, the building shall not be reoccupied until the Santa Clara Fire Department has confirmed and approved by that: (1) concentrations of methane meet the applicable compliance requirements and (2) the landfill gas monitoring and control system is operating in a manner that ensures adequate control of methane/vapor intrusion. The landfill gas control system shall be operated and maintained to control excessive gas concentrations as specified in 27 CCR 20939. This includes operating the landfill gas control system in such a manner as to satisfy the following requirements specified in 27 CCR 20921(a): • The concentration of methane gas must not exceed 1.25 percent by volume in air within any portion of any on-site structures; • The concentration of methane gas migrating from the disposal site must not exceed 5 percent by volume in air at the disposal site permitted facility boundary or an alternative boundary approved in accordance with Section 20925; and • Trace gases shall be controlled to prevent adverse acute and chronic exposure to toxic and/or carcinogenic compounds that could result in a health risk exceedance of the Regional Water Board's cumulative incremental cancer risk threshold of 1E-06 and HI (i.e., adverse non-cancer risk) of 1.0 established for the Project. In the event of an earthquake or other event that could cause a rupture or leak from overlying stormwater treatment measures (i.e., planters, vegetated areas), the landfill gas venting pipes shall be inspected at access ports within 24 hours of the event for leaks, ruptures, or any other conditions. Access ports shall be installed at select locations, to provide full coverage of the system based on system design and access constraints, within the venting layer to monitor for the presence of, and removal of, water that might flood the system in the event that water leaks from collection systems above the landfill gas mitigation system. This system would help prevent the water from further migrating into the underlying landfill gas mitigation system. The access ports will allow for use of portable moisture sensing devises to periodically monitor for moisture in the event that a leak is suspected. The access ports shall also be designed to allow for pumping of water from the interstitial space in the event that	LEA, and/or CalRecycle for their approval, as required by relevant regulations and approved plans. City and Project Developer/ Master Owners Association to implement the actions required by these Plans in accordance with the allocation of responsibilities set forth in the Landfill O&M Agreement attached to the DDA.			

Mitigation and Avoidance Measures	Action	Implementing Party	Monitoring Party	Timing [1]
water is detected. In addition to the monitoring and control of excessive gas concentrations to protect public health and safety and the environment, as specified in 27 CCR 20939, the landfill gas monitoring and control program shall incorporate the monitoring and control requirements for preventing subsurface fires that are described under Mitigation Measure HAZ-9.1, below.				
HAZ-4.5: Building Restrictions. The Project shall prohibit the construction of enclosed basements located over refuse on Parcels 1, 2, 3, and 4 to minimize the risk of landfill gas accumulation. Over the landfill area, the Project shall also limit residential construction to only Parcel 4 areas located over open-air podium level garages or over at least one level of enclosed commercial space to mitigate vapor intrusion effects by increasing the free flow and exchange of air beneath the residences.	Project Developer to submit final detailed design plans for review and approval by City.	Project Developer	Department of Public Works	Concurrent with building permit application
HAZ-4.6: Landfill Hazards Disclosure. Information about the existing subsurface hazardous materials conditions and the ongoing mitigation and monitoring requirements described in the PCLUP shall be included in all ground leases and space leases for space located over the Landfill. The text to be inserted shall be subject to review and approval by City.	Project Developer and City to include language in ground and tenant leases for space located over the landfill.	Project Developer/City	Department of Public Works	Prior to execution of ground or tenant leases
HAZ-5.1: Phase II Site Investigation. Prior to Project construction, a Phase II Site Investigation shall be performed on Parcel 5 and the tennis courts located in the southwest portion of Parcel 4 to (1) delineate the extent of soil, soil gas, and potential groundwater contamination on the site and (2) assess potential health risks posed to construction workers and future site users. The Phase II Site Investigation shall be conducted and evaluated by a licensed professional prior to construction and earthwork activities. The findings of the Phase II Site Investigation shall be submitted to the appropriate regulatory agency to the extent required by applicable law. The Project Developer shall conduct any additional investigation and/or risk assessment and/or implement any remedial or risk mitigation measures required by the regulatory agency.	If additional remedial or risk mitigation measures are needed, Project Developer to submit plans to City for review and approval.	Project Developer	Department of Public Works	Prior to issuance of grading and building permits for Parcel 5 and the portion of Parcel 4 beneath the existing tennis courts.
HAZ-5.2: Soil and Groundwater Management Plan. Construction on Parcel 5 and the tennis courts located in the southwest portion of Parcel 4 shall be conducted under a site-specific Soil and Groundwater Management Plan (SGMP) to protect construction workers, the general public, and the environment from hazardous materials identified in the Phase II Site Investigation (see Mitigation Measure HAZ-5.1) and potential undocumented sources of such materials. The SGMP shall delineate specific soil and groundwater management and disposal procedures,	City to review and approve a Soil and Groundwater Management Plan pertaining to Parcel 5 and the portion of Parcel 4 beneath the existing	Project Developer	Department of Public Works	Prior to issuance of grading and building permits for Parcel 5 and the portion of

Mitigation and Avoidance Measures	Action	Implementing Party	Monitoring Party	Timing [1]
construction worker health and safety requirements, and contingency measures in case unknown contamination is encountered during construction. The SGMP shall incorporate the soil and groundwater analytical data from the Phase II Site Investigation to ensure that soil and groundwater are stored, managed, and disposed of in a manner protective of human health and the environment, and in accordance with applicable laws and regulations. The SGMP shall specifically include the following: • Procedures for evaluating, handling, storing, testing, and disposing of known soil and groundwater contamination identified during the Phase II Site Investigation during Project excavation and dewatering activities, respectively; • Procedures for identifying, testing, and managing soil and groundwater suspected of containing hazardous materials (if any) that have not previously been identified at the site; • Descriptions of required worker health and safety provisions for all workers potentially exposed to hazardous materials in accordance with State and federal worker safety regulations; and • Identification of personnel responsible for implementation of the SGMP.	tennis courts.			Parcel 4 beneath the existing tennis courts
HAZ-5.3: Implement Measures Included in CCR Title 27, Section 21190(g). Consistent with the Project Developer's voluntary commitment, in order to mitigate gas migration into structures located within 1,000 feet of landfill, the City (as owner and operator of the landfill) and the Project Developer shall implement the following measures identified in Title 27, Section 21190(g), with respect to development on Parcel 5 and the southwest portion of Parcel 4: (1) a geomembrane or equivalent system with low permeability to landfill gas shall be installed between the concrete floor slab of the building and subgrade; (2) a permeable layer of open graded material of clean aggregate with a minimum thickness of 12 inches shall be installed between the geomembrane and the subgrade or slab; (3) a geotextile filter shall be utilized to prevent the introduction of fines into the permeable layer; (4) perforated venting pipes shall be installed within the permeable layer, and shall be designed to operate without clogging; (5) the venting pipe shall be constructed with the ability to be connected to an induced draft exhaust system; (6) automatic methane gas sensors shall be installed within the permeable gas layer, and inside the building to trigger an audible alarm when methane gas	City to review and approve detailed construction plans including these measures for Parcel 5 and the areas of Parcel 4 beneath the existing tennis courts. Project Developer shall submit quarterly reports that report methane gas levels for review by City.	Project Developer	Department of Public Works	Prior to issuance of building permits for Parcel 5 and the areas of Parcel 4 beneath the existing tennis courts; quarterly monitoring

Mitigation and Avoidance Measures	Action	Implementing Party	Monitoring Party	Timing [1]
concentrations are detected; and (7) periodic methane gas monitoring shall be conducted inside all buildings and underground utilities in accordance with Article 6, of Subchapter 4 of this chapter (section 20920 et seq.). At a minimum, quarterly monitoring is required, but more frequent monitoring may be required by LEA (Subchapter 4, section 20933(a)).				
HAZ-6.1: Finalize Draft Technical Memorandum: Leachate Collection and Removal System.[17] Prior to Project construction, a final Technical Memorandum: Leachate Collection and Removal System shall be prepared and implemented as part of the PCLUP. The technical memorandum shall be submitted to the LEA for review and approval and to CalRecycle and the Regional Water Board for review and comment. Specifically, the final technical memorandum shall contain, at a minimum, the following requirements: • During the construction phase of Parcel 3, the existing leachate collection and removal system (LCRS) risers LR-1 and LR-4 shall be protected and preserved during construction by flagging the well head locations, extending the risers, and installing a bollard around each riser. • If LR-1 or LR-4 are damaged during construction, repairs and modifications shall be completed promptly. • LR-1 and LR-4 shall be supported and anchored to prevent potential settlement over time and finished to grade at the end of excavation and/or completion of construction. • Ongoing operation and maintenance of the leachate recovery system shall continue during and after Project construction. The LCRS monitoring shall continue in accordance with the Regional Water Board's WDR Order No. R2-2002-0008 for the site, which shall be revised to consider the proposed development and modifications to the landfill systems.	Project Developer to submit to City for its review and approval a Leachate Collection and Removal System Technical Memorandum. City to submit to LEA for review and approval and to CalRecycle and the Regional Water Board for review and comment. As part of the PCLUPCity to operate and maintain the leachate recovery system in accordance with the allocation of responsibilities set forth in the Landfill O&M Agreement attached to the DDA.	Project Developer/City	Department of Public Works	Submittal of Memo: Prior to issuance of grading or construction permits for Parcels 1 and 3.
HAZ-9.1: Subsurface Fire Prevention, Detection, and Response Plan.[18] Prior to construction, a Subsurface Fire Prevention, Detection, and Response Plan shall be prepared that describes how subsurface heating conditions above the landfill will be monitored, prevented, and suppressed. The plan, which may be included as part of a	Project Developer to submit to City a Subsurface Fire Prevention, Detection,	Project Developer	Department of Public Works	Submittal of Plan prior to issuance of grading or

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Mitigation and Avoidance Measures	Action	Implementing Party	Monitoring Party	Timing [1]
larger planning document, shall identify responsible parties and schedules for implementing the measures described in the plan. The Project Developer shall submit the plan to the LEA, CalRecycle, and the Santa Clara Fire Department (SCFD) for review and comment. Responses to comments shall be incorporated into a final Subsurface Fire Prevention, Detection, and Response Plan from the regulatory agencies. The plan shall also incorporate the prevention, detection, and response actions described under Mitigations HAZ-9.2 and HAZ-9.3, below, unless alternative actions are approved by LEA, CalRecycle, and SCFD. The final plan shall be implemented during Project construction and operation.	and Response Plan that has been reviewed and commented on by relevant agencies. The Plan shall be implemented consistent with the Landfill Operations and Maintenance Agreement.			construction permits for Parcels 1, 2, 3, and 4. Implementation during Project construction and operation
HAZ-9.2: Subsurface Fire Prevention and Detection Measures.[19] The following measures may be included in whole, or in part, in the Subsurface Fire Prevention, Detection, and Response Plan, as required by the LEA, CalRecycle, and SCFD. In addition, these agencies may require additional measures. The landfill gas collection system shall be monitored and maintained to minimize the intrusion of oxygen (i.e., air) into the landfill and prevent the overheating of waste due to aerobic decomposition. In accordance with BAAQMD monitoring requirements (Regulation 8-34), the gauge pressure, nitrogen or oxygen concentration, and temperature of landfill gas within each extraction wellhead shall be monitored once a month and evaluated to ensure the system is not overdrawing air into the landfill. The nitrogen and oxygen concentrations may be measured using a calibrated portable instrument. The landfill gas measured at each extraction well head must meet the following monitoring threshold requirements: • Nitrogen concentrations less than 20 percent or oxygen levels less than 5 percent; and • Maximum temperature of 140 degrees Fahrenheit. The nitrogen and oxygen thresholds shall be used to indicate if the gas collection system is overdrawing and causing excessive ambient air infiltration into the landfill through its surface and sides. An exceedance of the maximum temperature threshold shall indicate that a subsurface fire may exist. Other evidence of a potential subsurface fire shall include the following: • Observations of rapid settlement over a short period of time; • Smoke or smoldering odor emanating from the gas extraction system or landfill; or • Combustion residue in extraction wells and/or headers.	Project Developer to integrate these measures into the Subsurface Fire Prevention, Detection, and Response Plan as requested by relevant agencies.	Project Developer	Department of Public Works	Submittal of Plan: Prior to issuance of grading or construction permits for Parcels 1, 2, 3, and 4. Implementation during Project construction and operation

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Mitigation and Avoidance Measures	Action	Implementing Party	Monitoring Party	Timing [1]
The landfill gas collection system shall be adjusted to reduce well extraction rates (if necessary) to ensure the monitoring thresholds for nitrogen/oxygen and temperature are not exceeded, while continuing to ensure the control of other excessive gas concentrations in the landfill (e.g., methane and trace gases) as specified in 27 CCR 20939. In the event that one or both of the monitoring thresholds are exceeded or other evidence of a potential subsurface fire is observed, then gas samples shall be collected from the extraction wells in the affected area and submitted to a certified laboratory for analysis of nitrogen, oxygen, and carbon monoxide. Analytical results for nitrogen and oxygen that exceed the monitoring thresholds shall be used as confirmation that an aerobic environment is present. Analytical results for carbon monoxide that exceed 1,000 parts per million shall be used as confirmation that a subsurface fire exists.				
HAZ-9.3: Subsurface Fire Suppression. If a subsurface fire condition has been confirmed (i.e., carbon monoxide level exceed 1,000 parts per million), the LEA, CalRecycle, and SCFD shall be notified immediately. The extraction wells surrounding the subsurface fire shall be shut down temporarily to reduce oxygen levels. The extraction wells shall then be returned to active use in stages in conjunction with monitoring to determine if the subsurface fire has been suppressed. If shutting down the extraction wells does not suppress the fire and/or results in the excess accumulation of methane and other trace gases beneath structures, then the LEA, CalRecycle, and SCFD shall consider injecting a Class A foam or wetting agent or liquid carbon dioxide (which also has the added benefit of rapidly cooling the refuse/fill) into the affected area. Large amounts of water shall not be used, because water can exacerbate the fire potential, generate contaminated runoff, increase leachate, and cause slope failure.	City to ensure that SCFD is aware of and trained on protocols. Project Developer and/or City to notify agencies if a subsurface fire condition is confirmed and to implement subsurface fire suppression measures.	Project Developer / City	City Planning & Inspection; SCFD	Prior to operation of Project over landfill areas for SCFD protocols. After confirmation of a subsurface fire condition as to agency notification
UTILITIES AND SERVICE SYSTEMS				
UT-3.1: Make a Fair-Share Contribution to Upgrading the Rabello and Northside Pump Station System's Capacity. The City will conduct detailed engineering study and analysis to determine the precise size and timing needed for the required pump station capacity upgrades to address overcapacity due to projected cumulative development. The City will implement the required capacity upgrades and the Developer will fund its fair share of such upgrades. The City shall determine the fair-share cost contribution for the Project based on the Project's percent of wastewater flow cumulative capacity needs above the current pump capacity (based on conceptual planning to date, that fair share is estimated as 27 percent of 2035 cumulative overcapacity amount). The City may require the Developer to fund the design and construction of the conveyance capacity upgrades to the Rabello and	Conduct a detailed engineering study and analysis to determine the precise size and timing needed for the required pump station capacity upgrades to address overcapacity due to projected cumulative development. Project	Department of Public Works	City Planning & Inspection	Conduct study prior to construction of Phase 2 of the Project, fund prior to issuance of first building permit for Phase 2 of the Project or later as

Mitigation and Avoidance Measures	Action	Implementing Party	Monitoring Party	Timing [1]
Northside Sanitary Sewer Pump Stations concurrent with construction of Phase 2 of the Project; the pump station upgrades would be designed to address overcapacity due to projected cumulative development. If the Developer is required to fund pump station upgrade costs, with the exception of costs attributable to the Project's fair share contribution to the upgrade, the City would reimburse the Developer for the design and construction costs through first (a) refunding the Project's Sanitary Sewer Conveyance Fees already paid by Developer or crediting those fees when due and (b) providing to Developer Sanitary Sewer Conveyance Fees collected from developers of projects that would use the Rabello and Northside Sanitary Sewer Pump Stations.	Developer to contribute fair-share, and potentially front costs of full upgrade.			otherwise determined necessary by City; if Developer to fund full pump station upgrade costs, Developer and City enter funding and reimbursement agreement prior to upgrade

Mitigation and Avoidance Measures	Action	Implementing Party	Monitoring Party	Timing
TRANSPORTATION				
IM-TRA-1: Prepare and Implement a Construction Traffic Control Plan. Prior to issuance of grading permits, the construction contractor will develop the traffic control plan in accordance with the appropriate jurisdiction's policies and submit for approval. The plan will be implemented throughout the course of construction and may include, but will not be limited to, the following elements. • Limit truck access to the intersection during peak commute times (7:00 a.m. to 9:00 a.m. and 4:00 p.m. to 6:00 pm.). • Require that written notification be provided to contractors regarding appropriate routes to and from the intersection, and the weight and speed limits on local roads used to access the intersection. • Provide access for emergency vehicles at all times. • Provide adequate parking for construction employees, site visitors, and inspectors as feasible. • Maintain bicycle and pedestrian access and circulation during Project construction where safe to do so. If construction encroaches on a bike lane, warning signs will be posted that indicate bicycles and vehicles are sharing the roadway. If construction encroaches on a sidewalk, a safe detour will be provided for pedestrians at the nearest crosswalk. • Require traffic controls in the vicinity of the intersection, including flagpersons with bright orange or red vests and using a "Stop/Slow" paddle to control oncoming traffic. • Post standard construction warning signs in advance of the construction area and at any intersection that provides access to the construction area. • Repair or restore the road right-of-way to its original condition or better upon completion of the work.	Project Developer to prepare and submit a Construction Traffic Control Plan for the purpose of managing traffic and reducing traffic congestion during construction. City to review and approve Plan.	Project Developer/ Project Contractor	Department of Public Works	Prior to issuance of grading and building permits
AIR QUALITY				
IM-AQ-1: Implement Measures to Reduce Construction-Related Dust Emissions. The Project Developer shall require all construction contractors to implement the specific construction mitigation measures below to reduce fugitive dust. Emissions reduction measures shall include, at a minimum, the measures below. Alternative	Project Developer to provide to City applicable provisions of construction contracts	Project Developer/ Project Contractor	City Planning & Inspection Division	Prior to issuance of grading and building

Mitigation and Avoidance Measures	Action	Implementing Party	Monitoring Party	Timing
measures may be identified by the Project Developer or its contractor, as appropriate, provided that they are as effective as the measures below. Alternative measures shall be submitted to the City for approval. • All exposed surfaces shall be watered at a frequency adequate to maintain minimum soil moisture of 12 percent. Moisture content can be verified by lab samples or moisture probe. If water infiltration into landfill refuse layers is a concern, non-toxic soil stabilizers may be used instead. • All excavation, grading, and/or demolition activities shall be suspended when average wind speeds exceed 20 mph for a period of 2 hours or more. • Windbreaks (e.g., fences) shall be installed on the windward side(s) of actively disturbed areas of construction. Windbreaks shall have at maximum 50 percent air porosity. • Exposed ground areas that are to be reworked more than 1 month after initial grading should be sown with fast-germinating native grass seed and watered appropriately until vegetation is established. If grass seeding is not feasible, then non-toxic soil stabilizers may be used. • All construction trucks and equipment, including tires, involved in ground disturbance or transit through loose soil areas shall be washed off prior to leaving the site. • Site accesses to a distance of 25 feet from the paved road shall be treated with a 6- to 12-inch compacted layer of wood chips, mulch, or gravel. Alternatively, a rumble plate may be used in place of chips, mulch, or gravel. • Sandbags or other erosion control measures shall be installed to prevent silt runoff to public roadways from sites with a slope greater than 1 percent.	specifying construction mitigation measures to reduce construction-related dust emissions.			permits
IM-AQ-2: Implement Measures to Reduce Construction-Related Exhaust Emissions. The Project Developer shall require all construction contractors to implement the specific construction mitigation measures below to reduce equipment exhaust emissions. Emission reduction measures shall include, at a minimum, the measures below. Alternative measures may be identified by the Project Developer or its contractor, as appropriate, provided that they are as effective as the measures below. Alternative measures shall be submitted to the City for approval. • Idling time of diesel powered construction equipment shall be limited to 2 minutes. • Ensure that all off-road diesel-powered equipment used during construction between 2017 and 2022 is equipped with U.S. Environmental Protection Agency (EPA) Tier 3 or cleaner engines, except for specialized construction equipment for which an EPA Tier 3 engine is not available. Consistent with advancements of the statewide fleet average, the Project Developer shall ensure that all off-road diesel-	Project Developer to provide to City applicable provisions of construction contracts construction mitigation measures to reduce construction-related exhaust emissions.	Project Developer/ Project Contractor	City Planning & Inspection Division	Prior to issuance of grading and building permits

Mitigation and Avoidance Measures	Action	Implementing Party	Monitoring Party	Timing
powered equipment used during construction between 2023 and 2030 is equipped with EPA Tier 4 engines. This requirement will ensure construction equipment remains cleaner than the fleet-wide average. • Ensure that all on-road heavy-duty diesel trucks with a gross vehicle weight rating (GVWR) of 19,500 pounds or greater used at the Project site comply with EPA 2007 on-road emissions standards for particulate matter of 10 micrometers or less (PM10) and nitrogen oxides (NO_X) (0.01 grams per brake horsepower-hour [g/bhp-hr] and 0.20 g/bhp-hr, respectively). • Notwithstanding the above requirements, all construction equipment, diesel trucks, and generators shall meet the California Air Resources Board's most recent certification standard for off-road heavy-duty diesel engines and shall employ Best Available Control Technology for reductions in NO_X and particulate matter (PM) emissions if more stringent than the requirements above.				
GREENHOUSE GAS EMISSIONS				
IM-GHG-1: Utilize Alternative Fuels during Construction. Require construction contractors to use alternative fuels in at least 30 percent of the construction equipment that uses diesel fuel. Alternative fuels may include electricity, compressed natural gas (CNG), biodiesel (B-20), or renewable diesel, such as diesel high-performance renewable (HPR).	Project Developer to provide to City applicable provisions of construction contracts requiring adequate use of alternative fuels.	Project Developer/ Project Contractor	City Planning & Inspection Division	Prior to issuance of grading and building permits
CULTURAL RESOURCES				
IM-CR-1: Conduct Cultural Resource Investigations and Protect and Recover Significant Resources. The Lead Agency shall conduct a cultural resource investigation that includes a background records search (including a search of records from Sonoma State and historical societies, contact with Native American representatives identified by the Native American Heritage Commission (NAHC), and site pedestrian surveys) for the areas of ground disturbance from each roadway improvement. If significant known or suspected sites are discovered within the Project footprint and would be disturbed by the Project, then a cultural resource treatment plan shall be prepared, defining Project monitoring and resource recovery and curation requirements concerning any encountered cultural resources.	Lead Agency to conduct a cultural resource investigation that includes a background records search during ground disturbance. If necessary, Lead Agency to prepare and execute cultural resource treatment plan.	City Planning & Inspection Division	City Planning & Inspection Division	Prior to issuance of grading and building permits
IM-CR-2: Stop Work if Cultural Resources Are Encountered during Ground-Disturbing Activities. In the event that cultural resources are encountered during ground-disturbing activities, all work within proximity of the find shall temporarily halt so that the archaeological monitor can examine the find and document its provenience and nature (e.g., with drawings, photographs, written descriptions). The	Archaeological monitor (retained by the Project Developer), as necessary, and in consultation with the	Project Developer/ Qualified Archaeologist	City Planning & Inspection Division	During construction if cultural resources are

Mitigation and Avoidance Measures	Action	Implementing Party	Monitoring Party	Timing
archaeological monitor shall then direct that the work proceed if the find is deemed to be insignificant, continue elsewhere, or cease until adequate mitigation measures are adopted. If the find is determined to be potentially significant, the archaeologist, in consultation with the appropriate jurisdiction, shall develop a treatment plan, which could include site avoidance, capping, or data recovery. If data recovery is determined to be appropriate, excavation shall target recovery of an appropriate amount of information from archaeological deposits to determine the potential of the resource to address specific research questions. If it occurs, data recovery shall emphasize the understanding of the archaeological deposit's structure, including features and stratification, horizontal and vertical extent, and content, including the nature and quantity of artifacts.	City, develop a Treatment Plan.			encountered
IM-CR-3: Stop Work if Human Remains Are Encountered during Ground-Disturbing Activities. If human remains are discovered (in either an archaeological or construction context), all work within proximity of the remains shall stop so that the archaeological monitor can examine the remains. The County Coroner shall be notified to make a determination as to whether the remains are of Native American origin. If the remains are determined to be Native American, the coroner shall notify the NAHC immediately. The NAHC shall notify those persons it believes are most likely descended from the deceased Native American. Once the 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 State CEQA Guidelines.	Project Developer to submit to City applicable provisions of construction contracts including applicable requirements.	Project Developer/ Project Contractor	County Coroner/ NAHC	Prior to issuance of grading and building permits.
BIOLOGICAL RESOURCES				
IM-BIO-1: Replace Removed Trees. The Project Developer shall replace all trees removed as part of the intersection improvements in accordance with the tree preservation policies or ordinances of the jurisdiction in which the improvements are constructed.	Project Developer to provide to City report documenting plans to replace all trees removed as part of the intersection improvements.	Project Developer	City Planning & Inspection Division	Prior to issuance of grading and building permits
IM-BIO-2: Preconstruction Surveys. For all intersections that have trees within the intersection footprint or that will remove trees, the Project Developer and its contractors shall avoid conducting vegetation removal during the migratory bird nesting season (February 1–August 31), if feasible. If construction activities must commence during the migratory bird nesting season, the Project Developer shall retain a qualified wildlife biologist to conduct a survey for nests of migratory birds.	Project Developer to provide to City provisions of construction contracts including pertinent requirements. If	Project Developer/ Project Contractor/ Qualified wildlife	City Planning & Inspection Division	Prior to issuance of grading and building permits for biologist and

Mitigation and Avoidance Measures	Action	Implementing Party	Monitoring Party	Timing
Surveys for nesting migratory birds shall occur within 3 days prior to the commencement of ground disturbance and vegetation removal. If an active nest is discovered, a no-disturbance buffer zone around the nest tree or shrub (or, for ground-nesting species, the nest itself) shall be established. The no-disturbance zone shall be marked with flagging or fencing that is easily identified by the construction crew and shall not affect the nesting bird or attract predators to the nest location. In general, the minimum buffer zone widths shall be as follows: 50 feet (radius) for non-raptor ground-nesting species, 50 feet (radius) for non-raptor shrub- and tree-nesting species, and 300 feet (radius) for raptor species. Buffer widths may be modified based on discussion with the California Department of Fish and Wildlife (CDFW). Buffers shall remain in place as long as the nest is active or young remain in the area and are dependent on the nest. If a burrowing owl nest is identified during preconstruction surveys, no-activity buffers will adhere to the recommendations in the 2012 California Department of Fish and Game Staff Report on Burrowing Owl Mitigation.	construction occurs in the nesting season, Project Developer to submit to City agreement with qualified wildlife biologist requiring surveys and protective measures.	biologist		construction contracts; prior to commencement of grading for biologist agreements; and prior to ground disturbance for surveys
IM-BIO-3: Site-Specific Surveys and Species/Habitat Avoidance, Minimization, and Compensation Measures. For intersections with the potential to have sensitive habitats, the Project Developer, in consultation with a qualified biologist, shall conduct site-specific surveys for special-status species, sensitive habitats, wetlands and waters of the United States, and nesting birds. If found, the Project Developer and its contractor shall implement avoidance and minimization measures, where feasible. Where avoidance is not possible, the Project Developer shall compensate for lost habitat at a minimum 1:1 basis. Compensation for lost habitat will be determined in consultation with CDFW/U.S. Fish and Wildlife Service (USFWS), as appropriate. The Project Developer shall obtain all required permits from the U.S. Army Corps of Engineers (USACE), the Regional Water Quality Control Board, and CDFW, and USFWS, as appropriate. The Project Developer shall provide buffer fencing and species relocation, as necessary, if permitted by CDFW/USFWS. Additionally, if special-status species or habitats are identified during the site-specific surveys, a Worker Environmental Awareness Training Program for construction personnel will be conducted by a qualified biologist retained by the Project Developer. The program will provide workers with information on their responsibilities with regard to the special-status species. The training will provide a physical description of the special-status species that have potential to occur and be affected by construction activities to each construction crew prior to the initiation of the crew's construction activities. The worker awareness training will also detail each species' habitat and legal protections, a photo of relevant species, and contact information for the primary biologist.	Project Developer to conduct site-specific surveys for special-status species, sensitive habitats, wetlands and waters of the United States, and nesting birds and provide to City for review and approval. If special status species are found, Project Developer to submit documentation to City detailing protective measures for review and approval.	Project Developer/ Qualified biologist	City Planning & Inspection Division	Prior to issuance of grading and building permits

Mitigation and Avoidance Measures	Action	Implementing Party	Monitoring Party	Timing
GEOLOGY AND SOILS				
IM-GEO-1: Prepare a Geotechnical Investigation. Prior to construction of any intersection improvement that requires retaining walls (or disturbance of existing retaining wall), disturbance or placement of fill, substantial excavation below grade, establishment of new slopes, and/or placement of new structures above or below grade, the Project Developer shall prepare a geotechnical investigation to evaluate the potential for geologic, seismic, and soil risks. The geotechnical investigation shall include recommendations to abate any potential risks. If risks are identified, the Project Developer shall implement the recommendations included in the geotechnical investigation.	Project Developer to provide to City geotechnical investigation for review and approval. City and Developer to submit such report to regulatory agencies and secure approval as required. Project Developer to incorporate resulting measures into project plans.	Project Developer/City	City Planning and Inspection Division	Prior to issuance of grading and building permits
HYDROLOGY AND WATER QUALITY				
IM-WQ-1: Prepare a Hydrology and Water Quality Technical Report. Prior to construction of any intersection improvement, the Project Developer shall prepare a hydrology and water quality technical report to evaluate the existing drainage and stormwater conditions at the subject intersections. The technical report shall include recommendations for drainage and stormwater controls to minimize impacts related to changes in drainage patterns that would result from the intersection improvements. The Project Developer shall be required to implement the report's recommendations.	Project Developer to provide to City a hydrology and water quality technical report to evaluate the existing drainage and stormwater conditions at the subject intersections for review and approval.	Project Developer	City Planning & Inspection Division	Prior to issuance of grading and building permits

Mitigation and Avoidance Measures	Action	Implementing Party	Monitoring Party	Timing
HAZARDS AND HAZARDOUS MATERIALS				
IM-HAZ-1: Prepare a Phase I Environmental Site Assessment. Prior to construction of any intersection improvement involving ground disturbance of acquired property, the Project Developer shall conduct a Phase I Environmental Site Assessment. Where the potential to encounter hazardous materials or waste is identified, the Project Developer shall prepare and implement a soil/groundwater handing plan that identifies measures to properly dispose of contaminated materials. Measures could include worker education and training, as appropriate, and site-specific controls to avoid risks to workers and adjacent residents or others.	Project Developer to submit Phase I Environmental Site Assessment to City for review and approval. Project Developer to implement soil/ groundwater handling plan to City for review and approval.	Project Developer	Department of Public Works	Prior to issuance of grading and building permits

Mitigation and Avoidance Measures	Action	Implementing Party	Monitoring Party	Timing
TRANSPORTATION				
SW-TRA-1: Prepare and Implement a Construction Traffic Control Plan. Prior to issuance of grading permits, the construction contractor will develop the traffic control plan in accordance with the City's policies and submit for approval. The plan will be implemented throughout the course of construction and may include, but will not be limited to, the following elements: • Limit truck access to the soundwall site during peak commute times (7:00 a.m. to 9:00 a.m. and 4:00 p.m. to 6:00 p.m.). • Require that written notification be provided to contractors regarding appropriate routes to and from the soundwall and the weight and speed limits on local roads that would be used to access the soundwall site. • Provide access for emergency vehicles at all times. • Provide adequate parking for construction workers, site visitors, and inspectors as feasible. • Maintain bicycle and pedestrian access and circulation during Project construction where safe to do so. If construction encroaches on a bike lane, warning signs will be posted that indicate that bicycles and vehicles are sharing the roadway. If construction encroaches on a sidewalk, a safe detour will be provided for pedestrians at the nearest crosswalk. • Require traffic controls in the vicinity of the soundwall, including flagpersons with bright orange or red vests and using a "Stop/Slow" paddle to control oncoming traffic. • Post standard construction warning signs in advance of the construction area and at any soundwall that provides access to the construction area. • Repair or restore the road right-of-way to its original condition or better upon completion of the work.	Project Developer to prepare and submit a Construction Traffic Control Plan for the purpose of managing traffic and reducing traffic congestion during construction. City to review and approve Plan.	Project Developer/ Project Contractor	Department of Public Works	Prior to grading and building permit issuance.
AIR QUALITY				
SW-AQ-1: Implement Measures to Reduce Construction-Related Dust Emissions. The Project Developer shall require all construction contractors to implement the specific construction mitigation measures below to reduce fugitive dust. Emission reduction measures shall include, at a minimum, the measures below. Alternative	Project Developer to City applicable provisions of construction contracts specifying construction	Project Developer/ Project Contractor	City Planning & Inspection Division	Prior to issuance of grading and building

Mitigation and Avoidance Measures	Action	Implementing Party	Monitoring Party	Timing
measures may be identified by the Project Developer or its contractor, as appropriate, provided that they are as effective as the measures below. Alternative measures shall be submitted to the City for approval. • All exposed surfaces shall be watered at a frequency adequate to maintain minimum soil moisture of 12 percent. Moisture content can be verified by lab samples or moisture probe. If water infiltration into landfill refuse layers is a concern, non-toxic soil stabilizers may be used instead. • All excavation, grading, and/or demolition activities shall be suspended when average wind speeds exceed 20 mph for a period of 2 hours or more. • Windbreaks (e.g., fences) shall be installed on the windward side(s) of actively disturbed areas of construction. Windbreaks shall have at maximum 50 percent air porosity. • Exposed ground areas that are to be reworked more than 1 month after initial grading should be sown with fast-germinating native grass seed and watered appropriately until vegetation is established. If grass seeding is not feasible, then non-toxic soil stabilizers may be used. • All construction trucks and equipment, including tires, involved in ground disturbance or transit through loose soil areas shall be washed off prior to leaving the site. • Site accesses to a distance of 25 feet from the paved road shall be treated with a 6- to 12-inch compacted layer of wood chips, mulch, or gravel. Alternatively, a rumble plate may be used in place of chips, mulch, or gravel. • Sandbags or other erosion control measures shall be installed to prevent silt runoff to public roadways from sites with a slope greater than 1 percent.	mitigation measures to reduce construction-related dust emissions.			permits
SW-AQ-2: Implement Measures to Reduce Construction-Related Exhaust Emissions. The Project Developer shall require all construction contractors to implement the specific construction mitigation measures below to reduce equipment exhaust emissions. Emission reduction measures shall include, at a minimum, the measures below. Alternative measures may be identified by the Project Developer or its contractor, as appropriate, provided that they are as effective as the measures below. Alternative measures shall be submitted to the City for approval. • Idling time of diesel powered construction equipment shall be limited to 2 minutes. • The Project Developer shall ensure that all off-road diesel-powered equipment used during construction between 2017 and 2022 is equipped with U.S. Environmental Protection Agency (EPA) Tier 3 or cleaner engines, except for specialized construction equipment for which an EPA Tier 3 engine is not available. Consistent with advancements of the statewide fleet average, the Project Developer	Project Developer to provide to City applicant provisions of construction contracts specifying construction mitigation measures to reduce construction-relate exhaust emissions.	Project Developer/ Project Contractor	City Planning & Inspection Division	Prior to issuance of grading and building permits

Mitigation and Avoidance Measures	Action	Implementing Party	Monitoring Party	Timing
shall ensure that all off-road diesel-powered equipment used during construction between 2023 and 2030 is equipped with EPA Tier 4 engines. This requirement will ensure that construction equipment remains cleaner than the fleet-wide average. • The Project Developer shall ensure that all on-road heavy-duty diesel trucks with a gross vehicle weight rating (GVWR) of 19,500 pounds or greater used at the Project site comply with EPA 2007 on-road emissions standards for particulate matter of 10 micrometers or less (PM10) and nitrogen oxides (NO_X) (0.01 grams per brake horsepower-hour [g/bhp-hr] and 0.20 g/bhp-hr, respectively). • Notwithstanding the above requirements, all construction equipment, diesel trucks, and generators shall meet the California Air Resources Board's most recent certification standard for off-road heavy-duty diesel engines and shall employ Best Available Control Technology for emission reductions of NO_X and particulate matter (PM) if more stringent than the requirements above.				
CULTURAL RESOURCES				
SW-CR-1: Conduct Cultural Resource Investigations and Protect and Recover Significant Resources. The improvement Lead Agency shall conduct a cultural resource investigation of the areas of ground disturbance associated with the soundwall that includes a background records search (including a search of records from Sonoma State and historical societies, contact with Native American representatives identified by the Native American Heritage Commission [NAHC], and site pedestrian surveys) for the areas of ground disturbance from each roadway improvement. If significant known or suspected sites are discovered within the Project footprint and would be disturbed by the Project, then a cultural resource treatment plan shall be prepared, defining Project monitoring and resource recovery and curation requirements concerning any encountered cultural resources.	City to conduct a cultural resource investigation that includes a background records search during ground disturbance. If necessary, City to prepare and execute cultural resource treatment plan.	City Planning & Inspection Division	City Planning & Inspection Division	Prior to issuance of grading and building permits
SW-CR-2: Stop Work if Cultural Resources Are Encountered during Ground-Disturbing Activities. In the event that cultural resources are encountered during ground-disturbing activities, all work within proximity of the find shall temporarily halt so that the archaeological monitor can examine the find and document its provenience and nature (e.g., withdrawings, photographs, written descriptions). The archaeological monitor shall then direct that the work proceed if the find is deemed to be insignificant, continue elsewhere, or cease until adequate mitigation measures are adopted. If the find is determined to be potentially significant, the archaeologist, in consultation with the appropriate jurisdiction, shall develop a treatment plan, which could include site avoidance, capping, or data recovery. If data recovery is determined to be appropriate, excavation shall target recovery of an appropriate amount of information from archaeological deposits to determine the potential of the resource	Archaeological monitor (retained by the Project Developer), as necessary, and in consultation with the City, develop a Treatment Plan.	Project Developer/ Qualified Archaeologist	City Planning & Inspection Division	During construction if cultural resources are encountered

Mitigation and Avoidance Measures	Action	Implementing Party	Monitoring Party	Timing
to address specific research questions. If it occurs, data recovery shall emphasize the understanding of the archaeological deposit's structure, including features and stratification, horizontal and vertical extent, and content, including the nature and quantity of artifacts.				
SW-CR-3: Stop Work if Human Remains Are Encountered during Ground-Disturbing Activities. If human remains are discovered (in either an archaeological or construction context), all work within proximity of the remains shall stop so that the archaeological monitor can examine the remains. The County Coroner shall be notified to make a determination as to whether the remains are of Native American origin. If the remains are determined to be Native American, the coroner shall notify the NAHC immediately. The NAHC shall notify those persons it believes are most likely descended from the deceased Native American. Once the 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 State CEQA Guidelines.	Project Developer to submit to City applicable provisions of construction contracts including applicable requirements.	Project Developer/ Project Contractor	County Coroner/ NAHC	Prior to issuance of grading and building permits
BIOLOGICAL RESOURCES				
SW-BIO-1: Replace Removed Trees on a 2:1 Basis. The Project Developer shall replace all trees removed as part of soundwall construction at a minimum of 2:1, or more, as required by the local tree ordinance.	Project Developer to provide to City report documenting plans to replace all trees removed at a 2:1 ratio for review and approval.	Project Developer	City Planning & Inspection Division	Prior to issuance of grading and building permits
SW-BIO-2: Preconstruction Surveys. The Project Developer and its contractors shall avoid conducting vegetation removal during the migratory bird nesting season (February 1–August 31) if feasible. If construction activities must commence during the migratory bird nesting season, the Project Developer shall retain a qualified wildlife biologist to conduct a survey for nests of migratory birds. Surveys for nesting migratory birds shall occur within 3 days prior to the commencement of ground disturbance and vegetation removal. If an active nest is discovered, a no-disturbance buffer zone around the nest tree or shrub (or, for ground-nesting species, the nest itself) shall be established. The no-disturbance zone shall be marked with flagging or fencing that is easily identified by the construction crew and shall not affect the nesting bird or attract predators to the nest location. In general, the minimum buffer zone widths shall be as follows: 50 feet (radius) for non-raptor ground-nesting species, 50 feet (radius) for non-raptor shrub- and tree-nesting species, and 300 feet (radius) for raptor species. Buffer widths may	Project Developer to provide to City provisions of construction contracts including pertinent requirements. If construction occurs in the nesting season, Project Developer to submit to City agreement with qualified wildlife biologist requiring surveys and protective	Project Developer/ Project Contractor/ Qualified wildlife biologist	City Planning & Inspection Division	Prior to issuance of grading and building permits for biologist and construction contracts; prior to commence-ment of grading for biologist agreements;

Mitigation and Avoidance Measures	Action	Implementing Party	Monitoring Party	Timing
be modified based on discussion with the California Department of Fish and Wildlife (CDFW). Buffers shall remain in place as long as the nest is active or young remain in the area and are dependent on the nest. If a burrowing owl nest is identified during pre-construction surveys, no-activity buffers will adhere to the recommendations in the 2012 California Department of Fish and Game Staff Report on Burrowing Owl Mitigation.	measures.			and prior to ground disturbance for surveys
SW-BIO-3: Site-Specific Surveys and Species/Habitat Avoidance, Minimization, and Compensation Measures. The Project Developer, in consultation with a qualified biologist, shall conduct a site-specific surveys for special-status species, sensitive habitats, wetlands and waters of the United States, and nesting birds. If found, the Project Developer and its contractor shall implement avoidance and minimization measures, where feasible. Where avoidance is not possible, the Project Developer shall compensate for lost habitat on a minimum 1:1 basis. Compensation for lost habitat will be determined in consultation with CDFW/U.S. Fish and Wildlife Service (USFWS), as appropriate. The Project Developer shall obtain all required permits from the U.S. Army Corps of Engineers (USACE), the Regional Water Quality Control Board, and CDFW and USFWS as appropriate. The Project Developer shall provide buffer fencing and species relocation, as necessary, if permitted by CDFW/USFWS. Additionally, if special-status species or habitats are identified during the site-specific surveys, a Worker Environmental Awareness Training Program for construction personnel will be conducted by a qualified biologist retained by the Project Developer. The program will provide workers with information on their responsibilities with regard to the special-status species. The training will provide a physical description of the special-status species that have potential to occur and be affected by construction activities to each construction crew prior to the initiation of the crew's construction activities. The worker awareness training will also provide details regarding each species' habitat and legal protections, a photo of relevant species, and contact information for the primary biologist.	Project Developer to conduct site-specific surveys for special-status species, sensitive habitats, wetlands and waters of the United States, and nesting birds and provide to City for review and approval. If special status species are found, Project Developer to submit documentation to City detailing protective measures for review and approval.	Project Developer/ Qualified biologist	City Planning & Inspection Division	Prior to issuance of grading and building permits
GEOLOGY AND SOILS				
SW-GEO-1: Prepare a Geotechnical Investigation. Prior to construction of the soundwall, the Project Developer shall prepare a geotechnical investigation to evaluate the potential for geologic, seismic, and soil risks. The geotechnical investigation shall include recommendations to abate any potential risks. If risks are identified, the Project Developer shall implement the recommendations included in the geotechnical investigation.	Project Developer to provide to City geotechnical investigation for review and approval. City and Developer to submit such report to regulatory agencies and	Project Developer/City	City Planning and Inspection Division	Prior to issuance of grading and building permits

Mitigation and Avoidance Measures	Action	Implementing Party	Monitoring Party	Timing
	secure approval as required. Project Developer to incorporate resulting measures into project plans.			
HYDROLOGY AND WATER QUALITY				
SW-WQ-1: Prepare a Hydrology and Water Quality Technical Report. Prior to construction of the soundwall, the Project Developer shall prepare a hydrology and water quality technical report to evaluate the existing drainage and stormwater conditions at the soundwall site. The technical report shall include recommendations for drainage and stormwater controls to minimize impacts related to changes in drainage patterns that would result from the soundwall. The Project Developer shall be required to implement the report's recommendations.	Project Developer to provide to City a hydrology and water quality technical report to evaluate the existing drainage and stormwater conditions at the soundwall site for review and approval.	Project Developer	City Planning & Inspection Division	Prior to issuance of grading and building permits
HAZARDS AND HAZARDOUS MATERIALS				
SW-HAZ-1: Prepare a Phase I Environmental Site Assessment. Prior to construction of the soundwall, the Project Developer shall conduct a Phase I Environmental Site Assessment. Where the potential to encounter hazardous materials or waste is identified, the Project Developer shall prepare and implement a soil/groundwater handing plan that identifies measures to properly dispose of contaminated materials. Measures could include worker education and training, as appropriate, and site-specific controls to avoid risks to workers and adjacent residents or others.	Project Developer to submit Phase I Environmental Site Assessment to City. Project Developer to implement soil/groundwater handling plan to City for review and approval.	Project Developer	Department of Public Works	Prior to issuance of grading and building permits

Mitigation and Avoidance Measures	Action	Implementing Party	Monitoring Party	Timing
UTILITIES AND SERVICE SYSTEMS				
SW-UT-1: Identify Underground and Overhead Utilities and Provide Coordination with Utility Providers. Prior to construction of the soundwall, the Project Developer shall identify all underground and overhead utilities within the footprint of the soundwall. If utilities are present, the Project Developer shall coordinate with the appropriate utility owners regarding utility shutoff during construction and relocation, as necessary.	Project Developer to identify all underground and overhead utilities within the footprint of the soundwall and provide documentation to City of coordination with the appropriate utility owners regarding utility shutoff during construction and relocation for review and approval.	City Planning & Inspection	City Planning & Inspection	Prior to issuance of grading and building permits

EXHIBIT MMRP-1
City Place Santa Clara Project – Intersection Mitigation Implementation
Planning/CEQA File # PLN2014-10554/CEQ2014-01180
State Clearinghouse # 2014072078

With Each Development Area Plan

Each DAP application 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 City (with assistance of consultants as desired) will peer review the data in the application and will determine at DAP approval for the development proposed in the DAP (1) the number of trips projected to result and the allocation of such 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.

As Development Occurs

The Project Trip thresholds set forth in the table below, *Intersection Mitigation Sensitivity Analysis Results: Full Funding Responsibility*, establish the number of Project Trips at which each of the required intersection mitigation measures that are wholly the Project's responsibility to implement must be in place. The Project Phase column of the table is informational and not controlling.

Prior to the issuance of each building permit for a new building, using the calculated number of vehicle trips from the DAP application, Developer will calculate and submit to City the cumulative number of Project trips that will result from all prior development within the Project for which building permits have been issued plus the proposed new building. If the cumulative number of Project Trips meet or exceed any of the intersection Project Trip thresholds, the mitigation measures identified for each of those intersections shall be completed prior to issuance of the certificate of occupancy for the building for which the new permit is being sought, except that, for Intersections 48, 55, 57, 82, 84, 109 and 123, Developer will instead fund the mitigation measures at the costs specified in the table below, *Costs for Certain Full Funding Responsibility Improvements*, prior to the issuance of the pertinent building permit. Any building permits for renovations, remodeling or changes in use to previously permitted and occupied buildings prior to the completion of all Full Funding Responsibility intersection mitigations that result in net new vehicle trips will be subject to the same process.

Prior to the issuance of a building permit for each new building, the Developer shall pay to City a transportation fair share fee of $2,474.18 per PM peak hour trip based on the calculated number of vehicle trips for each new building. The per trip fair share fee was determined by summing the Project's fair share of the estimated costs of mitigation measures for impacts to intersections located in the Cities of Santa Clara, San Jose, Sunnyvale, and those under the jurisdiction of the County of Santa Clara, totaling $14,292,901 plus the Project's voluntary contribution to the Santa Clara Valley Transportation Authority (VTA) for impacts to freeway segments in Santa Clara and San Mateo Counties in the amount of $16,164,220, divided by the 12,310 PM peak hour trips projected to be generated by the Project. The fee will be allocated among pertinent jurisdictions as follows: VTA 53.07%; County of Santa Clara 32.97%; City of San Jose 13.25%; City of Sunnyvale 0.11%; and City of Santa Clara 0.60%. Any building permits for renovations, remodeling or changes in use to previously permitted and occupied buildings that result in net new vehicle trips will be subject to the fee on the basis of net new PM peak hour vehicle trips until the full amount of the combined fair share fee and voluntary contribution of $30,457,121 has been paid, after which no additional fee shall be paid.

Site access improvements will be built as required by DAP conditions of approval.

EXHIBIT MMRP-1

City Place Santa Clara Project – Intersection Mitigation Sensitivity Analysis Results: Full Funding Responsibility

Planning/CEQA File # PLN2014-10554/CEQ2014-01180

State Clearinghouse # 2014072078

ID	Intersection	Jurisdiction/ CMP[20]	Mitigation Measure[21]	Impact Peak Hour	Project Trips	Project Phase
22	Agnew Road-De La Cruz Boulevard/ Montague Expressway	Santa Clara County (CMP)	Partial Mitigation: Add a second northbound left-turn lane.	AM	450	Phase 1
54	Lawrence Expressway/Benton Street	Santa Clara County	Partial Mitigation: Add a second southbound left-turn lane and a second eastbound left-turn lane.	AM	2,240	Phase 2
55	Lawrence Expressway/ Homestead Road	Santa Clara County (CMP)	Add a third eastbound through lane and a third westbound through lane (Yahoo! Santa Clara Campus TIA, August 2009; City of Sunnyvale Citywide Deficiency Plan, September 2005; and City of Santa Clara Traffic Mitigation Program, June 2011).	AM	2,240	Phase 2
76	San Tomas Expressway/Walsh Avenue	Santa Clara County	Partial Mitigation: Add a second eastbound left-turn lane.	AM	2,240	Phase 2
82	San Tomas Expressway/ Pruneridge Avenue	Santa Clara County	Partial Mitigation: Add a second northbound left-turn lane.	AM	2,240	Phase 2
8	Great America Parkway/Tasman Drive*	Santa Clara (CMP)	Partial Mitigation: Add a southbound right-turn lane and add a third westbound left-turn lane.	PM	2,610	Phase 2
48	Lawrence Expressway/US 101 SB Ramps	Santa Clara County	Convert eastbound left-turn lane to a shared left-/right-turn lane.	PM	2,610	Phase 2
59	Great America Parkway/Yerba Buena (Great America) Way	Santa Clara	Partial Mitigation: Add a second westbound right-turn lane with an overlap phase and a second southbound left-turn lane.	PM	3,650	Phase 2
60	Great America Parkway/Old Mountain View-Alviso Road	Santa Clara	Partial Mitigation: Add a second eastbound left-turn lane.	PM	3,650	Phase 2

[20] CMP = Congestion Management Program intersection (VTA).

[21] Partial Mitigation: The proposed mitigation measure mitigates the impact at one but not the other peak hour or reduces the delay but not enough to mitigate the impact.

ID	Intersection	Jurisdiction/ CMP[20]	Mitigation Measure[21]	Impact Peak Hour	Project Trips	Project Phase
71	Bowers Avenue/ Central Expressway	Santa Clara County (CMP)	Partial Mitigation: Add third southbound left-turn lane and third eastbound left-turn lane.**	PM	3,650	Phase 2
57	Great America Parkway/SR 237 WB Ramps	San José (CMP)[22]	Add third westbound left-turn lane and associated receiving lane under underpass. Add a second westbound right-turn lane. Include safe and convenient bicycle and pedestrian facilities along Great America Parkway. Intersections #58 and #123 would also need to be modified to accommodate these intersection improvements.[23]	AM	2,690	Phase 3
58	Great America Parkway/SR 237 EB Ramps	Santa Clara (CMP)	Add third southbound through lane and a second eastbound right-turn lane.[24]	AM	2,690	Phase 3
123	Great America Parkway/Gold Street Connector	San José	Add a second northbound right-turn lane.[25]	AM	2,690	Phase 3
79	San Tomas Expressway/Benton Street*	Santa Clara County	Add a second eastbound left-turn lane.	AM	3,140	Phase 3
120	De La Cruz Boulevard/ Laurelwood Road	Santa Clara	Reconfigure the northbound and southbound approaches to include one left-turn lane, one through, and one shared through/right-turn lane; change the phasing from split to protected in the northbound and southbound directions; and increase cycle length.	AM	3,140	Phase 3
14	Lick Mill Boulevard/ Tasman Drive	Santa Clara	Partial Mitigation: Reconfigure northbound and southbound approach to two left-turn lanes, one through lane, and one right-turn lane. Change the northbound/southbound signal phasing from split to protective. Add a second westbound left-turn lane.	PM	4,690	Phase 3
23	Lick Mill Boulevard/ Montague Expressway	Santa Clara County	Add a third southbound left-turn lane.	PM	5,730	Phase 4

[22] An LOS D threshold is used for study intersections within San José, including CMP designated intersections. Santa Clara County intersections in San José use an LOS E threshold.

[23] Intersection #58 (Great America Parkway/SR 237 EB Ramps) and #123 (Great America Parkway/Gold Street Connector) are not impacted intersections, but would need to be modified to accommodate the improvements at Intersection #57 (Great America Parkway/SR 237 WB Ramps).

[24] Intersection #58 (Great America Parkway/SR 237 EB Ramps) and #123 (Great America Parkway/Gold Street Connector) are not impacted intersections, but would need to be modified to accommodate the improvements at Intersection #57 (Great America Parkway/SR 237 WB Ramps).

[25] Intersection #58 (Great America Parkway/SR 237 EB Ramps) and #123 (Great America Parkway/Gold Street Connector) are not impacted intersections, but would need to be modified to accommodate the improvements at Intersection #57 (Great America Parkway/SR 237 WB Ramps).

ID	Intersection	Jurisdiction/ CMP[20]	Mitigation Measure[21]	Impact Peak Hour	Project Trips	Project Phase
96	Lafayette Street/ Montague Expressway WB Ramps	Santa Clara	Add second westbound right-turn lane with an overlap phase and a second southbound left-turn lane.	AM	6,730	Phase 7
84	Gold Street/Gold Street Connector	San José[26]	Convert northbound through lane to a shared left-turn/through lane, add a second northbound left-turn lane and second eastbound right-turn lane. (move pedestrian crossing to north leg of intersection).	AM	7,180	Phase 7
114	Calle Del Sol/Calle Del Luna	Santa Clara	Signalize.	PM	8,340	Phase 7
90	Lafayette Street/Calle De Luna	Santa Clara	Reconstruct the westbound approach to include two left-turn lanes and one right-turn lane.	AM	8,970	Phase 8
13	Calle Del Sol/Tasman Drive*	Santa Clara	Add a westbound right-turn lane. Reconfigure southbound approaches to include two left-turn lanes and one right-turn lane with overlap phase.	PM	9,380	Phase 8
73	Bowers Avenue/ Monroe Street	Santa Clara	Add a northbound and a southbound left-run lane. Change the northbound and southbound from split to protected left-turn phasing.	PM	10.420	Phase 8
94	Lafayette Street/ Agnew Road	Santa Clara	Add a second eastbound left-turn lane and a second southbound left-turn lane.	PM	10,420	Phase 8
109	Liberty Street/Taylor Street	San José[27]	Signalize. Off-setting Mitigation: Construct traffic control devices to divert traffic from entering the Alviso neighborhood.**	PM	10,420	Phase 8

Notes:

Based on information concerning funding sources and status of planning for and construction of transportation improvements identified in the EIR as being 100% the responsibility of the Project Developer, the City Engineer has made relatively minor changes to the responsibilities for implementing such measures; those adjustments are reflected in this table.

* Intersection improvement identified at this intersection under existing or background no-project conditions. See Appendix 3.3-D of the *City Place Santa Clara Project Draft Environmental Impact Report* (October 2015).

** City-preferred mitigation option.

Source: Fehr & Peers, 2016.

[26] An LOS D threshold is used for study intersections within San José, including CMP designated intersections. Santa Clara County intersections in San José use an LOS E threshold.

[27] An LOS D threshold is used for study intersections within San José, including CMP designated intersections. Santa Clara County intersections in San José use an LOS E threshold.

EXHIBIT MMRP-1

City Place Santa Clara Project – Costs for Certain Full Funding Responsibility Improvements

Planning/CEQA File # PLN2014-10554/CEQ2014-01180

State Clearinghouse # 2014072078

ID	Intersection	Mitigation	Total Cost	Basis of Cost
48	Lawrence Expressway/ US 101 SB Ramps	Convert eastbound left turn lane to a shared left/right turn lane.	**$13,500**	The cost estimate was prepared by BKF Engineers and accepted by the City. The cost estimate assumes that the work is limited to striping.
55	Lawrence Expwy/ Homestead Rd	Add a third eastbound through lane and a third westbound through lane (Yahoo! Santa Clara Campus TIA, August 2009; City of Sunnyvale Citywide Deficiency Plan, September 2005; and City of Santa Clara Traffic Mitigation Program, June 2011).	**$2,841,800**	The cost estimate was prepared by BKF Engineers and accepted by the City. The cost estimate assumes that 10' turn lanes and 11' through lanes will be implemented. While the Project has 100% responsibility for this mitigation, the project's responsibility for the cost is reduced by previous contributions made by Yahoo ($96,060) and the County of Santa Clara ($400,000). Right of way for this mitigation has been previously dedicated by Kaiser negating the need for the Project to acquire any right of way for mitigation. The Project will make a monetary contribution equal to its cost responsibility in lieu of constructing the mitigation.
57	Great America Pkwy/SR 237 WB Ramps	Add third westbound left-turn lane and associated receiving lane under underpass. Add a second westbound right-turn lane.	**$2,351,652**	The Total Cost includes both local road work and freeway ramp work. The cost estimate was prepared by BKF Engineers and accepted by the City. The cost of the local road work is estimated at $963,508 and the freeway ramp work at $1,388,144. Since the freeway ramp work will be performed concurrently with the intersection mitigation, the estimated cost of the freeway ramp work is deducted from the Freeway Fair Share voluntary contribution amount.
82	San Tomas Expwy/ Pruneridge Ave	Partial Mitigation: Add a second northbound left-turn lane.	**$271,900**	The cost estimate was prepared by BKF Engineers and accepted by the City after concurrence with the cost by the County. The estimate assumes that the second northbound left turn lane will be implemented by the County as part of the San Tomas widening project.

ID	Intersection	Mitigation	Total Cost	Basis of Cost
84	Gold Street/Gold Street connector	Convert northbound through lane to a shared left-turn/through lane, add second northbound left-turn lane and a second eastbound right-turn lane (move pedestrian crossing to north leg of intersection).	**$735,100**	In order to avoid modifications to existing electrical transmission line towers, the City waived the mitigation requirement to add a second northbound left turn lane. The City also agreed to include a surveillance camera at the intersection as requested by the City of San Jose. The cost estimate was prepared by BKF Engineers and accepted by the City. The estimated cost includes $685,100 for the intersection mitigation and an additional $50,000 for the surveillance camera requested by the City of San Jose. The estimated cost assumes that 11' lanes will be implemented and the work associated with the addition of the surveillance camera does not require a new signal controller or installation of equipment to the control station.
109	Liberty St/Lewis St	Signalize.	**$300,000**	The City of San Jose requested that the intersection not be signalized per the mitigation. The City of Santa Clara will provide the City of San Jose with the monetary equivalent of the cost of installing a signal. BKF Engineers estimated and the City of Santa Clara concurred with a cost for signalization of $300,000.
123	Great America Pkwy/ Gold Street connector	Add a second northbound right-turn lane (from Int. 57 dual westbound right-turn lanes).	$ --	The cost of this work is included in the cost estimate for intersection #57.

EXHIBIT D

Project Approvals

- ☐ Certification of Environmental Impact Report, State Clearinghouse No. 2014072078 (City Council Resolution No. 16-8337) (includes Adoption of Mitigation Monitoring and Reporting Program, and CEQA Findings and Statement of Overriding Considerations
- ☐ Amendments to the Santa Clara General Plan to create a new "Urban Center Entertainment district" General Plan classification for the Property, amend Figure 2.3-1 ("Areas of Potential Development") and related minor text amendments, and amend its Climate Action Plan (City Council Resolution No. 16-8338)
- ☐ Amendment to the Santa Clara Zoning Code and Zoning Map rezoning the Project Site to PD-MC; and adopting the Master Community Plan for the Project (City Council Resolution No. 16-8339)
- ☐ Disposition and Development Agreement (City Council Resolution No. 16-8340)
- ☐ Development Agreement (City Council Ordinance No. 1956)
- ☐ Establishing Procedures for Compliance with Cal. Govt. Code Section 37380 for Leasing Property for a Cumulative Term in Excess of 55 Years (City Council Ordinance No. 1957)
- ☐ Adopting Overriding Findings Regarding Santa Clara County Airport Land Use Commission's Determination of Inconsistency for the Project (City Council Resolution No. 16-8341)

EXHIBIT E

Phasing Plan

[ATTACHED]

PROGRAM & PHASING SUMMARY

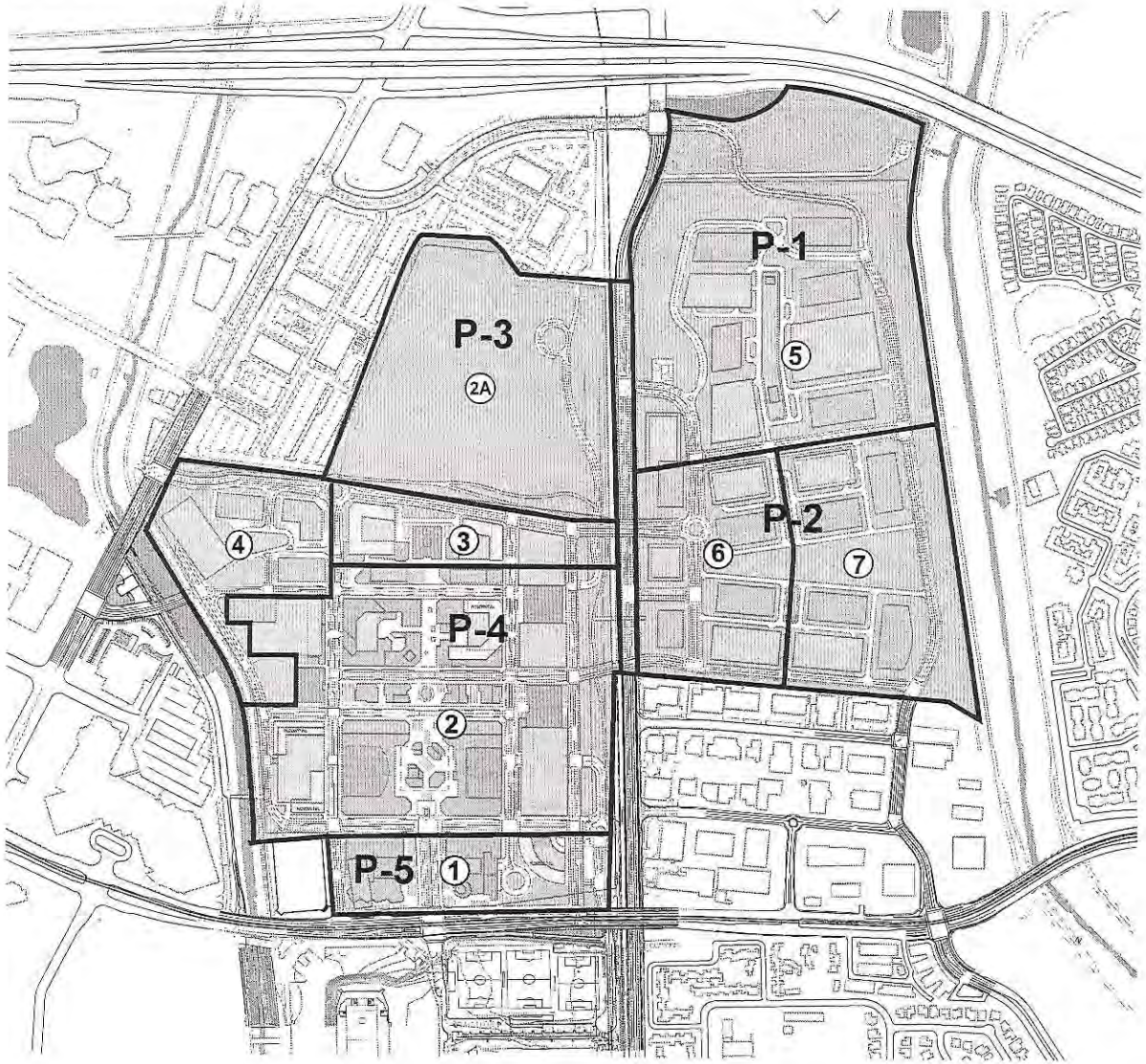

EXHIBIT F

Schedule of Performance[1]

Take Down Phase	Outside Date for Phase Option Notice[2]	Outside Date for first DAP Submittal	Outside Date for Land Take Down	Outside Date for Commencement of Construction of Infrastructure
1[3]	5/1/2017	9/1/2017	12/31/2017	Within 2 years after Actual Take Down of Phase 1
2[4]	5/1/2018	9/1/2018	12/31/2018	Within 2 years after Actual Take Down of Phase 2
Phase 2A	Three (3) months prior to Outside Date for Land Take Down	n/a	The earlier to occur of: (i) 12 months after Commencement of construction of any residential buildings within Phase 2; or (ii) 24 months from the Commencement of Infrastructure within Phase 2.	n/a
3	Eight (8) months prior to Outside Date for Land Take Down	Four (4) months prior to Required Land Take Down Date	4 years after Actual Phase 2 Take Down	Within 1 year after Actual Take Down of Phase 3
4	Eight (8) months prior to Outside Date for Land Take Down	Four (4) months prior to Required Land Take Down Date	5 years after Actual Phase 3 Take Down	Within 2 years after Actual Take Down of Phase 4
5	Eight (8) months prior to Outside Date for Land Take Down	Four (4) months prior to Required Land Take Down Date	3 years after Actual Phase 4 Take Down	Within 2 years after Actual Take Down of Phase 5

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1 All Outside Dates are subject to extension for Excusable Delay in accordance with the DDA

2 Notwithstanding the Outside Dates for Phase Option Notice, for any Phase or Partial Phase on which the BMX Track is located and operational, Developer shall provide a Phase Option Notice no less than eighteen (18) months prior to the Outside Date for Take Down of Such Phase or Partial Phase as required by Section 4.3 of the DDA.

3 All references to Phase 1 are to the Phase 1 shown in the Phasing Plan for the Project as of the DDA Reference Date.

4 All references to Phase 2 are to the Phase 2 shown in the Phasing Plan for the Project as of the DDA Reference Date.

6	Eight (8) months prior to Outside Date for Land Take Down	Four (4) months prior to Required Land Take Down Date	2 years after Actual Phase 5 Take Down	Within 2 years after Actual Take Down of Phase 6
7	Eight (8) months prior to Outside Date for Land Take Down	Four (4) months prior to Required Land Take Down Date	2 years after Actual Phase 6 Take Down	Within 2 years after Actual Take Down of Phase 7

EXHIBIT F-1
Form of Phase Schedule of Performance Phases 1, 2 and 3[1]:

Take Down Phase	Outside Date for Commencement of Minimum Initial Buildings	Outside Date for Completion of Minimum Initial Buildings	Outside Date for Completion of Minimum Retail Buildings
1	Within ___ months after Commencement of Construction of Phase 1	Within ___ months after Commencement of Construction of Phase 1	Within ___ months after Commencement of Construction of Phase 1
2	Within ___ months after Commencement of Construction of Phase 2	Within ___ months after Commencement of Construction of Phase 2	Within ___ months after Commencement of Construction of Phase 2
3			

[1] All references in this table are to the numbered phases shown in the Phasing Plan for the Project as of the DDA Reference Date.

EXHIBIT G-1
FORM OF GROUND LEASE (PHASE 1)

GROUND LEASE
(CITY PLACE SANTA CLARA – PHASE 1)

by and between

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

as landlord,

and

_____,

a _____,

as tenant,

dated as of _____, 20__

Premises:

Phase 1 of City Place Santa Clara

Santa Clara, CA

EXHIBIT G-1
FORM OF GROUND LEASE (PHASE 1)

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EXHIBIT G-1
FORM OF GROUND LEASE (PHASE 1)

List of Exhibits

Exhibit A-1	–	**Legal Description of Premises**
Exhibit A-2*	–	**Map of Premises**
Exhibit B	–	**Form of Guaranty**
Exhibit C*	–	**Permitted Exceptions**
Exhibit D*	–	**Additional Initial Buildings**
Exhibit E*	–	**Project MMRP and Applicable MMRP Measures**
Exhibit F*	–	**Required Initial Buildings**
Exhibit G	–	**[Reserved]**
Exhibit H	–	**Appraisal Instructions**
Exhibit I	–	**Examples of Calculations of Base Rent Escalations**
Exhibit J	–	**Insurance Requirements**
Exhibit K	–	**Form of Recognition Agreement**
Exhibit L	–	**Notice Parties**
Exhibit M	–	**Pre-Approved Arbitrators List**
Exhibit N	–	**Form of Memorandum of Lease**

[Add if Applicable]:

ATTACHMENT 1 – Provisions Regarding Public Financing

* To be added upon Ground Lease execution.

EXHIBIT G-1
FORM OF GROUND LEASE (PHASE 1)

GROUND LEASE
(City Place Santa Clara - Phase 1)

This GROUND LEASE (CITY PLACE SANTA CLARA – PHASE 1) is made and entered into as of _____, 20___ (the "**Commencement Date**") by and between the **CITY OF SANTA CLARA, CALIFORNIA**, a chartered municipal corporation, as landlord ("**City**"), and _____, a _____, as tenant ("**Tenant**").

RECITALS

Tenant and City enter into this Lease with reference to the following facts and circumstances:

A. Capitalized terms used herein are defined or referenced in Article 1.

B. City owns a fee interest in certain real property generally located in the North of Bayshore Area in Santa Clara, California to be developed under the DDA and the other Project Documents as part of the City Place Santa Clara project (as more particularly described in the DDA and the other Project Documents, the "**Project**").

C. Such real property is generally located immediately north of Tasman Drive on the east and west sides of Centennial Boulevard (APNs 104-03-038 and -039) and a portion of another parcel (APN 104-03-036) located immediately northward of those other parcels, consisting of approximately 9.48 acres (the "**Tasman Parcels**"). The legal description of the Tasman Parcels is in Exhibit A-1 and shown on the map attached hereto as Exhibit A-2.

D. City and Related Santa Clara, LLC, a Delaware limited liability company, entered into that certain Disposition and Development Agreement (City Place Santa Clara) dated as of August 12, 2016 (as the same has been amended as of the Commencement Date and may be further amended from time to time, the "**DDA**"), under which, among other things, City has agreed to enter into this Lease and Tenant has agreed to enter into this Lease and construct the Initial Improvements.

E. Master Developer and City also entered into that certain Development Agreement (City Place Santa Clara) dated as of August 12, 2016 (as the same has been amended as of the Commencement Date and may be further amended from time to time, the "**Development Agreement**"), which, among other things, grants certain rights to Master Developer and to Tenant as the tenant under this Lease. By its execution and delivery of that certain Development Agreement Assignment and Assumption [dated concurrently herewith], Tenant has become a party to the Development Agreement having the rights and obligations provided therein with respect to Phase 1.

F. The City, by Ordinance No. 1957 adopted on July 12, 2016, established procedures pursuant to Cal. Government Code Section 37380, in which it authorized leases of up to 99 years of City-owned property that is subject to the CityPlace Santa Clara Master Community Plan, so long as the form of lease is in substantially the form of ground lease

attached to the DDA and includes regular base rent escalations and periodic base rent escalations, including a market rate base rent adjustment in years 45 and 70 (each, a "**Qualifying Lease**").

G. The City has determined that this Lease is a Qualifying Lease and, subject to the further terms and conditions set forth in this Lease, City desires to ground lease to Tenant, and Tenant desires to ground lease from City, the Premises on each and all of the terms and conditions set forth herein.

AGREEMENT

NOW, THEREFORE, in reliance on the foregoing and in consideration of the mutual covenants, agreements and conditions set forth herein, and for other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged by the Parties, the Parties hereby agree as follows:

ARTICLE 1
DEFINITIONS

The following terms used in this Lease shall have the meanings ascribed to them below:

"**20th Project Lease Year**" means the Lease Year commencing on _____, _____.[1]

"**45th Project Lease Year**" means the Lease Year commencing on _____, _____.[2]

"**70th Project Lease Year**" means the Lease Year commencing on _____, _____.[3]

"**AA&R**" is defined in Section 11.3(c).

"**Additional Initial Buildings**" means _____ gross square feet of Additional Initial Buildings to be developed on the Premises in accordance with Section 5.3.3 of the DDA, as described in Exhibit D. ***[NTD: If the Phase 1 DAP includes a Department Store, that would be described in this Exhibit D and included within the Additional Initial Buildings]***

"**Additional Rent**" is defined in Section 3.6.

"**Affiliate**" means, with respect to any specified Person, any other Person that directly or indirectly, through one or more intermediaries, controls, is controlled by, or is under common control with the specified Person. For purposes of this definition, the term "**control**" means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of a Person, whether through ownership of voting stock, by contract or otherwise.

---

[1] The first day of the 20th Lease Year under the Phase 1 Ground Lease.
[2] The first day of the 45th Lease Year under the Phase 1 Ground Lease.
[3] The first day of the 70th Lease Year under the Phase 1 Ground Lease.

The possession, directly or indirectly, by another Person of a right to approve or consent to (or otherwise restrict) certain business or affairs of the specified Person only through major decision rights or similar protective approval rights shall not, in and of itself, constitute or indicate "control", nor shall a Person be deemed not to have "control" solely because another Person possesses, directly or indirectly, such major decision rights or similar protective approval rights with respect to the specified Person.

"**Applicable Law**" means any and all applicable present and future laws, rules, orders, ordinances, regulations, statutes, requirements, directives, permits, consents, certificates, approvals, codes and executive orders of all Governmental Authorities now existing or hereafter created, and of all their departments and bureaus, including City zoning regulations to the extent applicable, and of any applicable fire rating bureau or other body exercising similar functions affecting the Premises; provided, however, that in all cases the foregoing shall be subject, with respect to the laws, rules, orders, orders, ordinances, regulations, statutes, requirements, directives, permits, consents, certificates, approvals, codes and executive orders of City, to the Development Agreement.

"**Applicable MMRP Measures**" is defined in Section 21.3.

"**Appraisal Instructions**" is defined in Section 3.4.1.

"**Approved Restoration Plans and Specifications**" is defined in Section 9.2.2.

"**Arbitrable Claim**" is defined in Section 28.1.2.

"**Arbitrator**" is defined in Section 28.1.2(a).

"**Arbitrator's Qualifications**" is defined in Section 28.1.2(a).

"**Assignment**" is defined in Section 11.2.2.

"**Authorizations**" means all permits, approvals, entitlements, agreements, permits to enter, utility services, subdivision maps (including under the Subdivision Code), Building Permits or other authorization(s) required under Applicable Law for the work Tenant is required or authorized to perform under this Lease, the DDA or any other of the Project Documents and as may be necessary or desirable to effectuate and implement such work.

"**Base Rent**" is defined in Section 3.1.1.

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

"**Business Day**" means any day that is not a Saturday, Sunday or a day observed as a holiday by either the State of California or the federal government.

"**Casualty**" is defined in Section 9.1.

"**Casualty Termination Work**" is defined in Section 9.7.2.

"**CC&Rs**" means that certain Master Declaration of Covenants, Conditions and Restrictions and Grant of Easements for City Place Santa Clara dated as of _____, 201_ and recorded in the Official Records on _____, 201_, as the same has been amended as of the Commencement Date and may be further amended from time to time.

"**Change**" is defined in Section 9.2.3.

"**Change of Control**" means, as to any specified Person, a change in the Controlling Owner of the specified Person.

"**City**" has the meaning set forth in the preamble or, depending on the context, may mean the territorial jurisdiction of the foregoing.

"**City Appraisal Materials**" is defined in Section 3.4.2.

"**City Council**" means the City Council of City or means any successor governing body of City designated by or under law.

"**City Fault**" means the gross negligence, willful misconduct or fraud of City or any City Indemnitee or any licensee or invitee of City or a material breach of this Lease or any other Project Document by City.

"**City Indemnitees**" is defined in Section 18.1.

"**City Manager**" means the City Manager of City, or any successor chief executive officer of City designated by or under law.

"**City Residual Improvements Interest**" means, as of the date of the Taking, the net present fair market value of City's residual interest in the Improvements, which shall be deemed to be an amount equal to the net present fair market value of the Improvements as of the date of the Taking, discounted to account for the remaining Lease Term from the date of the Taking to the Expiration Date at a discount rate of six and one half percent per annum. For purposes of determining the City Residual Improvements Interest, the fair market value of the Improvements shall be determined by the process contained in Section 3.4; provided, however, that (a) references to the Tasman Parcels Fee Fair Market Value therein shall be deemed to be "fair market value of the Improvements" and (b) the City Appraisal Materials shall be delivered no later than thirty days after the amount of the Condemnation Proceeds is finally determined.

"**City Residual Land Interest**" means, as of the date of the Taking, the net present fair market value of City's residual fee interest in the Tasman Parcels, which shall be deemed to be an amount equal to the Tasman Parcels Fee Fair Market Value as of the date of the Taking, discounted to account for the remaining Lease Term from the date of the Taking to the Expiration Date at a discount rate of six and one-half percent per annum. For purposes of determining the City Residual Land Interest, the Tasman Parcels Fee Fair Market Value shall be determined by the process contained in Section 3.4; provided, however, that the City Appraisal

Materials shall be delivered no later than thirty days after the amount of the Condemnation Proceeds is finally determined.

"**City's Termination Rights**" is defined in Section 11.7.6.

"**Claims, Damages and Costs**" is defined in Section 18.1.

"**Commencement Date**" is defined in the preamble.

"**Condemnation Expenses**" is defined in Section 10.1.2.

"**Condemnation Proceeds**" is defined in Section 10.1.2.

"**Condemnation Proceeds Depository**" means an Institutional Lender that is reasonably acceptable to both City and Tenant to hold the Condemnation Proceeds under Article 10. A Leasehold Mortgagee that is an Institutional Lender shall, upon its request, be entitled to serve as the Condemnation Proceeds Depository; provided, that such Leasehold Mortgagee shall have agreed in writing, for the benefit of City and under an instrument reasonably satisfactory to City, to hold such funds in a segregated account to be used and distributed as set forth in Article 10.

"**Consent Transfer**" is defined in Section 11.2.

"**Consent Transfer Request Notice**" is defined in Section 11.3.3.

"**Controlling Owner**" means, as to a specified Person, the Person who holds the Controlling Ownership in the specified Person.

"**Controlling Ownership**" means, with respect to a specified Person, the ownership, directly or indirectly, of the right to direct the day-to-day business and affairs of the specified Person. The ownership, directly or indirectly, by a Person of a right to approve or consent to (or otherwise restrict) certain business or affairs of the specified Person only through major decision rights or similar protective approval rights shall not, in and of itself, constitute or indicate "Controlling Ownership" in the specified Person, nor shall a Person be deemed not to have "Controlling Ownership" in the specified Person solely because another Person possesses, directly or indirectly, such major decision rights or similar protective approval rights with respect to the specified Person.

"**CPI**" means the Consumer Price Index for All Urban Consumers (CPI-U), San Francisco-Oakland-San Jose, California, published by the Bureau of Labor Statistics of the United States Department of Labor or its successors, All Items (1982-84 = 100), or any successor index thereto designated by the Bureau of Labor Statistics or its successor, appropriately adjusted. If the CPI ceases to be published and there is no such successor index, another comparable index selected by mutual agreement of City and Tenant shall be used. If the Parties cannot agree within a reasonable time, the successor index and any appropriate adjustments shall be determined under Article 28 and shall be substituted for the CPI.

"**CPI Adjustment**" means an adjustment of each dollar amount that is expressly subject to CPI Adjustment under this Lease and is made by multiplying the dollar amount being adjusted by the sum of (a) one hundred percent, plus (b) the CPI Increase.

"**CPI Increase**" means the percentage increase, if any (but not decrease, if any), between the CPI for the calendar month that is three months prior to the effective date of adjustment and the CPI for the calendar month that is fifteen months prior to the effective date of adjustment.

"**Date of the Taking**" is defined in Section 10.2.

"**DDA**" is defined in the Recitals.

"**Default Rate**" means the lesser of (i) the prime rate of interest announced from time to time by Citibank, N.A. or any successor thereof, plus four percent per annum, or (ii) the maximum rate permitted by Applicable Law.

"**Depository**" means any of the Restoration Fund Depository, the Condemnation Proceeds Depository or the Impositions Depository.

"**Development Agreement**" is defined in the Recitals.

"**DAP**" means one or more Development Area Plans approved for Phase 1 in accordance with the MCP, as the same may be amended from time to time.

"**Due Date**" means, with respect to an Imposition, the last date on which such Imposition can be paid without any fine, penalty, interest, fee, cost or expense being added thereto or imposed by law for the non-payment thereof (but excluding any early payment discount).

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

"**Environmental Law**" means and includes all applicable present and future federal, State and local laws, statutes, rules, regulations, ordinances, standards, directives, and conditions of approval, all administrative or judicial orders or decrees and all permits, license approvals or other entitlements, or rules of common law pertaining to Hazardous Substances, the protection of the environment, natural resources, wildlife, human health or safety, or employee safety or community right-to-know requirements related to the work being performed pursuant to this Lease.

"**Event of Default**" is defined in Section 22.1.

"**Experience Requirement**" is defined in Section 11.3.3(d).

"**Expiration Date**" means the day immediately preceding the ninety-ninth anniversary of the Commencement Date.

"**Financial Requirement**" is defined in Section 11.3.3(d).

"**First Final Map**" is defined in the Recitals.

"**Force Majeure**" is defined in Section 30.1.

"**Governmental Authority**" means all federal, state, local and/or regional governmental and quasi-governmental bodies and authorities including departments, agencies, boards and councils, and any political subdivision, public corporation, district or other political or public entity or department thereof having or exercising jurisdiction over City, Tenant or the Project or the Premises, or such portions thereof as the context indicates.

"**Guaranty**" means a guaranty in the form attached hereto as Exhibit B with only such changes as may be approved by Tenant and City in their respective sole and absolute discretion that is executed by a Person(s) (i) meeting or exceeding the Net Worth Requirement.

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

"**Impositions**" is defined in Section 4.1.

"**Impositions Depository**" means an Institutional Lender that is reasonably acceptable to both City and Tenant that would hold the Impositions contested under Section 4.4. A Leasehold Mortgagee that is an Institutional Lender shall, upon its request, be entitled to serve as the Impositions Depository; provided that such Leasehold Mortgagee shall have agreed in writing, for the benefit of City and under an instrument reasonably satisfactory to City, to hold such funds in a segregated special account to be used and distributed solely as set forth in Section 4.4. All funds held by an Impositions Depository shall be drawable in California.

"**Improvements**" means all structures, buildings, improvements, fixtures, additions, alterations and betterments of whatsoever nature or description, including, without limitation, all Infrastructure Improvements and Buildings included in any DAP approved for the Premises.

"**Infrastructure Improvements**" means all infrastructure improvements (installed in or under the Premises or elsewhere) supporting or provided for the benefit of the Premises or the Buildings, including all Required Initial Infrastructure.

"**Infrastructure Master Plan**" means the Infrastructure Master Plan attached as an exhibit to the MCP, as amended from time to time.

"**Initial Improvements**" means, individually or collectively as the context requires, the Required Initial Infrastructure; the Minimum Initial Buildings and, subject to Section 5.3.3 of the DDA, the Additional Initial Buildings; and the Minimum Retail Buildings.

"**Institutional Lender**" means any one or more of the following, whether acting for its own interest and capacity or in an agency, fiduciary or other representative capacity for one or more Persons none of which need be an Institutional Lender: (i) a savings bank, a savings and loan association, a commercial bank or trust company or branch thereof, an insurance company, a governmental agency, a real estate investment trust, a religious, educational or charitable institution, an employees' welfare, benefit, pension or retirement fund or system, an investment banking, merchant banking or brokerage firm, or any other Person or group of Persons which, at the time a Leasehold Mortgage is recorded in favor of such Person or Persons, has or is an Affiliate of a Person which has assets of at least $500 million in the aggregate (or the equivalent in foreign currency), and in the case of any Person or group of Persons none of whom is a savings bank, a savings and loan association, a commercial bank or trust company, an insurance company, a governmental agency, or a real estate investment trust, is regularly engaged or is an Affiliate of a Person regularly engaged in the business of commercial real estate (whether as an owner, investor, lender, sponsor or otherwise), or (ii) any special account, managed fund, department, agency or Affiliate of any of the foregoing, or (iii) any person acting in an agency, fiduciary or other representative capacity for any of the foregoing. For purposes hereof, acting in an "agency, fiduciary or other representative capacity" shall be deemed to include acting as a trustee, agent, or in a similar capacity under a mortgage, loan agreement, indenture or other loan document.

"**Insurance Premiums**" means the aggregate annual insurance premiums to be paid in respect of any insurance required to be carried by Tenant under this Lease.

"**Lease**" means this Ground Lease (City Place Santa Clara – Phase 1) and all future amendments, modifications, extensions and renewals hereof, including the exhibits attached hereto and thereto.

"**Lease Year**" means each consecutive twelve month period during the Term, commencing with the Commencement Date. However, if the first day of the first Lease Year falls on a day other than the first day of a month, then (1) the first Lease Year shall end at midnight of the last day of the month in which the first anniversary of the Commencement Date falls and (2) all subsequent Lease Years shall begin on the first day of the month following the month in which the prior Lease Year ended. The last Lease Year shall end at midnight on the Expiration Date or earlier termination of the Term. Notwithstanding the foregoing, effective on _____, _____[4], a new Lease Year shall commence and thereafter each succeeding Lease Year shall commence on the anniversary of such date.

"**Leasehold Interest**" means Tenant's interest in this Lease.

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[4] Such date is the first day of the 15th Lease Year under the Phase 1 Ground Lease.

"**Leasehold Mortgage**" means any mortgage, deed of trust, pledge or similar instrument, including any modification, amendment, spreader, consolidation or renewal thereof that constitutes a lien on the Leasehold Interest and the beneficiary of which is an Institutional Lender. Once any mortgage, deed of trust, pledge or similar instrument qualifies as a Leasehold Mortgage, no transfer by a Leasehold Mortgagee of all or any interest in such indebtedness and obligations secured thereby shall affect such qualification so long as the transferee is an Institutional Lender except in the case where the transferee is a purchaser in foreclosure or under a sale in lieu of foreclosure of the Leasehold Mortgage and such purchaser is not an Affiliate of the Leasehold Mortgagee under such Leasehold Mortgage.

"**Leasehold Mortgagee**" means the mortgagee or beneficiary under a Leasehold Mortgage.

"**Lender Notice of Cure**" is defined in Section 11.7.4.

"**Major Occupant**" is defined in Section 7.2.

"**Major Occupant Fee Parcel**" is defined in Section 7.2.

"**Major Occupant Lease**" is defined in Section 7.7.1.

"**Major Occupant Purchase Option**" is defined in Section 7.2.

"**Major Restoration**" is defined in Section 9.2.1.

"**Map Act**" is defined in Section 7.6.

"**Master Association**" means the master owners' association described in the CC&Rs.

"**Master Association Documents**" means the governing documents of the Master Association.

"**Master Developer**" means the Person that is Master Developer under the DDA and the Development Agreement.

"**MCP**" means the Master Community Plan adopted by the City Council by Resolution No.16-8339 on June 28, 2016, as amended from time to time.

"**Mezzanine Lender**" means the lender under a Mezzanine Loan.

"**Mezzanine Loan**" means any financing secured by interests in Tenant or, if the financing documents so provide, in any Person controlling Tenant (and not by a lien on the Leasehold Interest).

"**Minimum Initial Buildings**" means the following minimum initial development to be constructed in accordance with Section 5.3.2 of the DDA: _____[5].

"**Minimum Retail Buildings**" means the following minimum initial development to be constructed in accordance with Section 5.3.4 of the DDA: _____[6].

"**Mitigation Measures**" means the mitigation measures identified in the Project EIR that are applicable to the Project and adopted by the City in connection with its approval of the Project, to be implemented as provided in the Project MMRP and, as applied to the Premises, the Applicable MMRP Measures.

"**Monetary Default**" means a default by Tenant under this Lease in the payment of any item of Rent or any other amount due and payable by Tenant to City hereunder.

"**Monthly Base Rent**" is defined in Section 3.1.1.

"**MO Purchase Closing**" is defined in Section 7.5.

"**MO Purchase Price**" is defined in Section 7.2.

"**Mortgage Condemnation Proceeds Procedure**" is defined in Section 10.3.3.

"**Mortgage Restoration Procedure**" is defined in Section 9.3.2.

"Net Worth" means net worth calculated using generally accepted accounting principles **("GAAP")**. In the case of a corporation, "Net Worth" shall mean shareholders' equity calculated in accordance with GAAP. Any reference in this Agreement to a minimum Net Worth or a Net Worth Requirement shall mean that the Net Worth must be satisfied and maintained at all times. Upon City's request, a Person required to maintain a minimum Net Worth under this Agreement shall provide to City reasonable evidence that it satisfies the Net Worth Requirement, including a copy of the most recent audit of such Person (which shall in no event be dated more than thirteen (13) months before the date of City's request). Any such audit must have been performed by an independent third-party auditor and must include the opinion of the auditor indicating that the financial statements are fairly stated in all material respects.

"**Net Worth Requirement**" means either: (i) if the Premises hereunder equals or exceeds a land area of seventy percent (70%) or more of Phase 1, a Net Worth calculated as of the scheduled closing of the proposed Assignee's acquisition of the Lease, equal to or more than Seventy Five Million Dollars ($75,000,000) increased automatically by ten percent (10%) on each five (5) year anniversary of the Effective Date or (ii) if the Premises hereunder is less than seventy percent (70%) of the land area of Phase 1, a Net Worth calculated as of the scheduled closing of the proposed Assignee's acquisition of the Lease equal to or more than the higher of (A) Twenty Five Million Dollars ($25,000,000), increased automatically by ten percent (10%) on

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[5] Insert the amount of the Minimum Initial Buildings allocated to the Phase 1 Ground Lease; such amount may be transferable to the other Phase without City consent.

[6] Insert the amount of the Minimum Retail Buildings allocated to the Phase 1 Ground Lease; such amount may be transferable to the other Phase without City consent.

each five (5) year anniversary of the Effective Date or (B) the amount determined under clause (i) above times the percentage of the land area of Phase 1 consisting of the Premises. Any entity required to satisfy the Net Worth Requirement can do so either by either meeting the Net Worth Requirement itself or by providing a Guaranty, covering all of that entity's obligations under this Lease without limitation, from an entity that meets the Net Worth Requirement.

"**New Lease**" is defined in Section 11.8.1.

"**New Parcel**" is defined in Section 6.1.

"**New Parcel Share**" is defined in Section 7.7.1.

"**New Tenant**" is defined in Section 11.8.1(a).

"**Non-Monetary Default**" means a default by Tenant under this Lease other than a Monetary Default.

"**Official Records**" means the Official Records of Santa Clara County maintained by the Santa Clara County Recorder's Office.

"**Opening Date**" means the date that at least fifty percent (50%) of all Buildings depicted within the approved DAP(s) for all of Phase 1 are constructed and open for business.

"**Parcelization**" is defined in Section 6.1.

"**Partial Taking**" is defined in Section 10.3.

"**Partial Taking Rent Reduction Percentage**" is defined in Section 10.3.1(b).

"**Parties**" means City and Tenant.

"**Party**" means City or Tenant as the context requires.

"**Patriot Act**" means the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001, and all rules and regulations promulgated thereunder from time to time, in each case as amended from time to time.

"**Permitted Exceptions**" means the exceptions to title to the Premises listed on Exhibit C and shall also include all matters created by or on behalf of, or with the consent of, Tenant.

"**Permitted Transfer**" is defined in Section 11.5.

"**Permitted Uses**" is defined in Section 21.1.

"**Person**" means any natural person or a corporation, partnership, trust, limited liability company, limited liability partnership or other entity.

EXHIBIT G-1
FORM OF GROUND LEASE (PHASE 1)

"**Phase**" means, individually or collectively as the context requires, any or each of the Phases of the Project as determined from time to time under and as defined in the DDA.

"**Phase 1**" means Phase 1 of the Project as determined under the DDA as of the Effective Date.

"**Pre-Approved Arbitrators List**" is defined in Section 28.1.2(a).

"**Pre-Casualty Condition**" is defined in Section 9.1.

"**Premises**" means the Tasman Parcels.

"**Project**" is defined in the Recitals.

"**Project Documents**" means collectively, the CC&Rs, the DDA, the Development Agreement, the Project MMRP and any other Authorizations received for any portion of the Project and agreements entered into pursuant to the DDA, together with all exhibits thereto, as any of the foregoing may be amended from time to time.

"**Project EIR**" means that certain Environmental Impact Report for the City Place Santa Clara Project, certified by the City Council by Resolution No. 16-8337.

"**Project MMRP**" means the Mitigation Monitoring Reporting Program adopted by the City Council in connection with its approval of the Project and attached hereto as Exhibit E.

"**Project Site**" is defined in the Recitals.

"**Proposed Restoration Plans and Specifications**" is defined Section 9.2.1.

"**Qualifying Sublease**" is defined in Section 11.13.1.

"**Qualifying Subtenant**" is defined in Section 11.13.1.

"**Recognition Agreement**" is defined in Section 11.13.2.

"**Rent**" means, individually or collectively as the context requires, Base Rent and Additional Rent.

"**Required Buildings**" means the Minimum Initial Buildings and Minimum Retail Buildings that are required to be constructed by Tenant under the DDA and the Additional Initial Buildings (subject to Section 5.3.3 of the DDA), as such Buildings are described on Exhibit F.

"**Required Initial Infrastructure**" means the infrastructure on, under or in support of the Premises and the Buildings that is required to be constructed and completed by Tenant under the DDA in accordance with each DAP approved for the Premises and all other applicable Authorizations.

"**Restoration**" and "**Restore**" are defined in Section 9.1.

"**Restoration Fund Depository**" means an Institutional Lender that is regularly engaged in the business of administering construction loans and reasonably acceptable to both City and Tenant to hold the Restoration Funds under this Lease; provided, however that any Leasehold Mortgagee that is an Institutional Lender shall automatically be entitled to serve as Restoration Fund Depository hereunder.

"**Restoration Funds**" is defined in Section 9.3.3.

"**Restoration Notice**" is defined in Section 9.2.2.

"**Restoration Standard**" is defined in Section 9.1.

"**Restoration Submission Exceptions**" is defined in Section 9.2.1.

"**Restoration Work**" is defined in Section 9.1.

"**Shortfall Amount**" is defined in Section 9.3.3.

"**Subtenant**" means any tenant or subtenant under a written sublease of space in the Premises from Tenant. Subtenant shall not include any Person that holds only a license to enter into and use the Premises, such as Persons using parking facilities located in the Premises.

"**Sublease**" means any written sublease of space in the Premises and/or the Improvements between Tenant and a Subtenant.

"**Succession Date**" is defined in Section 11.13.2.

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

"**Tasman Parcels**" is defined in the Recitals and is, subject to Articles 6 and 7, the real property comprising Phase 1, the legal description for which is contained on Exhibit A.

"**Tasman Parcels Fee Fair Market Value**" means, as of a particular date, the fair market value of City's fee interest in the Tasman Parcels calculated in accordance with the Appraisal Principles set forth in Section IV, paragraphs 1 through 6 of Exhibit H attached hereto, as may be amended from time to time.

"**Temporary Taking**" is defined in Section 10.3.4.

"**Tenant**" is defined in the preamble hereof or, following a Permitted Transfer of such Person's rights and obligations under this Lease, means such transferee.

"**Tenant Appraisal Materials**" is defined in Section 3.4.2.

"**Tenant Parties**" is defined in Section 12.2.2.

"**Tenant Related Party**" is defined in Section 11.5(c).

EXHIBIT G-1
FORM OF GROUND LEASE (PHASE 1)

"**Tentative Subdivision Map**" is defined in the Recitals.

"**Term**" is defined in Section 2.4.

"**Termination Notice**" is defined in Section 9.7.1.

"**Total Taking**" is defined in Section 10.1.1.

"**Transferee Team**" is defined in Section 11.3.3(c).

ARTICLE 2
PREMISES AND TERM OF LEASE

2.1 Lease of Premises. City hereby leases to Tenant, and Tenant hereby hires from City, the Premises, together with all easements, appurtenances and other rights and privileges now or hereafter belonging or appertaining to the Premises, subject to the Permitted Exceptions.

2.2 Boundary Adjustment. ***[NTD: Process for boundary line adjustments for Tasman Parcels, if necessary, to be discussed]***

2.3 [Reserved].

2.4 Term. The "**Term**" of this Lease shall commence upon the Commencement Date and shall expire on the earlier to occur of the Expiration Date or the earlier termination of this Lease in accordance with the provisions hereof.

2.5 Ownership of Improvements.

2.5.1 During the Term. During the Term, Tenant shall own each of the following: (i) all Improvements, including the Initial Improvements, hereafter constructed by, for the benefit of, or on behalf of Tenant, in each case that are located upon or within the Premises and (ii) all Infrastructure Improvements provided by Master Developer prior to the Commencement Date for the exclusive benefit of the Premises, except to the extent Tenant dedicates any Improvements to City or transfers the same to the Master Association; provided, that Tenant shall not own Improvements that, by agreement with Subtenants, are owned by Subtenants. Without limiting the foregoing, City will not claim, and during the Term Tenant (or its designee) alone shall be entitled to, all of the federal tax attributes of ownership, including, without limitation, the right to claim depreciation or cost recovery deductions.

2.5.2 Upon the Expiration Date. Subject to the terms of this Section 2.5.2, upon the Expiration Date or the earlier termination of the Term, all Improvements then existing on the Premises shall remain upon and be surrendered to City with the Premises, and title thereto shall vest in City without compensation therefor to Tenant, except as provided otherwise in Article 9 or Article 10; provided, however, that, notwithstanding the foregoing, (a) nothing contained in this Lease shall be construed to deny or abrogate the right of Tenant or any Subtenant to receive any and all proceeds attributable to a condemnation or, at any time prior to the Expiration Date or an earlier termination of the Term (or within a reasonable time thereafter, on account of any termination of this Lease prior to the Expiration Date), to remove any furniture, equipment, or

fixtures not permanently affixed to, and not reasonably necessary for the operation of, the Premises, any signage identifying Tenant or any Subtenant (as opposed to other signage used in the operation of the Premises or the Project), or any personal property, and (b) nothing contained herein shall be construed to deny Tenant or any Subtenant any right to remove any so-called "trade-dress" items installed in or on the Premises. Tenant shall be responsible for repairing any damage to the Improvements on the Premises incurred in connection with the removal from the Premises of any of the items described in this Section 2.5.2. In the event that any Buildings are, as of the Expiration Date or an earlier termination of the Term, in a state of poor condition and repair and constitute either (a) a nuisance or threat to public health and safety or (b) are of no economic value, Tenant and City shall consult in good faith with one another regarding the appropriate disposition of such Buildings, and following such consultation Tenant shall have an obligation to do one of the following, at Tenant's option and at its expense: (i) demolish and remove such Buildings and repair any damage caused by such removal; (ii) repair such Buildings so that they are not in such poor condition and repair; or (iii) replace such Buildings with Buildings that are consistent with the then use of the Premises.

ARTICLE 3
RENT

3.1 Base Rent.

3.1.1 Tenant shall pay to City, for each Lease Year during the Term, the annual amounts set forth in this Article 3 (the "**Base Rent**"), in equal monthly installments ("**Monthly Base Rent**"), which Monthly Base Rent shall be payable in advance on the first Business Day of each calendar month during the Term. Monthly Base Rent for any partial month, and Base Rent for any Lease Year of fewer than twelve (12) months, shall be prorated on the basis of twelve months of thirty (30) days each. Base Rent shall include any escalation or restatement of the original Base Rent provided for in Sections 3.2 and 3.3.

3.1.2 Base Rent for the first Lease Year shall be Seven Hundred Fifty Thousand Dollars ($750,000.00).

3.1.3 Commencing on the Opening Date, Base Rent will increase to One Million Dollars ($1,000,000.00).

3.1.4 Commencing on the 4th Anniversary of the Opening Date, Base Rent will increase to One Million Five Hundred Thousand Dollars ($1,500,000.00).

3.2 Regular Base Rent Escalations.

3.2.1 Escalations Before the 45th Project Lease Year. For each Lease Year commencing with the second Lease Year and continuing until the end of the Lease Year immediately preceding the 45th Project Lease Year, Base Rent shall be an amount equal to the Base Rent for the immediately preceding Lease Year *multiplied by* one hundred three percent (103%).

3.2.2 Escalations After the 45th Project Lease Year. For each Lease Year commencing with the first Lease Year after the 45th Project Lease Year and continuing until the Expiration Date or any earlier termination of the Term, Base Rent shall be an amount equal to Base Rent for the immediately preceding Lease Year *multiplied by* the lesser of (i) the sum of one hundred percent (100%) plus the CPI Increase and (ii) one hundred three percent (103%).

3.2.3 Exceptions. Notwithstanding the foregoing, Sections 3.2.1 and 3.2.2 shall not apply with respect to the Lease Years commencing on _____ __, 20__, _____ __, 20__,_____ __, 20__,_____ __, 20__,_____ __, 20__,_____ __, 20__,_____ __, 20__,_____ __, 20__, and _____ __, 20__,[7]; Base Rent for those Lease Years shall be adjusted as set forth in Section 3.3.

3.3 Periodic Base Rent Escalations.

3.3.1 10% Annual Escalations. For the Lease Years commencing on _____, 20__, _____,20__, _____,20__, _____,20__, _____,20__, and _____,20__[8], Base Rent shall be an amount equal to the Base Rent for the immediately preceding Lease Year *multiplied by* one hundred ten percent (110%).

3.3.2 Base Rent Adjustments in the 20th, 45th and 70th Project Lease Years.

(a) Base Rent Adjustment in the 20th Lease Year. For the 20th Project Lease Year, Base Rent shall be an amount equal to the Tasman Parcels Fee Fair Market Value multiplied by six and one-half percent (6.5%), but in no event less than Three Million Dollars ($3,000,000) or more than Three Million Five Hundred Thousand Dollars ($3,500,000).

(b) Base Rent Adjustment in the 45th and 70th Project Lease Years. For the 45th Project Lease Year and the 70th Project Lease Year, Base Rent shall be an amount equal to the greater of:

(i) the Tasman Parcels Fee Fair Market Value as of the commencement of such Lease Year multiplied by six and one-half percent (6.5%); and

(ii) the Base Rent for the immediately preceding Lease Year *multiplied by* one hundred ten percent (110%).

3.4 Tasman Parcels Fee Fair Market Value Determinations. The Tasman Parcels Fee Fair Market Value shall be determined in the following manner:

3.4.1 The Parties have agreed upon appraisal instructions to determine the Tasman Parcels Fee Fair Market Value in the form of those attached hereto as Exhibit H (the "**Appraisal**

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[7] the Opening Date, the 4th anniversary date of the Opening Date, the 20th, 25th, 35th, 45th, 53rd, 61st, 70th, 80th and 90th Lease Years under this Ground Lease (or as such dates may be adjusted per footnote 8).

[8] The first day of the 25th, 35th, 53rd, 61st, 80th and 90th Lease Years under this Ground Lease unless Take Down of Phase 2 or Phase 3 occurs within one year of the Commencement of this Lease, in which case the 10% rent adjustment will occur concurrently with the first 10% rent adjustment under the Phase 2 Lease starting in year 25 thereof.

Instructions"). The Appraisal Instructions direct each appraiser for purposes of this Section 3.4 to prepare and deliver to the applicable party an appraisal report consistent with the methodology set forth therein for determining the Tasman Parcels Fee Fair Market Value. The Parties hereto may agree to amend the Appraisal Instructions from time to time, which agreement to amend shall not be unreasonably withheld, conditioned or delayed by either Party. If material changes are proposed to the Appraisal Instructions, including assumptions, special assumptions, limiting conditions, hypothetical conditions, and other special instructions, the requesting Party shall propose such amendment in writing, and, if the Parties disagree, they shall follow the dispute resolution procedures set forth in Article 28 hereof.

3.4.2 Not more than eighteen (18) months and not less than six (6) months before the commencement of each of the 20th Project Lease Year, 45th Project Lease Year and the 70th Project Lease Year, City shall deliver to Tenant an appraisal (including all relevant backup information necessary for Tenant to fully assess such appraisal) prepared by an appraiser selected by City and setting forth such appraiser's determination of the Tasman Parcels Fee Fair Market Value (collectively, the "**City Appraisal Materials**"). Not more than eighteen (18) months before the commencement of each of the 20th Project Lease Year, 45th Project Lease Year and the 70th Project Lease Year, but no later than ninety (90) days after Tenant's receipt of the City Appraisal Materials, Tenant shall deliver to City an appraisal (including all relevant backup information necessary for City to fully assess such appraisal) prepared by an appraiser selected by Tenant and setting forth such appraiser's determination of the Tasman Parcels Fee Fair Market Value (collectively, the "**Tenant Appraisal Materials**"). Thereafter, City and Tenant shall attempt in good faith to resolve any disagreement over the Tasman Parcels Fee Fair Market Value; if such disagreement is not resolved within seventy-five (75) days after City's receipt of the Tenant Appraisal Materials, then either Party may, by notice to the other and to the two appraisers selected by the Parties under this Section 3.4.2, require that the disagreement be resolved under Section 3.4.4. If either Party fails to deliver the required appraisal within the time period provided in this Section 3.4.2 and such failure continues for twenty (20) Business Days after notice of such failure is given by other Party, the appraisal that was timely delivered (if any) shall determine the Tasman Parcels Fee Fair Market Value.

3.4.3 Each appraisal under this Section 3.4 shall be prepared by a qualified appraiser, which for purposes of this Lease shall be defined as an appraiser (i) licensed in the State of California as a Certified General Appraiser and holding the MAI designation from the Appraisal Institute, (ii) practicing or working for at least ten (10) years in either a national firm, or regional firm based in California, (iii) who is not an Affiliate of Tenant and has no equity investment in Tenant or its Affiliates, (iv) who has particular experience with Northern California real property transactions involving commercial and residential mixed-use developments, and (v) who has no conflict of interest as evidenced by contractual relationships with the selecting Party, either existing or in the immediately prior twenty-four (24) months, unless a conflict waiver is obtained from the other Party.

3.4.4 Within thirty Business Days after notice from either Party under Section 3.4.2 requesting resolution under this Section 3.4.4, the two appraisers selected by the Parties under Section 3.4.2 shall agree upon and appoint a third appraiser, who shall meet the qualifications in Section 3.4.3. The three appraisers shall, on or before the date that is sixty (60) days after the appointment of the third appraiser, attempt to reach a decision as to the Tasman

Parcels Fee Fair Market Value. The agreement of two of the three appraisers on the Tasman Parcels Fee Fair Market Value shall be binding on the Parties. If the two appraisers fail to agree on and appoint a third appraiser or if two of the three the appraisers are unable to agree on the Tasman Parcels Fee Fair Market Value, in either case within the applicable time period above, then either Party may at any time within the succeeding thirty (30) days submit the matter to arbitration under Article 28.

3.4.5 The Parties shall share equally the cost of the third appraiser under Section 3.4.4. However, promptly following the final determination of the Tasman Parcels Fee Fair Market Value under Section 3.4.4, the Party that delivered the appraisal under Section 3.4.2 that was closest to the Tasman Parcels Fee Fair Market Value finally determined under Section 3.4.4 shall be entitled to be promptly reimbursed by the other Party for such cost (and such other Party shall promptly pay any unpaid cost of such third appraiser); provided, that if the appraisals delivered by each Party differ from the Tasman Parcels Fee Fair Market Value finally determined under Section 3.4.4 by more than five percent (5%), then the Parties shall share equally the cost of the third appraiser under Section 3.4.4. For the avoidance of doubt, the cost of the appraiser selected by a Party, including costs of the initial appraisal delivered under Section 3.4.2 and the costs of such appraiser under Section 3.4.4, shall be paid by the Party that selected such appraiser.

3.4.6 If for any reason the Tasman Parcels Fee Fair Market Value has not been finally determined by the first day of the 45th Project Lease Year or the 70th Project Lease Year, whichever is applicable, then until such final determination, the Base Rent for such Lease Years shall be determined under Section 3.3.2 and Section 3.3.3, whichever is applicable, without reference to Section 3.3.2(a) or Section 3.3.3(a), respectively, and within thirty days of any such final determination the Parties shall make such adjusting payments as are necessary, if any, to align the Monthly Base Rent paid since the beginning of the 45th Project Lease Year or the 70th Project Lease Year, whichever is applicable, to the Monthly Base Rent finally determined under Section 3.3.2 and Section 3.3.3, whichever is applicable, with reference to Section 3.3.2(a) or Section 3.3.3(a), respectively.

3.5 Net Lease. Except as expressly set forth in this Lease, it is the intent of City and Tenant, and City and Tenant hereby agree, that all Base Rent shall be absolutely net to City without any abatement, counterclaim, set-off or offset whatsoever, so that this Lease shall yield, net, to City the Base Rent for each Lease Year during the Term.

3.6 Other Charges. Tenant shall pay (or shall cause to be paid) to the Person legally entitled thereto, as additional rent ("**Additional Rent**") under this Lease, all Impositions and all Insurance Premiums.

3.7 Late Charges. All Base Rent and other sums due from Tenant to City as landlord under this Lease (for the avoidance of doubt, not including Impositions), or from City to Tenant under this Lease, that are not paid within ten days after the date due under this Lease shall bear interest at the Default Rate from the date due until paid.

3.8 Examples. Examples of the calculation of Base Rent escalations under Sections 3.2 and 3.3 are contained in Exhibit I.

EXHIBIT G-1
FORM OF GROUND LEASE (PHASE 1)

ARTICLE 4
IMPOSITIONS [AND PUBLIC FINANCING]

4.1 Impositions. Subject to any exemptions or abatements that may be granted by any Governmental Authority (or shall otherwise be applicable to the Premises or Tenant under Applicable Laws), Tenant shall pay all of the following items assessed, levied or imposed on Tenant in connection with its use of the Premises, the Improvements thereon or Tenant's interest in the foregoing by any Governmental Authority with respect to the period after the Commencement Date and before the Expiration Date or any earlier termination of the Term (collectively, "**Impositions**"), all of which shall be calculated without taking into account available exemptions arising on account of the ownership of the Premises by City in its capacity as a Governmental Authority: (a) real property ad valorem taxes and special assessments; (b) personal property taxes; (c) commercial rent or occupancy taxes; (d) taxes or assessments, charges, license fees, municipal liens, levies, excise taxes, impact fees, or imposts, whether general or special, ordinary or extraordinary, that at any time may be levied for any reason by the State, County, City (subject to the Development Agreement) or any other tax or assessment levying body; and (e) any fines, penalties, interest, fees, costs or expenses arising from the failure to make timely payment of the foregoing. Each Imposition, or installment thereof, shall be paid not later than the Due Date therefor. However, if by law any Imposition may at the option of the payor be paid in installments (whether or not fines, penalties, interest, fees, costs or expenses shall accrue on the unpaid balance of such Imposition), Tenant may exercise the option to pay the same in such installments and shall be responsible for the payment of such installments only, together with applicable fines, penalties, interest, fees, costs or expenses, if any. Notwithstanding any provision of this Lease to the contrary, for the avoidance of doubt, (i) Tenant reserves its rights to contest any Impositions, as more completely described in Section 4.4 and (ii) City, and not Tenant, shall be responsible to pay, prior to delinquency, any documentary transfer tax or similar amount assessed, levied or imposed relating to creation of this Lease, the Term or the granting of a leasehold estate to Tenant under this Lease.

4.2 Possessory Interest. City owns the fee interest in the Premises, which on the Commencement Date are not subject to certain amounts that would otherwise be assessed, levied or imposed thereon by a Governmental Authority on account of the status of City as a Governmental Authority. Under Section 24.3, and except as provided in Article 7 of this Lease, City is prohibited from transferring, directly or indirectly, its fee interest in the Premises. Nevertheless, if for any reason such fee interest or any part thereof or interest therein is directly or indirectly transferred to a Person that is subject to amounts assessed, levied or imposed thereon by any Governmental Authority, or for any other reason such fee interest becomes subject to such amounts, (a) City and not Tenant shall be responsible therefor and on account of any such transfer, without reimbursement from Tenant, and (b) the successor in interest to City as the fee owner of the Premises shall be responsible for payment, without reimbursement from Tenant, for any documentary transfer or similar taxes or taxes in lieu thereof that are or become payable on account of any change from time to time in the ownership of the fee ownership of the Premises. All amounts payable by City (or any successor in interest as the fee owner of the Premises) shall be paid by such City (or such successor in interest) prior to the delinquency date therefor and if either (i) City (or such successor in interest) shall fail to make a payment required to be made by it under this Section 4.2 (or in the last sentence of Section 4.1) on a timely basis,

and such failure continues for ten days following delivery of notice thereof by Tenant to City (or such successor in interest), or (ii) such payment may only be made by Tenant, then Tenant shall have the right to make such payment on behalf of City (or such successor in interest) and following such payment Tenant shall be entitled to be reimbursed by City (or such successor in interest) (within ten days after City's (or such successor in interest's) receipt of a written invoice therefor) for such payment (together with any late charges, default interest or other fees applicable thereto) with interest thereon at the Default Rate from the date paid by Tenant until so reimbursed. If such amounts are not timely reimbursed by City (or such successor in interest), Tenant shall have the right of offset such unreimbursed amounts (and any such interest to the date of offset) against Rent otherwise payable under this Lease. Notwithstanding the foregoing provisions of this Section 4.2 to the contrary, this Section 4.2 shall not apply if City's fee interest or any part thereof or interest therein is transferred in connection with the exercise by Tenant of a Major Occupant Purchase Option, and in such event, Tenant or the Major Occupant, and not City, shall be responsible for all amounts assessed, levied or imposed on such fee interest or part thereof or interest therein.

4.3 Impositions Beyond the Term. Any Imposition relating to a fiscal period, a part of which relates to the period after the Commencement Date and before the Expiration Date and part of which relates the period on or before the Commencement Date or on or after the Expiration Date or any earlier termination of the Term (whether or not such Imposition is assessed, levied or imposed or the Due Date therefor occurs during the Term) shall be apportioned between City and Tenant as of the Commencement Date or the Expiration Date (or the date of earlier termination of the Term), as the case may be, so that Tenant shall pay that portion of such Imposition to which that part of such fiscal period included in the period of time after the Commencement Date and before the Expiration Date (or the date of earlier termination of the Term) bears to such fiscal period.

4.4 Tenant's Contest.

(a) Tenant shall have the right to contest the amount or validity, in whole or in part, of any Imposition by appropriate proceedings diligently conducted in good faith, in which event payment of such Imposition may be postponed at the election of Tenant if and only as long as (i) neither the Premises nor any part thereof or interest therein or income therefrom or any other assets of or funds appropriated to City would, by reason of such postponement or deferment, be in danger of being forfeited or lost, and (ii) neither City nor Tenant would by reason thereof be subject to any civil or criminal liability. Such proceedings shall be at Tenant's sole cost and expense, and Tenant shall be solely responsible for and shall indemnify and hold City harmless from the consequences thereof.

(b) In the event Tenant does not pay the contested amount when due, and the amount contested and unpaid (together with all interest and penalties in connection therewith and all charges that are reasonably estimated by Tenant to be assessed against or become a charge on the Premises or any part thereof in (or during the pendency of) the contest proceedings) exceeds five million dollars ($5,000,000) (or in the case of a

Major Tenant Lease, the lesser of five million dollars ($5,000,000) or twenty-five percent (25%) of the subject Imposition), subject to CPI Adjustment on the first day of each Lease Year (but not including the first day of the first Lease Year), Tenant shall have either (i) deposited with the Impositions Depository, prior to or simultaneously with commencement of the contest proceedings, an amount equal to one hundred percent (100%) of the amount so contested and unpaid and such estimated charges or (ii) delivered to City a letter of credit in favor of City with a face amount equal to the amount so contested and unpaid and such estimated charges issued by an Institutional Lender (or other security in form and substance approved by City).

(c) Upon the termination of such proceedings, Tenant shall pay the amount of such Imposition or part thereof as finally determined in such proceedings (to the extent the payment was deferred during the prosecution of such proceedings), together with any costs, fees (including attorneys' fees and disbursements), interest, penalties or other liabilities imposed on Tenant in connection therewith. Promptly upon such payment, the Impositions Depository shall return and City shall cause the Impositions Depository to return, with interest, if any, any amount deposited with it in respect of such Imposition; provided, that the Impositions Depository, at Tenant's request (or, upon Tenant's failure to make such payment in a timely manner, at City's request) shall disburse such amounts and interest directly to the taxing authority or other Person to whom such payments are to be made and any remaining such amounts and interest shall be returned promptly to Tenant and the payment of any remaining balance of such Imposition not satisfied by such direct disbursement by the Impositions Depository shall remain the sole responsibility and obligation of Tenant.

(d) Tenant shall notify City of any such contest involving an amount of two million dollars ($2,000,000) or more (or in the case of a Major Tenant Lease, the lesser of two million dollars ($2,000,000) or twenty-five percent (25%) or more of the subject Imposition) and shall deliver to City copies of any applications in connection with any such contest within a reasonable period following Tenant's submission of the same to the applicable taxing authority.

4.5 City Cooperation. City shall not be required to join in any proceedings referred to in Section 4.4 unless Applicable Law so requires or requires that such proceedings be brought by or in the name of City, in which event City shall join and reasonably cooperate in such proceedings, or permit the same to be brought and pursued by Tenant in City's name. In no event shall City be liable to pay the amount of any Imposition determined to be payable as a result of any such proceedings. Further, City shall not be liable for the payment of any costs or expenses incurred by City in connection with any such proceedings, and Tenant agrees to reimburse City for any and all costs or expenses that City may reasonably sustain or incur in connection with any such proceedings, including reasonable attorneys' fees and disbursements. If Tenant institutes a proceeding referred to in Section 4.4 and Applicable Law does not require

that such proceeding be brought by and/or in the name of City, City, nevertheless, shall, at Tenant's sole cost and expense, reasonably cooperate with Tenant in any such proceeding.

4.6 Invoices for Impositions. Tenant shall make all necessary arrangements with the applicable taxing authorities to have invoices for Impositions sent directly to Tenant. At Tenant's request, City shall promptly cooperate in making such arrangements. If after the Commencement Date City receives any invoices for Impositions payable by Tenant hereunder, City shall promptly forward the same to Tenant, but City's delay in forwarding or failure to forward such invoices to Tenant shall not relieve Tenant of its obligation to pay such Impositions.

4.7 Separation of Tax Assessment Parcels. City agrees to cooperate reasonably with Tenant in any applications to be made by Tenant for the creation of a separate tax parcel or parcels within the Premises, including the execution of any documents that may be required by a Governmental Authority in connection therewith. The costs associated with any such applications for a separate tax parcel, including surveying costs, and the expenses reasonably incurred by City in cooperating with Tenant, shall be paid by Tenant.

4.8 Public Financing [***NTD: Add as applicable***] As material consideration for the City entering into this Lease, Tenant shall comply with all of the covenants and acknowledgements set forth in Attachment 1 attached hereto related to the public financing and special tax matters related to the Premises.

ARTICLE 5
CC&RS; MASTER ASSOCIATION

5.1 CC&Rs. The Premises are subject to the CC&Rs, and during the Term City and Tenant shall be entitled to all of their respective rights and benefits under the CC&Rs.

5.2 Master Association. City has heretofore approved the Master Association Documents as in effect on the Commencement Date. City will accept the performance by the Master Association of any obligation of Tenant hereunder.

ARTICLE 6
FURTHER PARCELIZATION

6.1 Parcelization. Tenant shall have the right from time to time to create additional legal parcels (each, a "**New Parcel**", and the creation of such parcel, a "**Parcelization**") within the Premises in order to create condominiums or other common ownership schemes, a separate legal parcel for all or a portion of a particular Building, a Major Occupant Fee Parcel or otherwise.

ARTICLE 7
MAJOR OCCUPANT PURCHASE OPTION AND MAJOR OCCUPANT NEW LEASES

7.1 Major Occupants. The Parties acknowledge that (i) it is critical to the success of Tenant's efforts with respect to the Premises and the overall Project that Tenant be able to attract

to the Premises and the Project the most significant and highest quality business occupants, including major office space occupants, hotel operators and retail project and/or operation operators and/or occupants and (ii) a necessary prerequisite to attracting certain of such occupants (particularly those considering multiple locational alternatives) to the Premises and the Project is the ability of the prospective major occupant to either acquire a fee simple equity interest in the real estate property to be occupied (as opposed to acquiring a leasehold or subleasehold interest for occupancy) or to directly assume the role of the tenant under a ground lease with the City for the subject property.

7.2 Major Occupant Purchase Option. Subject to the provisions of this Article 7, Tenant is hereby granted the option (the "**Major Occupant Purchase Option**") from time to time during the Term to purchase City's fee simple interest in that portion of the Tasman Parcels designated by Tenant to be ultimately purchased by a Major Occupant (a "**Major Occupant Fee Parcel**") for a cash purchase price (a "**MO Purchase Price**") equal to the then fair market value of the Major Occupant Fee Parcel. A "**Major Occupant**" shall be a prospective occupant which has agreed to occupy or operate (as applicable) not less than one hundred thousand rentable square feet of Building(s) and the Major Occupant Fee Parcel shall comprise that portion of the Premises that the Major Occupant has agreed to occupy or operate within a reasonable period of time following the MO Purchase Closing.

7.3 Exercise of Major Occupant Purchase Option. Each Major Occupant Purchase Option shall be exercised by Tenant by delivery of notice of exercise not later than seventy-five (75) days prior to the proposed closing date for the purchase from City of the Major Occupant Fee Parcel, which notice of exercise shall (i) identify by plot plan and legal description the proposed Major Occupant Fee Parcel, (ii) identify the proposed Major Occupant and provide a reasonable description of its qualifications as a Major Occupant, (iii) provide a reasonable description of the Major Occupant's proposed use of the Major Occupant Fee Parcel, and (iv) identify a proposed closing date for the purchase from City of the Major Occupant Fee Parcel and for the MO Purchase Closing.

7.4 Determination of Fair Market Value. For purposes of the Major Occupant Purchase Option, in determining the fair market value of the Major Occupant Fee Parcel, the Parties shall utilize the definition of Tasman Parcels Fee Fair Market Value (with the exception that the valuation shall be of the Major Occupant Fee Parcel alone, not the entire Tasman Parcels) and in the event that the parties are unable to agree on such fair market value, the Parties shall determine the same in accordance with the procedure set forth in Section 3.4. Approval by City and Tenant of the MO Purchase Price ultimately determined shall be a condition of the MO Purchase Closing.

7.5 MO Purchase Closing. Prior to the closing of the Major Occupant Fee Parcel purchase, Tenant shall notify City as to (i) the amount of Required Initial Infrastructure, if any, required to be provided by the Major Occupant following its purchase, and (ii) the Required Buildings (as to number and square footage) included in the Major Occupant Fee Parcel and any Required Buildings to be constructed by the Major Occupant following the closing of its purchase (a "**MO Purchase Closing**"). In each case, all such rights and/or obligations so allocated to the Major Occupant by Tenant shall reduce by the same amount the corresponding rights and obligations of Tenant under this Lease, the DDA and the other Project Documents. At

the MO Purchase Closing, Tenant and the Major Occupant shall execute and deliver documents prepared by Tenant (and approved by City) evidencing such allocations. Also, at the MO Purchase Closing, (i) City and Tenant shall enter into an amendment of this Lease (reasonably prepared by Tenant and approved by City) providing for the termination of this Lease as to the Major Occupant Fee Parcel and (ii) the Major Occupant, City and Tenant shall enter into covenants, conditions and restrictions governing Major Occupant's use and operation of the Major Occupant Fee Parcel reasonably prepared by Tenant (and approved by City) covering the rights and obligations of such parties (as applied to the Major Occupant Parcel) with respect to the noneconomic matters which were applicable to the Premises generally prior to MO Purchase Closing under this Lease, the DDA, the CC&Rs and other Project Documents (and otherwise governing the interplay of the Major Occupant Parcel with the Premises after the MO Purchase Closing).

7.6 MO Purchase Closing Conditions. In order to facilitate the proposed acquisition by the Major Occupant of the Major Occupant Fee Parcel, at the election of Tenant in its sole and absolute discretion, the transactions shall be structured such that the fee simple interest of City in the Major Occupant Fee Parcel shall be either (i) first sold to Tenant, provided that it shall be a condition of such transfer to Tenant that such fee simple interest shall be concurrently thereafter conveyed by Tenant to the Major Occupant or (ii) sold directly by City to the Major Occupant. City's obligation hereunder to so sell and transfer the Major Occupant Fee Parcel in question shall be conditional upon (a) Tenant reasonably demonstrating that the proposed Major Occupant qualifies as a Major Occupant hereunder and that such Person's proposed use and occupancy of the Major Occupant Fee Parcel is compatible with any applicable DAP, (b) the Major Occupant agreeing to occupy through it and its Affiliates not less than eight-five percent (85%) of the planned Building square footage if the primary use planned for the Major Occupant Fee Parcel is retail, or fifty percent (50%) of the planned Building square footage if the primary use planned for the Major Occupant Fee Parcel is office, in either case, for a reasonable period (not less than ten years) and (c) Tenant creating the Major Occupant Fee Parcel as a New Parcel in compliance with the California Subdivision Map Act, section 66400 et seq. of the California Government Code (the "**Map Act**"). The MO Purchase Price shall be payable to City in cash at the MO Purchase Closing, and the form of the purchase and sale agreement, all conveyance documents and all relevant closing cost allocations and/or prorations shall be consistent with the then custom of Santa Clara County for sales of raw land. The Parties shall work in good faith together to facilitate a closing of Major Occupant purchase of the Major Occupant Fee Parcel consistent with the schedule therefor of the Major Occupant, to the extent reasonably possible.

7.7 Major Occupant Parcel Lease.

7.7.1 Major Occupant Lease. If determined reasonably necessary by Tenant to attract a Major Occupant to the Project, Tenant may from time to time create a New Parcel for the benefit of a Major Occupant and request that City enter into a new ground lease with the Major Occupant for such New Parcel on terms substantially similar to those in this Lease but in compliance with this Section 7.7 (each such lease, a "**Major Occupant Lease**"). The rights and obligations of Tenant under this Lease and the DDA that are allocated to the Major Occupant Lease and the Major Occupant are referred to herein as the "**New Parcel Share**". The combination of the New Parcel Share and the rights and obligations of Tenant remaining under this Lease and the DDA following the creation of the Major Occupant Lease shall be the same in

all material respects as the rights and obligations of Tenant under this Lease and the DDA immediately prior to the execution and delivery of the Major Occupant Lease. Tenant shall have the right to fashion the New Parcel Share in such manner as is commercially reasonable in the circumstances. Tenant shall prepare the form of Major Occupant Lease for review and approval by City. At its expense, Tenant shall take all actions necessary to cause each New Parcel to comprise a separate tax lot and a separate legal lot under the Map Act. City, in its capacity as fee owner of the Premises, shall, promptly upon the request of Tenant, execute all documents, notices, applications and other instruments as shall be necessary or convenient to the creation of any New Parcel or Major Occupant Lease desired by Tenant.

7.7.2 Major Occupant Lease Requirements. Without limiting the generality of Section 7.7.1, each Major Occupant Lease shall specify: (a) any Initial Improvements that the Major Occupant will construct or cause to be constructed; (b) the Base Rent as of the Commencement Date thereunder (as such terms are defined in the Major Occupant Lease) and all escalations payable with respect thereto; (c) the legal description of the New Parcel; (d) all other provisions needed to include the New Parcel Share; and (e) such other matters as are required by the nature of the Major Occupant Lease.

7.7.3 Lease Amendment. Simultaneously with the execution and delivery of each Major Occupant Lease, (a) City and Tenant shall each execute, acknowledge and deliver to the other an amendment to this Lease in form and substance reasonably satisfactory to City and Tenant that (i) replaces the legal description of the Premises attached hereto with a new legal description of the Premises that omits the premises demised by such Major Occupant Lease and (ii) revises this Lease to eliminate the New Parcel Share and to otherwise make this Lease consistent with the provisions of the Major Occupant Lease; (b) City and Tenant shall each execute, acknowledge and deliver an amendment to the Memorandum of Lease to reflect the new legal description of the Premises, which amendment shall be recorded in the Official Records; (c) City and Major Occupant shall each execute, acknowledge and deliver to the other a memorandum of lease to the Major Occupant Lease, which either of them may record in the Official Records; and (d) City, Tenant and the New Parcel Tenant shall each execute, acknowledge and deliver all transfer tax forms required to be filed in connection with the creation of the Major Occupant Lease, it being agreed that any such transfer taxes are to be paid by Tenant or the New Parcel Tenant and not by City.

7.7.4 Rights of Tenant. Upon the execution and delivery of a Major Occupant Lease by City and the Major Occupant, Tenant shall have no rights or obligations under this Lease with respect to the Major Occupant Lease or the New Parcel covered thereby and shall be automatically and conclusively be released from all further liabilities arising with respect to such New Parcel or under the Major Occupant Lease arising from and after the date thereof. In addition, no Event of Default under and as defined in any Major Occupant Lease (including with respect to the payment of rent) shall be deemed an Event of Default under and as defined in any other Major Occupant Lease or under this Lease, and no Event of Default under this Lease (including with respect to the payment of Rent) shall be deemed an Event of Default under and as defined in any Major Occupant Lease.

7.7.5 Conditions Precedent. As conditions to creating a Major Occupant Lease, (a) there shall be no Event of Default hereunder, (b) the Person who will be the Major Occupant

under the Major Occupant Lease shall have been approved by the City in accordance with the requirements governing a Consent Transfer under Sections 11.3.3 and 11.4 hereof, and (c) each Leasehold Mortgagee shall have consented in writing thereto.

7.7.6 Reimbursement of City Costs. Within thirty days after receipt of an invoice from City (together with reasonably substantiating evidence of costs), Tenant or the New Parcel Tenant under the Major Occupant Lease shall pay any and all reasonable costs and expenses (including reasonable attorneys' fees and expenses) incurred by City in connection with reviewing and implementing any request for a Major Occupant Lease.

ARTICLE 8
INSURANCE

8.1 Required Insurance. Tenant shall, at its sole cost and expense, provide and keep in full force and effect at all times during the Term the insurance coverages in accordance with the insurance requirements as described in Section 8.2 and on Exhibit J.

8.2 Other Insurance Requirements. In addition to the requirements specified in Exhibit J, Tenant and City shall cooperate in connection with the adjustment and collection of any insurance recoveries that may be due in the event of loss, and Tenant shall furnish City with such proofs of loss and other instruments as City may reasonably require to recover any proceeds from the required insurance policies. Such policies may be carried under a blanket policy covering the Premises and other locations of Tenant and Tenant's Affiliates, if such blanket policy contains an endorsement that guarantees a minimum limit available for the Premises equal to the minimum limits required by this Article and that the minimum limits shall not be reduced for claims made with respect to other properties, and otherwise complies with this Article.

8.2.1 Tenant shall not carry separate comprehensive general liability or property damage insurance other than personal property and damage insurance concurrent in form or contributing in the event of loss with that required by this Lease to be obtained by Tenant, unless City is included therein as an additional insured with respect to such liability or a loss payee with respect to property, as their interests may appear, with loss payable as provided in this Lease. Tenant shall promptly notify City of the carrying of any such separate comprehensive general liability or property damage insurance and shall cause a certified copy of the policy evidencing such insurance to be promptly delivered to City as required in Exhibit J. The foregoing shall not prevent Tenant from carrying so-called "umbrella" or "excess" insurance or insurance that is not required by this Article 8 to be obtained, and City shall not be required to be named as an insured or additional insured under any of the insurance described in this sentence.

8.2.2 All general liability insurance and property damage liability insurance shall specifically insure the performance by Tenant of its indemnity obligations contained in Article 18 of this Lease, but the limits of such insurance shall not limit those indemnity obligations.

8.3 CPI Adjustment. All dollar amounts referenced in Exhibit J shall be subject to CPI Adjustment on the first day of each Lease Year (but not including the first day of the first Lease Year).

EXHIBIT G-1
FORM OF GROUND LEASE (PHASE 1)

ARTICLE 9
CASUALTY AND USE OF INSURANCE PROCEEDS

9.1 Tenant's Obligation to Restore. If all or any portion of the Improvements located on or within the Premises (including any portions thereof encroaching on adjacent property) are destroyed or damaged in whole or in part by fire or other casualty of any kind or nature, ordinary or extraordinary, foreseen or unforeseen, and whether covered by insurance or not (a "**Casualty**"), upon acquiring actual knowledge of such Casualty, Tenant shall give City prompt notice thereof, and subject to Section 9.7, shall with reasonable promptness undertake and pursue with reasonable diligence to completion (subject to Force Majeure) the repair, alteration, restoration, replacement and/or rebuilding of (collectively, "**Restore**," and any such repair, alteration, restoration, replacement and/or rebuilding, a "**Restoration**") such portions of the Improvements and Buildings within the Premises as shall have been so damaged or destroyed. Any Restoration shall be either, as selected by Tenant, to a condition generally comparable to (i) the condition of the Improvements so damaged existing immediately prior to such occurrence (the "**Pre-Casualty Condition**"), or, (ii) with respect to any Building or any portion thereof, a condition that may differ in type and quality from the Pre-Casualty Condition due to changes in circumstances (and taking into account all relevant circumstances, including, without limitation, market feasibility) then applicable to Tenant, the Premises and this Lease as reasonably determined by Tenant (the "**Restoration Standard**"). All Restoration work following a Casualty ("**Restoration Work**") shall be at the sole cost and expense of Tenant; provided, that to the extent that such Casualty was caused, contributed to or exacerbated by City Fault, the performance of such Restoration Work shall be, to that extent, at the cost and expense of City. In the case (and to the extent) where City is responsible for the cost and expense of performance of such Restoration Work, City shall pay such costs and expenses (as reasonably estimated by the Parties) to Tenant in progress payment installments as the Restoration Work in question progresses, in each case within a reasonable period following submission of a reasonably customary application for payment by Tenant to the City indicating the cost of labor and materials purchased and delivered to the Premises for incorporation into such Restoration, or incorporated therein since the last previous application, and due and payable or paid by Tenant, and otherwise conforming to the provisions of Section 9.4.1 and Section 9.4.2 as if City were the Restoration Fund Depository and the costs and expenses payable by City in connection with the Restoration Work were the Restoration Funds.

9.2 Restoration Plans and Specifications.

9.2.1 Tenant shall submit to City, not later than ten (10) days (sixty (60) days in the case where twenty percent (20%) or more of the rentable area of a Building or Buildings is materially damaged by the Casualty in question and is to be Restored under Section 9.1 (a "**Major Restoration**")) prior to the commencement of any Restoration, plans and specifications for the Restoration Work relating to such Restoration (the "**Proposed Restoration Plans and Specifications**") prepared by a licensed professional engineer or registered architect selected by Tenant for the performance of the Restoration; provided, however that notwithstanding the foregoing, nothing contained in this Section 9.2 shall prevent or restrict Tenant from (a) making any immediately necessary repairs in the event of an emergency situation or to comply with Applicable Laws or (b) making repairs immediately required to be made to comply with the requirements of any Sublease or other agreement binding on Tenant (collectively, "**Restoration**

Submission Exceptions"), in each case without compliance with the foregoing approval process. Such Proposed Restoration Plans and Specifications (but not the Restoration Submission Exceptions) shall be subject to the review and approval of City, which review and approval shall be limited to the determination of whether such Proposed Restoration Plans and Specifications are substantially consistent with the Restoration Standard applicable to such Restoration; provided, however, if such Proposed Restoration Plans and Specifications (or any portion thereof) are substantially the same as (or not materially different from) the prior plans and specifications for the Improvements and/or Buildings (previously submitted by Tenant to City) damaged by the Casualty in question, City's review and approval of such Proposed Restoration Plans and Specifications (or portion thereof) shall not be required. If such Proposed Restoration Plans and Specifications are not substantially consistent with the Restoration Standard, and the deviations from the Restoration Standard are not reasonably acceptable to City, then City shall so notify Tenant, specifying in reasonable detail the basis on which it alleges such Proposed Restoration Plans and Specifications are not substantially consistent with the Restoration Standard (and are otherwise not reasonably acceptable to City). Upon receipt of such notice from City, Tenant shall then either (i) cause such Proposed Restoration Plans and Specifications to be revised and resubmitted to City for review and approval in accordance with the Restoration Standard under Section 9.1, or (ii) arbitrate City's disapproval of such Proposed Restoration Plans and Specifications under Article 28.

9.2.2 If City fails to approve or disapprove any Proposed Restoration Plans and Specifications within thirty (30) days (or sixty (60) days if that is the applicable time period under Section 9.2.1) after Tenant submits the same to City, Tenant may provide to City a notice, which notice shall be headed with the following legend in a minimum of fourteen point type, all capital letters: "THIS NOTICE IS BEING GIVEN UNDER SECTION 9.2 OF THAT CERTAIN GROUND LEASE (CITY PLACE SANTA CLARA – PHASE 1). YOUR FAILURE TO RESPOND WITHIN FIFTEEN (15) DAYS WILL RESULT IN YOUR DEEMED APPROVAL OF THE PROPOSED RESTORATION PLANS AND SPECIFICATIONS" (such notice, a "**Restoration Notice**"). If City does not approve or disapprove (based on the Restoration Standard) such Proposed Restoration Plans and Specifications within fifteen days after Tenant provides City with the Restoration Notice, City shall automatically (without further notice or action) conclusively be deemed to have approved such Proposed Restoration Plans and Specifications. As used herein, the term "**Approved Restoration Plans and Specifications**" means the final Proposed Restoration Plans and Specifications for Restoration Work that have been approved (or shall have been deemed approved) by City under this Section 9.2.

9.2.3 Tenant may make changes (which individually and in the aggregate are non-material) to the Approved Restoration Plans and Specifications for particular Restoration Work without the need to obtain the consent or approval of City. However, if Tenant desires to change the Approved Restoration Plans and Specifications for particular Restoration Work (other than the Restoration Submission Exceptions) in any material respect, Tenant shall submit its proposed changes (a "**Change**") to City for approval, which shall be limited to a determination as to whether the Change in question substantially complies with the Restoration Standard. City shall promptly review the proposed Changes to determine whether or not the Approved Restoration Plans and Specifications as modified by the proposed Change(s) substantially conform to the

Restoration Standard. If City determines that the same do not so conform (and are not otherwise reasonably acceptable to City), City shall so notify Tenant, specifying in reasonable detail the aspects of such proposed Changes that do not so conform (and which are not reasonably acceptable to City). Following such notice, Tenant shall submit revised plans and specifications for the Restoration Work Changes to City for review. Each review by City of Tenant's submissions of Changes shall be carried out within twenty days after the date of delivery thereof, and if City does not notify Tenant of its determination within such twenty day period, City shall automatically be deemed to have agreed that the proposed Changes are satisfactory.

9.2.4 All Approved Restoration Plans and Specifications shall comply with all Applicable Laws, including City building codes, as well as the requirements of the CC&Rs, to the extent applicable.

9.3 Progress Payments for Major Restorations.

9.3.1 Prior to commencing any Major Restoration, Tenant shall furnish City with an estimate of the costs thereof, prepared by the licensed professional engineer or registered architect selected by Tenant.

9.3.2 Notwithstanding any provision of this Lease to the contrary, as to any Major Restoration, if the provisions of any Leasehold Mortgage then in effect requires that Tenant deposit with the Leasehold Mortgagee or any designee thereof all or any material portion of the cost of such Major Restoration for use solely in connection with the performance and completion of such Major Restoration (a "**Mortgage Restoration Procedure**"), Tenant shall comply with the requirements of such Mortgage Restoration Procedure, as amended by Tenant and such Leasehold Mortgagee from time to time, and Tenant shall not be required to comply in any manner with the requirements of Sections 9.3.3, 9.3.4, and 9.4 in connection with such Major Restoration.

9.3.3 Subject to Section 9.3.2, if the cost of any Major Restoration is greater than twenty percent (20%) of the then replacement cost of the entirety of all Buildings damaged by the Casualty in question, all proceeds of insurance payable in respect of damage to such Improvements, if any, and any additional funds as may reasonably be needed from Tenant to complete such Restoration (the "**Shortfall Amount**") (such insurance proceeds and Shortfall Amount are collectively referred to herein as the "**Restoration Funds**"), shall be deposited with the Restoration Fund Depository before being utilized for any Restoration. However, in lieu of depositing the Shortfall Amount with the Restoration Fund Depository, Tenant may deliver to City an irrevocable, continuing guaranty of payment and performance in form and substance reasonably acceptable to City for such Shortfall Amount from a creditworthy guarantor subject to the reasonable approval of City.

9.3.4 Subject to the provisions of Section 9.4, all Restoration Funds deposited with the Restoration Fund Depository under Section 9.3.3 shall be paid to Tenant in progress payment installments as the Restoration Work in question progresses, in each case within a reasonable period following submission of a reasonably customary application for payment by Tenant to the Restoration Fund Depository indicating the cost of labor and materials purchased and delivered to the Premises for incorporation into such Restoration, or incorporated therein since the last

previous application, and due and payable or paid by Tenant. If any vendor's, mechanic's, laborer's, or materialman's lien is filed against the Premises or the Improvements or any part of either thereof, or if any public improvement lien relating to the Restoration is created by Tenant and is filed against City (or any assets of, or funds appropriated to City), Tenant shall promptly satisfy and discharge all such liens, by bonding or otherwise. Upon completion of and payment in full for the Restoration Work by Tenant, the balance of the Restoration Funds deposited with the Restoration Fund Depository under Section 9.3.3 shall be paid to Tenant, subject to the rights of any Leasehold Mortgagee or Mezzanine Lenders to such balance of funds.

9.4 Conditions Precedent to Disbursements. Subject to Section 9.3.2, the following shall be conditions precedent to each progress payment to be made by the Restoration Fund Depository to Tenant with respect to Restoration Funds under Section 9.3.4:

9.4.1 Tenant shall have submitted an application for payment (i) certifying that the sum then requested to be withdrawn either has been paid by Tenant (or is due and payable) to contractors, subcontractors, materialmen, engineers, architects or other Persons (whose names and addresses shall be stated) who have rendered or furnished services or materials for the Restoration, (ii) giving a brief description of such services and materials and the principal subdivisions or categories thereof and the several amounts so paid or due to each of said Persons in respect thereof, (iii) stating in reasonable detail the progress of the Restoration Work in question up to the date of said certificate and/or application for payment, (iv) certifying that no part of such expenditures has been or is being made the basis, in any previous or then pending requisition, for the withdrawal of the Restoration Funds or has been made out of the Restoration Funds previously received by Tenant, and (v) certifying that the balance of the Restoration Funds held by the Restoration Fund Depository (whether from the proceeds of insurance or by deposit of Tenant's own funds) will be sufficient upon completion of the Restoration to pay for the same in full; and

9.4.2 Tenant shall have furnished to City an official search, or a certificate of a title insurance company reasonably satisfactory to City, or other evidence reasonably satisfactory to City, showing that there has not been filed any vendor's, mechanic's, laborer's or materialman's statutory or other similar lien affecting the Premises or any portion thereof, or any public improvement lien with respect to the Premises or the Restoration Work affecting City, or the assets of, or funds appropriated to, City, which had not been discharged of record (by bonding or otherwise), except such as will be discharged upon payment of the requisite amount out of the sum then requested to be withdrawn.

9.5 Additional Requirements for Restoration. Tenant shall deliver to City (a) prior to commencement of any portion of the Restoration Work, any material building permits or discretionary governmental authorizations with respect thereto required by any Governmental Authority with respect to such portion then being undertaken, (b) prior to commencement of such Restoration, evidence that the insurance policies required under Article 8 that pertain to the Restoration are in effect, and (c) within thirty (30) days after the completion of any Restoration, a complete set of "as-built" plans therefor, together with a statement in writing from a registered architect or licensed professional engineer that such plans are complete and correct in all material respects.

9.6 No Abatement. Subject to Sections 9.7 and 9.8, Tenant hereby acknowledges and agrees that it shall have no right of reduction, abatement, setoff, refund or deduction of Rent by reason of damage to or total, substantial or partial destruction by Casualty of the Improvements or any part thereof, and, subject to Section 9.7, Tenant shall have no right to terminate this Lease on account of any such Casualty. Subject to the foregoing, nothing herein shall be deemed to limit or restrict any remedies available to Tenant at law or otherwise with respect to obligations of City under this Lease with respect to any Restorations (or the Casualty damage that is the subject thereof).

9.7 Termination.

9.7.1 Damage Near End of Term. Notwithstanding Section 9.1, in the event that the Casualty occurs on or after the date which is ten (10) year prior to the Expiration Date and the cost of Restoration (as reasonably determined by Tenant) is greater than twenty-five percent (25%) of the then fair market value of the Leasehold Interest (including the Improvements), and such Casualty was not caused by the misconduct of Tenant, Tenant may, at its option, terminate this Lease by notice ("**Termination Notice**") given to City no later than thirty (30) days after the date of such Casualty, provided all of the following conditions are met:

(a) Tenant has paid all Rent then due and all other amounts then payable by Tenant under this Lease through the date of the Casualty.

(b) Tenant has maintained in full force and effect the insurance policy or policies required to be maintained by Tenant under this Lease, and Tenant pays City an amount equal to such policy's or policies' deductibles.

(c) Tenant assigns to City all of its right, title and interest in the proceeds of any insurance covering the Casualty and reasonably cooperates with City's efforts to obtain such insurance proceeds (which obligation to assign and cooperate shall survive any termination of this Lease).

(d) Tenant has delivered to City all insurance proceeds actually received by Tenant covering the Casualty under the insurance policies that are required to be maintained by Tenant under this Lease.

(e) There are no Subtenants or other occupants whose leases or occupancy agreements have not been validly terminated by reason of such Casualty.

(f) Tenant has completed the Casualty Termination Work in a good and workerlike manner, lien free and in compliance with all Applicable Laws.

If such Termination Notice is given, this Lease shall cease and come to an end as of the later of the date forty five (45) days after the date City receives the Termination Notice and the date all of the foregoing conditions are met. Subject to the requirements of Section 9.7.1, Tenant

shall not be required to perform any Restoration Work relating to such Casualty if the foregoing conditions are met. Tenant shall continue to pay all Base Rent and all other amounts payable by Tenant under this Lease, including Impositions, until all insurance proceeds covering the Casualty are paid to City. If, for any reason, all insurance proceeds are not paid to City or if the insurance company refuses to pay the insurance proceeds to City, Tenant's Termination Notice shall be void and this Lease shall be deemed in full force and effect.

9.7.2 Casualty Termination Work. If Tenant exercises its option to terminate this Lease pursuant to Section 9.7.1 of this Lease, Tenant, at Tenant's sole expense, shall demolish and remove the Improvements (except as otherwise directed in writing by City, which direction shall be given to Tenant within thirty (30) days after City receives Tenant's Notice of Termination pursuant to Section 9.7.1), remove all debris, and return the affected land to a level graded condition (collectively, the "**Casualty Termination Work**").

9.8 Disputes. All disputes arising under this Article 9 shall be resolved in accordance with Article 28.

ARTICLE 10
CONDEMNATION

10.1 Taking of All or Substantially All of Premises. For purposes of this Lease a "**Taking**" means all or any portion of the Premises, the Improvements or the Buildings being taken for any public or quasi-public purpose by any lawful power or authority through the exercise of the right of condemnation or eminent domain or by agreement among City, Tenant and those authorized to exercise such right in lieu thereof.

10.1.1 Termination Upon Total Taking. If the whole or substantially all of the Premises, the Buildings or the Improvements are subjected to a Taking for any public or quasi-public purpose by any lawful power or authority (collectively, a "**Total Taking**"), this Lease shall terminate on the date of such Taking and the Rent payable by Tenant hereunder shall be equitably apportioned as of the date of such Total Taking. The phrase "substantially all of the Premises, the Buildings or the Improvements" means such portion thereof as when so taken would leave remaining a balance which (due either to the area so taken or the location of the part so taken in relation to the part not so taken and/or other relevant factors), would not, under then-current economic conditions, applicable zoning laws and/or building regulations then existing or prevailing, reasonably permit the profitable and economic operation under this Lease by Tenant of the Improvements and Buildings located on such remaining portions of the Premises for their permitted uses hereunder.

10.1.2 Allocation of Condemnation Proceeds in a Total Taking. In the event of a Total Taking, the award of damages received from the condemning authorities with respect to the Premises, the Buildings or the Improvements, net of any amounts ("**Condemnation Expenses**") reasonably expended by Tenant or any Leasehold Mortgagee in negotiating and/or contesting the same (such net amount is referred to herein as "**Condemnation Proceeds**") shall be apportioned as follows:

(a) First, to any Leasehold Mortgagees and Mezzanine Lenders up to (but not exceeding) all sums secured by its Mortgage that remain outstanding as of the date of the Taking;

(b) Second, to the City in the amount of the City Residual Land Interest as of the date of the Taking;

(c) Third, if any Condemnation Proceeds remain available for distribution to Tenant and/or City after the payments called for by Section 10.1.2(a) and (b), Tenant shall receive the balance, if any, of such Condemnation Proceeds up to (but not exceeding) the fair market value of the Leasehold Interest not including the fair market value of the Buildings and the Improvements for the remaining unexpired portion of the Term of this Lease as of the date of the Taking;

(d) Fourth, if any Condemnation Proceeds remain available for distribution to Tenant and/or City after the payments under subparagraphs (a), (b) and (c) above, each such dollar of Condemnation Proceeds shall be distributed equally between City up to the value of any City Residual Improvements Interest as of the date of the Taking and Tenant up to the fair market value of the Buildings and the Improvements for the remaining unexpired portion of the Term of this Lease as of the date of the Taking;

(e) Fifth, if any Condemnation Proceeds remain available for distribution to Tenant and/or City after the payments under subparagraphs (a), (b), (c) and (d) above, such remaining Condemnation Proceeds shall be shared equally by City and Tenant;

provided, however, that notwithstanding any provision of this Lease to the contrary, if there is a Total Taking by City, and/or any Person established by or controlled by City, and/or for the purpose of making the Premises available, directly or indirectly, to or for the benefit of City and/or its residents, then one hundred percent of all Condemnation Proceeds related to the Total Taking in question shall be paid to Tenant.

10.2 Date of the Taking. For purposes of this Article 10, the "**Date of the Taking**" shall be deemed to be the earlier of (a) the date on which actual possession of the whole or substantially all, or a partial portion of the Premises, or a part thereof, as the case may be, is acquired by any lawful power or authority under applicable federal or California state law or (b) the date on which title to the Premises or a portion thereof shall have vested in any lawful power or authority under applicable federal or California state law.

10.3 Partial Taking; Tenant's Obligation to Restore. In the case of any Taking other than a Total Taking or a Temporary Taking (a "**Partial Taking**"), this Lease shall continue as to the portion of the Premises remaining and the following provisions shall apply:

10.3.1 Partial Taking; Abatement of Base Rent and Allocation of Condemnation Proceeds.

(a) In the case of any Partial Taking, Base Rent in effect as of the date of the Taking shall be reduced by the Partial Taking Rent Reduction Percentage.

(b) "**Partial Taking Rent Reduction Percentage**" means: (i) if the Partial Taking has an immaterial impact on the value, aesthetics and function of the Premises, Buildings and Improvements and shall affect less than two percent of both the Premises and Buildings, the percentage number corresponding to the greater of (A) the portion of the Premises (calculated in land area) lost to Tenant due to the Partial Taking and (B) the portion of the rentable area of the Buildings lost to Tenant due to the Taking, and (ii) in all other cases, the percentage number corresponding to the loss in the economic value of the Leasehold Interest as of the date immediately prior to the date of the Taking due to the Taking, taking into account all reasonably relevant factors for determining such damage and loss to the economic value of the Leasehold Interest.

10.3.2 Partial Taking Restoration. In the event of any Partial Taking, Tenant shall (subject to Force Majeure) undertake, with reasonably diligence, Restoration of any remaining portion of the Improvements and Buildings within the Premises (and damaged by the Taking) not the subject of such Partial Taking such that the remaining part of the Improvements and Buildings shall be complete, operable and in good condition and repair but the configuration, quality, and scope of such Restoration shall be limited to that which shall then be commercially reasonable, given all circumstances relevant to Tenant, the Premises and this Lease.

10.3.3 Partial Taking Allocation of Proceeds. In the event of any Partial Taking, the entirety of the Condemnation Proceeds for or attributable to the portion of the Premises, the Buildings or the Improvements which are the subject of such Partial Taking shall be paid to the Condemnation Proceeds Depository as shall be necessary to be disbursed to Tenant (in accordance with the procedures set forth in Section 9.3) for reimbursement of the costs of Restoration of the portion of the Buildings and/or Improvements of the same remaining; provided, however, that notwithstanding the foregoing, (i) if the provisions of any Leasehold Mortgage then in effect requires that Tenant deposit all or any material portion of the Condemnation Proceeds with the Leasehold Mortgagee or a designee thereof for distribution in accordance with and only for the Restoration (a "**Mortgage Condemnation Proceeds Procedure**"), Tenant shall comply with the requirements of such Mortgage Condemnation Proceeds Procedure, as amended by Tenant and such Leasehold Mortgagee from time to time, and Tenant shall not be required to comply with the requirements of this Section 10.3.3 (and the Condemnation Proceeds shall not be paid to a Condemnation Proceeds Depository), and (ii) in any event no Condemnation Proceeds shall be required to be deposited with the Condemnations Deposit Depository unless such proceeds exceed two million dollars; if such Condemnation Proceeds total less than such amount, all Condemnation Proceeds shall be paid directly to Tenant. Any Condemnation Proceeds award held by the Condemnation Proceeds Depository remaining after completion of Restoration Work shall be divided equally between City and Tenant (subject to the rights of any Leasehold Mortgagees and Mezzanine Lenders). Each of City and Tenant shall execute any and all documents that may be reasonably required by any

Party in order to facilitate collection by the other of its respective portion of the Condemnation Proceeds.

10.3.4 Temporary Taking. If the use of the whole or any portion of the Premises, Improvements, or any other rights appurtenant to the Premises are the subject of a Taking for any public or quasi-public purpose by any lawful power or authority by the exercise of the right of condemnation or eminent domain or by agreement between Tenant and those authorized to exercise such right for a temporary period less than the remaining Term (a "**Temporary Taking**"), Tenant shall promptly notify City, and Tenant shall be entitled to receive for itself any and all Condemnation Proceeds received in connection with such Temporary Taking. If the Temporary Taking is a Total Taking and extends beyond the remaining Term, the Lease shall terminate as of the date of the taking and all Condemnation Proceeds received in connection therewith shall be apportioned between City and Tenant as of the termination date in accordance with the provisions of Section 10.1.2 hereof. If the Temporary Taking is not a Total Taking and extends beyond the remaining Term, the portion of the Condemnation Proceeds allocable to the period prior to the expiration date of the Term is to be paid to Tenant and the portion allocable to the period after the expiration date of the Term is to be paid City. Except where the Temporary Taking is a Total Taking and extends beyond the remaining Term (in which case the Lease shall terminate as provided above), the Term shall not be reduced or otherwise affected by such Temporary Taking and Tenant shall continue to pay in full the Rent payable by Tenant hereunder without reduction or abatement; provided, that if the Temporary Taking is by City, and/or any Person established by or controlled by City, and/or for the purpose of making the Premises or the Building available, directly or indirectly to or for the benefit of City or its residents, then Tenant shall have the right to offset against Rent otherwise payable under this Lease any damages that it and its Subtenants suffer on account of such Temporary Taking to the extent Tenant does not receive Condemnation Proceeds in an amount equal to such damages.

10.4 Sale-in-Lieu of Condemnation. In the event of a negotiated sale of all or a portion of the Premises in lieu of condemnation, the proceeds of such sale shall be distributed as provided in this Article 10 as if such sale were a Taking and such proceeds were Condemnation Proceeds, and all other provisions of this Article 10 shall apply as if such sale were a Taking. Neither Party shall agree to such a sale without the prior consent of the other Party (which consent may be granted or denied in such Party's sole and absolute discretion).

10.5 Participation in Proceedings and Other Issues. City, Tenant and any Leasehold Mortgagee shall be entitled to file a claim and otherwise participate in any condemnation or similar proceeding and all hearings, trials and appeals in respect thereof. City, Tenant and its Leasehold Mortgagees shall be reimbursed for all Condemnation Expenses incurred by them from available Condemnation Proceeds prior to any other payments to the Parties under this Article 10. Each of City and Tenant shall execute any and all documents that may be reasonably required in order to facilitate collection by the other Party of its respective portion of the Condemnation Proceeds under this Article 10. City agrees that it shall not, directly or indirectly, condemn all or any portion of the Premises or Improvements thereon (or any interests therein).

10.6 Claims for Personal Property. Notwithstanding anything to the contrary contained in this Article 10, in the event of any permanent or temporary Taking of all or any

portion of the Premises or the Buildings, (i) Tenant and its Subtenants (to the extent permitted under a Sublease) shall have the exclusive right to assert claims for any trade fixtures and personal property so taken that were the property of Tenant or its Subtenants and for relocation expenses of Tenant or its Subtenants, (ii) all awards and damages in respect thereof shall belong to Tenant and its Subtenants, and (iii) City hereby waives any and all claims to any part thereof. However, if there is no separate award or allocation for such trade fixtures or personal property, then Tenant and its Subtenants shall have the right to assert claims in the condemnation proceedings for the same.

ARTICLE 11
ASSIGNMENT, SUBLETTING, MORTGAGES, ETC.

11.1 Limitations on Tenant's Right to Transfer. Tenant represents and agrees that its undertakings pursuant to this Lease are for the purpose of development of the Premises and not for speculation in land holding. Tenant further recognizes that: (a) the qualifications and identity of Tenant are of particular concern to City in light of the importance of the Project to the general welfare of City residents; (b) City's is relying upon the qualifications and ability of Tenant to serve as the catalyst for development of the Premises and to assure the quality of the use, operation, and maintenance in the development of the Premises; and (c) such qualifications and identity are material considerations inducing City to enter into this Lease with Tenant. Therefore, Tenant's rights to transfer any right or interest under this Lease shall be governed strictly in accordance with the provisions of this Article 11, and no voluntary or involuntary successor in interest of Tenant shall acquire any rights or powers under this Lease except as expressly set forth herein.

11.2 Consent Transfer. Except as otherwise specifically provided in this Article 11 (for the avoidance of doubt, including in Section 11.5), Tenant shall not without the prior written consent of City (each, subject to the exclusions set forth herein, a "**Consent Transfer**"):

11.2.1 sell, assign, transfer, pledge, mortgage, encumber or grant a security interest in this Lease or in all or any portion of the Premises, except as otherwise permitted hereunder (including Permitted Transfers under Section 11.5 hereof and to Leasehold Mortgagees or Mezzanine Lenders under Section 11.7 hereof); or

11.2.2 sell, assign, transfer, pledge, mortgage, encumber or grant a security interest in any interest of Tenant in this Lease or in all or any portion of the Premises, whether by operation of law or otherwise, nor shall any sale, Assignment, transfer, pledge, mortgage, or encumbrance or grant of a security interest be effected of all or any part of the issued or outstanding capital stock of a corporation that is Tenant or of its Controlling Owner, whether held directly or indirectly, and whether made voluntarily, involuntarily, by operation of law or otherwise, if the same shall result in a Change of Control of Tenant, nor shall there be any merger or consolidation of Tenant or of such Controlling Owner into or with another corporation, nor shall any of the same be effected with respect to any interest in a partnership that is Tenant or in a partnership that is its Controlling Owner, whether directly or indirectly, and whether made voluntarily, involuntarily, by operation of law or otherwise, if the same will or could result in a Change of Control of Tenant, nor shall any of the same be effected with respect to any managing member's interest in a limited liability company that is Tenant or in a limited

liability company that is its Controlling Owner, whether directly or indirectly, and whether made voluntarily, involuntarily, by operation of law or otherwise, if the same will or could result in a Change of Control of Tenant (any of the transactions or events in the foregoing Sections 11.2.1 and 11.2.2 is referred to herein as an "**Assignment**").

Notwithstanding any provision of this Lease to the contrary, nothing contained in this Article 11 shall restrict in any manner, prohibit, require notice to, or require the consent or approval of City for (a) any Assignment or any form of transfer in or of the equity interests in any Person whose common stock is quoted on a recognized securities exchange such as the New York Stock Exchange or NASDAQ or (b) an Assignment or any form of other transfer of any equity interests in Tenant or any other Person that does not and could not, directly or indirectly, result in a Change of Control of Tenant or such other Person.

11.3 Conditions Precedent to Consent Transfers. Except as otherwise provided in this Article 11, Tenant shall only have the right to effect a Consent Transfer subject to and upon fulfillment of the following conditions precedent:

11.3.1 No Event of Default. No Event of Default by Tenant (or event subject to an outstanding notice by City could become an Event of Default) shall be outstanding and uncured as of the effective date of the proposed Consent Transfer, unless City has received adequate assurances satisfactory to City in its sole discretion that such Event of Default shall be cured in a timely manner either by Tenant or the transferee under the Consent Transfer.

11.3.2 Timing. Unless Section 22.4.2(a) of the DDA is waived by the City Council in its sole discretion and except for a transfer of a Major Occupant Fee Parcel or Major Occupant Lease which may occur at any time in accordance with Article 7 hereof, the provisions of Article 22 of the DDA shall govern the transfer of this Lease until such time as all of the conditions set forth in Section 22.4.2(a) of the DDA have been satisfied. Thereafter, Tenant may effect a Consent Transfer or Permitted Transfer of this Lease in accordance with the applicable provisions of this Article 11.

11.3.3 Notice to City. If Tenant desires to engage in a Consent Transfer, then at least thirty (30) days prior to the proposed effective date of the Consent Transfer, Tenant shall submit to City a request for consent by City (a "**Consent Transfer Request Notice**") of the proposed Consent Transfer, which request shall include or attach the following:

(a) A statement that precisely sets forth the rights and obligations to be transferred, including the boundaries of any land area that is the subject of the Consent Transfer Request Notice;

(b) A statement that precisely sets forth the rights and obligations to be transferred, including the boundaries of any land area that is the subject of the Consent Transfer Request Notice;

(c) A statement containing: (i) the name and address of the proposed transferee; (ii) the proposed effective date of the proposed Consent Transfer; and (iii) a description of the experience of the proposed

transferee (and members of such transferee's team, by contract or otherwise (the "**Transferee Team**")) in the ownership, operation, management and, if applicable, development of real estate assets of the use classes represented by the Buildings then located within the portion of the Project that is the subject of the Consent Transfer Request Notice (and/or then planned to be developed within such area);

(d) Additional reasonably sufficient information and documentation evidencing that (i) the proposed Transferee Team and/or its Controlling Owner (if such Controlling Owner would be financially liable as part of the proposed Transfer) has the financial standing and/or strength (taking into account all of the proposed transferee's other obligations and liabilities) to perform its rental and other obligations under any applicable ground lease that would be entered into for the Phase that is the subject of the proposed Consent Transfer, provided, however, that a transferee that meets the Net Worth Requirement (by itself or by providing a Guaranty, covering all of the proposed transferee's obligations under this Lease without limitation, from an entity that meets the Net Worth Requirement) for that Phase shall be deemed to satisfy this subsection (d)(i)) (in either case, the "**Financial Requirement**") and (ii) the proposed Transferee Team and/or its Controlling Owner (x) has a commercially reasonable amount of experience in the ownership, development, operation, leasing and management of real estate assets within the United States of the use classes represented by the then-current Buildings located within the applicable Phase (and, if a material amount of development of the Premises is then planned to occur in the future during the Term, in the development of real estate assets of the use classes then planned to be developed in the Phase in the future during the Term) and (y) has a commercially reasonable amount of experience in the construction and operation of Infrastructure Improvements of the same type and quality as that proposed or constructed within the applicable Phase (together, the "**Experience Requirement**"). Such documentation shall include (but may not be limited to) financial statements, references, and examples of prior development projects; and

(e) an agreement or certificate, in form and substance reasonably satisfactory to City (each, an "**AA&R**"), whereby the transferee shall (i) assume the obligations and performance of this Lease and agree to be bound by all of the covenants, agreements, terms, provisions and conditions hereof on the part of Tenant to be performed or observed on and after the effective date of any such Transfer, and (ii) agree no further Transfer shall be made except in accordance with this Article 11, and if applicable, the obligations of Tenant hereunder to be retained or released as to the applicable Phase.

11.4 Procedures for Consent Transfer.

11.4.1 City Approval. Subject to the conditions precedent set forth in Section 11.3 above, the City Manager within thirty (30) Business Days of receiving the information and documentation above, shall approve or disapprove the proposed Consent Transfer.

11.4.2 City's Consent; Standards. The withholding or conditioning of City's consent to any proposed Consent Transfer shall be reasonable and shall be based solely on one or more of the following criteria:

(i) The proposed transferee and/or its Controlling Owner (if applicable) do not meet the Financial Requirement;

(ii) The proposed transferee and its Transferee Team together do not meet the Experience Requirement; and

(iii) The proposed transferee and/or its Controlling Owner have not provided any Adequate Security as and to the extent required under Article 27 of the DDA, which shall apply to the obligations assumed by the Transferee unless replacement Adequate Security is provided by the proposed transferee and approved by the City Manager.

(iv) If approved, the AA&R shall be recorded in the Official Records concurrently with the consummation of the Consent Transfer, and a copy thereof, certified by the County Recorder as a duplicate copy of the approved assumption agreement with recording information, shall be delivered to City within three (3) days after consummation of the Consent Transfer. Upon City's approval, the Consent Transfer shall be effective upon the effective date of transfer under the fully executed AA&R.

11.4.3 Appeal to City Council. If City Manager withholds or conditions its consent to any proposed Consent Transfer, Tenant may appeal the decision to the City Council in writing within ten (10) days of the City Manager's decision. The City Council shall hear and decide the appeal at its next regularly scheduled meeting (allowing for legally required agenda notice requirements to be met) subject to any reasonable continuation by the City Council, but in no event more than thirty (30) days after such request; provided, however, that the City Council may continue the matter to a date no more than twenty (20) days past the original hearing. If the City Council disapproves the Consent Transfer, Tenant may submit the matter to the dispute resolution procedures of Article 28 hereof.

11.5 Permitted Transfers and Procedures. Notwithstanding anything to the contrary in this Article 11, so long as Tenant is not in Material Breach of this Lease, Tenant shall have the right at any time to Transfer all or a portion of its rights and corresponding obligations under this Lease without the approval of City (except as set forth in this Section 11.5) as set forth below (any of the following, a **"Permitted Transfer"**):

(a) Any transaction that would otherwise constitute a Consent Transfer if such transaction is to one or more Affiliates of Tenant; provided, that in each case where such transaction is a Direct Assignment in which the Affiliate does not meet the Financial Requirement, Tenant

shall remain liable as the Tenant or Phase Developer, as the case may be, under this Lease;

(b) Any transfer to Related-MPG JV, LLC, or an Affiliate of Related-MPG JV, LLC;

(c) Any grant by Tenant, any Affiliate of Tenant or any Person related to the foregoing (collectively, a "**Tenant Related Party**") to equity or debt providers to or directly or indirectly in Tenant (or any Tenant Related Party) of a participation in the profits and/or losses of the business of Tenant so long as such providers do not acquire Controlling Ownership in Tenant;

(d) Any grant, transfer, creation, amendment, modification, or termination of any Mortgage or Mezzanine Loan by Tenant or any Tenant Affiliate;

(e) The exercise by a Mezzanine Lender of (y) any rights it may have under its Mezzanine Loan with respect to obtaining title to the direct or indirect equity interests of Tenant that may have been pledged to such Mezzanine Lender under its Mezzanine Loan or (z) any foreclosure remedies the Mezzanine Lender may have; provided, that such Mezzanine Loan shall have been made for a valid business purpose and not principally for the purpose of transferring such equity interests and/or the leasehold estate created hereby; and

(f) The exercise by a Mortgagee of any foreclosure, transfer in lieu of foreclosure or other rights and/or remedies under or with respect to its Mortgage (or related loan documents).

11.5.2 All Permitted Transfers that constitute an Assignment shall be subject to the following terms:

(a) In the event of a direct Assignment of this Lease (for the avoidance of doubt, not including transfers in the equity interests of any Person) (a "**Direct Assignment**"), not later than ten (10) Business Days after the effective date of any such Direct Assignment, Tenant shall deliver to City (a) a duplicate original or certified copy of the Direct Assignment instrument, (b) evidence that the transferee meets the Financial Requirement, (c) evidence that the transferee meets the Experience Requirement, and (d) if applicable, proof in a form reasonably acceptable to the City Manager that there continues to exist Adequate Security as and to the extent required under Article 27 of the DDA, which shall apply to the obligations assumed by the transferee unless replacement Adequate Security is provided by the transferee and approved by the City Manager;

(b) Any Direct Assignment shall not be effective for purposes of this Lease unless and until the transferee thereunder executes, acknowledges and delivers to City an AA&R in form and substance reasonably satisfactory to City whereby the transferee shall (i) assume the obligations and performance of this Lease and agree to be bound by all of the covenants, agreements, terms, provisions and conditions hereof on the part of Tenant to be performed or observed on and after the effective date of any such Transfer, and (ii) agree no further Transfer shall be made except in accordance with this Article 11, and, if applicable, the obligations of Tenant hereunder are released as to the applicable Phase.

11.6 Release. Except as may otherwise be provided under Section 11.5(a) above, if, as and when Tenant enters into a Direct Assignment (whether under a Consent Transfer or Permitted Transfer) and the Transferee thereunder assumes all of Tenant's obligations under this Lease as set forth above, then from and after the date of such Direct Assignment the Tenant assigning this Lease as part of such Direct Assignment (and all prior Tenants) shall automatically and conclusively be released from all obligations under this Lease, other than any obligations that arose and were to be performed prior to the effective date of such Direct Assignment (unless also assumed in writing, in recordable form, by the transferee), which release shall be confirmed in the AA&R or such other instrument in form and substance reasonably satisfactory to City and Tenant.

11.7 Leasehold Mortgages and Mezzanine Loans.

11.7.1 Notwithstanding any provision of this Lease to the contrary, Tenant shall have the right to mortgage or pledge the Leasehold Interest to one or more Leasehold Mortgagees and/or to permit the direct or indirect interest in Tenant to be pledged to a Mezzanine Lender, in each case without City's consent, at any time and from time to time during the Term; provided, that no holder of any Leasehold Mortgage or Mezzanine Loan, nor anyone claiming by, through or under any such Leasehold Mortgage or Mezzanine Loan, shall by virtue thereof acquire any greater rights hereunder than Tenant has, except the right to cure or remedy Tenant's defaults or to become entitled to a New Lease as more fully set forth below in this Article 11 and such other rights as are expressly granted to Leasehold Mortgagees or Mezzanine Lenders under this Lease. Notwithstanding any provision of this Lease to the contrary, each Subtenant and each Major Subtenant shall have the right to mortgage its interest in a Sublease (or permit its interest in a Sublease to be pledged) to one or more Leasehold Mortgagees and/or permit the direct or indirect interests in such Subtenant to be pledged to Mezzanine Lenders without the need to obtain City's consent thereto, at any time and from time to time during the Term. Notwithstanding the foregoing, however, no Leasehold Mortgage or Mezzanine Loan shall be effective, unless:

(a) at the time such Leasehold Mortgage or such Mezzanine Loan becomes effective there is no existing Event of Default; and provided, that, unless otherwise notified in writing by City that there is an existing Event of Default, any actual or prospective Leasehold Mortgagee and Mezzanine Lender may conclusively rely on a statement to the effect that

there is no existing Event of Default given by City under Section 26.2 for a period of thirty days after the delivery thereof;

(b) such Leasehold Mortgage shall be subject to all the agreements, terms, covenants and conditions of this Lease;

(c) such Leasehold Mortgage shall contain in substance the following provision (and no provisions inconsistent therewith in any material respect):

> "This instrument and all rights of the mortgagee hereunder are, without the necessity for the execution of any further documents, subject and subordinate to the rights of City under the Lease hereby mortgaged, as said Lease may have been previously modified, amended or renewed, or may hereafter be modified, amended or renewed with the consent of the mortgagee, which consent may not be unreasonably withheld, conditioned or delayed. Nevertheless, the holder of this mortgage agrees from time to time upon request and without charge to execute, acknowledge and deliver any instruments reasonably requested by City to evidence the foregoing subordination."

11.7.2 Tenant or the Leasehold Mortgagee or Mezzanine Lender shall give to City written notice of the making of any Leasehold Mortgage or Mezzanine Loan (which notice shall contain the name and office address of the Leasehold Mortgagee or Mezzanine Lender and shall contain information in reasonable detail demonstrating that the Leasehold Mortgagee or Mezzanine Lender is a Leasehold Mortgagee or Mezzanine Lender as defined in this Lease) no later than ten (10) days after the execution and delivery of such Leasehold Mortgage or Mezzanine Loan and a duplicate original or certified copy thereof after the recording of any Leasehold Mortgage executed by Tenant and upon the written request of City, Tenant shall, at Tenant's own cost and expense, record in the Official Records a written request, executed and acknowledged by City, for a copy of any notice of default and a copy of any notice of sale under such Leasehold Mortgage to be mailed to City at the address specified in the request by City.

11.7.3 City shall give to each Leasehold Mortgagee or Mezzanine Lender, at the address of such Leasehold Mortgagee or Mezzanine Lender set forth in a written notice from such Leasehold Mortgagee or Mezzanine Lender or from Tenant delivered in the manner provided by Article 24 a copy of each notice given by City to Tenant under Section 22.1 at the same time as and whenever any such notice shall thereafter be given by City to Tenant, and, without affecting or extending the commencement of any grace or cure period available to Tenant as provided in this Lease, no such notice by City shall be deemed to have been duly given to Tenant (and no grace or cure period in favor of such Leasehold Mortgagee or Mezzanine Lender shall be deemed to have commenced) unless and until a copy thereof shall have been given to each such Leasehold Mortgagee and Mezzanine Lender. Each Leasehold Mortgagee and Mezzanine Lender (i) shall thereupon have a period of ten days more in the case of a Monetary Default and thirty days more in the case of a Non-Monetary Default, after the

applicable period afforded Tenant for remedying the same or causing the same to be remedied has expired and (ii) shall, within such period and otherwise as herein provided, have the right (but not the obligation) to remedy such Monetary or Non-Monetary Default or cause the same to be remedied. City shall accept performance by or on behalf of a Leasehold Mortgagee or Mezzanine Lender of any covenant, condition or agreement on Tenant's part to be performed hereunder with the same force and effect as though performed by Tenant, so long as such performance is made in accordance with the terms and provisions of this Lease. City shall not object to and shall cooperate with any entry onto the Premises by or on behalf of a Leasehold Mortgagee or a Mezzanine Lender to the extent necessary to effect such Leasehold Mortgagee's or Mezzanine Lender's cure rights, provided such entry is in compliance with Applicable Law.

11.7.4 No Non-Monetary Default or Event of Default arising from a Non-Monetary Default shall be deemed to exist as long as a Leasehold Mortgagee or Mezzanine Lender, in good faith, (i) shall have commenced to cure (or caused to be commenced such cure) such Non-Monetary Default or Event of Default arising from a Non-Monetary Default within thirty (30) days after the expiration of the applicable period afforded to Tenant for remedying such Non-Monetary Default or Event of Default arising from a Non-Monetary Default, and continuously prosecutes or causes to be prosecuted the same to completion with reasonable diligence (subject to Force Majeure) or (ii) if possession or control of the Premises or any part thereof is required in order to cure such Non-Monetary Default or Event of Default arising from a Non-Monetary Default, and Leasehold Mortgagee or Mezzanine Lender shall have notified City within thirty days after the expiration of the applicable period afforded to Tenant for remedying such Non-Monetary Default or Event of Default arising from a Non-Monetary Default of its intention to institute foreclosure proceedings to obtain possession or control of the Premises, directly or through a receiver, and thereafter promptly commences such foreclosure proceedings, prosecutes such proceedings with all reasonable diligence and continuity (subject to Force Majeure) and, upon obtaining possession and/or control of the Premises, commences or causes its designee to commence promptly to cure the Non-Monetary Default or Event of Default arising from a Non-Monetary Default and prosecutes the same to completion with all reasonable diligence and continuity (subject to Force Majeure); provided that the Leasehold Mortgagee or Mezzanine Lender or its designee shall have delivered to City, in writing, within the time periods set forth in clause (i) or (ii) above, its agreement, subject to the last sentence of this Section 11.7.4, to cause the Person obtaining possession and/or control of the Premises to agree to take the action described in clause (i) or (ii) above (the "**Lender Notice of Cure**"); and, provided further, that during the period in which the actions comprising the Lender Notice of Cure are being performed, all of the other obligations of Tenant under this Lease (other than those that require possession or control of the Premises in order to cure) are being duly performed (including payment of all Rent due hereunder) within any applicable notice and cure periods (including any applicable notice and cure rights of Leasehold Mortgagees and Mezzanine Lenders hereunder). In the event that at any time after the delivery of the Lender Notice of Cure, the Leasehold Mortgagee or Mezzanine Lender notifies City, in writing, that it has relinquished possession or control of the Premises or that it will not institute foreclosure proceedings or, if such proceedings have been commenced, that it has discontinued them, thereupon City shall have the unrestricted right to terminate this Lease by reason of any Event of Default (and to take any other action it deems appropriate by reason of any Event of Default by Tenant).

11.7.5 A Leasehold Mortgagee, Mezzanine Lender, successor leasehold owner, assignee or transferee gaining possession or control of the Premises pursuant to a foreclosure or transfer in lieu of foreclosure shall not be bound by any deadline for completion of any construction or alterations required of Tenant under this Lease; provided, however, that such Person gaining possession and/or control of the Premises pursuant to a foreclosure or transfer in lieu of foreclosure shall with all reasonable diligence and continuity prosecute completion of same; and provided further, that upon gaining such ownership and possession, it shall be an obligation of such Person under this Lease to cure any default of Tenant under the DDA (after the expiration of any applicable notice and cure period contained therein, which cure periods shall be extended to be conterminous with the cure rights of such Person under this Lease, and the Parties hereby agree to grant to such Person all necessary rights under the DDA or enter into a replacement agreement with such Person substantially identical to the DDA). Notwithstanding anything in this Lease to the contrary, a Leasehold Mortgagee, Mezzanine Lender, successor leasehold owner, assignee or transferee gaining possession or control of the Premises pursuant to a foreclosure or transfer in lieu of foreclosure shall not be required to cure any Non-Monetary Defaults or Events of Default arising from Non-Monetary Defaults that are not capable of being cured, and if any Leasehold Mortgagee, Mezzanine Lender, successor leasehold owner, assignee or transferee shall acquire the Premises pursuant to a foreclosure or transfer in lieu of foreclosure, then any such Non-Monetary Default or Event of Default arising from a Non-Monetary Default that is not capable of being cured shall no longer be deemed an Event of Default or Non-Monetary Default.

11.7.6 With respect to any Non-Monetary Default, so long as a Leasehold Mortgagee or Mezzanine Lender shall be diligently exercising its cure rights under this Lease, City shall not (i) re-enter the Premises, (ii) serve a termination notice, or (iii) bring a proceeding on account of such default to (x) dispossess Tenant and/or other occupants of the Premises, (y) re-enter the Premises, or (z) terminate this Lease or the leasehold estate (such rights described in clauses (i), (ii) and (iii), "**City's Termination Rights**"). In addition, with respect to any Monetary Default, City shall not exercise any of City's Termination Rights so long as a Leasehold Mortgagee or a Mezzanine Lender shall be diligently exercising its cure rights under this Section 11.7 within the time periods set forth above; provided, however, that (A) nothing contained in this Section 11.7.6 shall in any way impair the right of City to exercise any of City's Termination Rights or to enforce any other remedy in the event of any other Event of Default by Tenant in the performance of its obligations hereunder, subject to a Mortgagees or Mezzanine Lender's right hereunder with respect to any such Event of Default, and (B) upon any cessation of a Leasehold Mortgagee or Mezzanine Lender so exercising such rights and undertaking such activities, City may exercise any of City's Termination Rights hereunder. Nothing in the protections to Leasehold Mortgagees or Mezzanine Lenders provided in this Lease shall be construed to either (I) extend the Term beyond the Expiration Date provided for in this Lease that would have applied if no default had occurred, or (II) require such Leasehold Mortgagee or Mezzanine Lender to cure any Non-Monetary Default by Tenant that is not capable of being cured as a condition to preserving this Lease or to such Leasehold Mortgagee obtaining a New Lease as provided in Section 11.8.

11.7.7 Notwithstanding anything to the contrary herein, the exercise of any rights or remedies of a Leasehold Mortgagee under a Leasehold Mortgage or a Mezzanine Lender under a

Mezzanine Loan, including the consummation of any foreclosure or transfer in lieu of foreclosure, shall not constitute a default under this Lease or require the consent of City.

11.7.8 No Leasehold Mortgagee or Mezzanine Lender shall become liable under this Lease unless and until such time as it becomes, and then only for so long as it remains, the owner of the leasehold estate created hereby, and no performance by or on behalf of a Leasehold Mortgagee or Mezzanine Lender of Tenant's obligations hereunder shall cause such Leasehold Mortgagee or Mezzanine Lender to be deemed to be a "mortgagee in possession" unless and until such Leasehold Mortgagee shall take possession or control or of the Premises, or such Mezzanine Lender shall take possession or control of Tenant, as applicable.

11.7.9 If there is more than one Leasehold Mortgagee, the rights and obligations afforded by this Section 11.7.9 to a Leasehold Mortgagee shall be exercisable only by the Leasehold Mortgagee whose Leasehold Mortgage is most senior in lien (or that has obtained the consent of any Leasehold Mortgagees whose Leasehold Mortgage is senior to the Leasehold Mortgage of such Leasehold Mortgagee).

11.7.10 Without limiting Section 11.7.7 and notwithstanding anything contained in the DDA to the contrary, if possession or control of the Premises or any part thereof is required in order for a Leasehold Mortgagee or Mezzanine Lender to cure a Non-Monetary Default by Tenant under the DDA, then, following the giving of the Lender Notice of Cure and during the pendency of any proceedings to foreclose such Leasehold Mortgage or Mezzanine Loan and obtain ownership of Tenant's interest in the Premises, no "Default" under and as defined in the DDA shall be deemed to exist (and, for the avoidance of doubt, neither Leasehold Mortgagee nor Mezzanine Lender will be required to assume any obligation under the DDA unless and until it or its nominee has obtained ownership of Tenant's estate hereunder) so long as such Leasehold Mortgagee or Mezzanine Lender shall comply with its obligations under this Section 11.7.

11.8 New Lease.

11.8.1 In the event of a termination of this Lease prior to the Expiration Date, whether by summary proceedings to dispossess, service of notice to terminate, or otherwise, due to an event specified in Article 22, City shall serve upon each Leasehold Mortgagee who is entitled to notice, notice of such termination promptly following the same, together with a statement of any and all sums which would at that time be due under this Lease but for such termination, and of all other defaults, if any, under this Lease then known to City. Subject to clause (e) of this Section 11.8, the Leasehold Mortgagee entitled to the rights afforded by this Section 11.8 shall thereupon have the option to obtain a new lease in accordance with and upon the following terms and conditions (a "**New Lease**"):

(a) Upon the request of such Leasehold Mortgagee, served upon City in accordance with Article 22, within forty-five (45) days after service upon the Leasehold Mortgagee of notice of termination by City, City shall enter into a New Lease of the Premises with such Leasehold Mortgagee, a special-purpose Affiliate thereof or any good faith designee of such Leasehold Mortgagee (such Leasehold Mortgagee, Affiliate thereof or designee, the "**New Tenant**").

(b) The New Lease shall be effective as of the date of termination of this Lease and shall be for the remainder of the Term and at the Rent and upon all the agreements, terms, covenants and conditions hereof. Upon the execution of such New Lease, the New Tenant shall pay any and all sums that would at the time of the execution thereof be due under this Lease but for its termination, together with interest thereon at the Default Rate, and shall otherwise with reasonable diligence commence to remedy any Non-Monetary Defaults and shall pay all costs and expenses, including reasonable attorneys' fees, court costs and disbursements incurred by City in connection with such defaults and termination, the recovery of possession of the Premises and the preparation, execution and delivery of such New Lease, less any net monies received by City from the date of termination of this Lease for rent or for use and occupancy of the Premises. City shall have no obligation to deliver physical possession of the Premises in connection with the giving of any such New Lease to the extent that City shall not previously have recovered possession of same. Nothing herein contained shall release Tenant from any of its obligations under this Lease which shall not have been discharged or fully performed by Tenant or by such Leasehold Mortgagee or New Tenant.

11.8.2 As between City and New Tenant, any New Lease, and the leasehold estate created thereby, subject to the same conditions contained in this Lease, shall continue to maintain the same priority as this Lease with regard to any Leasehold Mortgage or any other lien, charge or encumbrance whether or not the same shall then be in existence.

11.8.3 Upon the execution and delivery of a New Lease, all subleases that theretofore may have been assigned to City shall be assigned and transferred, without recourse, by City to the New Tenant. Between the date of termination of this Lease and the date of execution and delivery of the New Lease, if a Leasehold Mortgagee shall have requested such New Lease, City shall not enter into any new subleases, cancel or modify in any material respect any then-existing subleases or accept any cancellation, termination or surrender thereof (unless such termination shall be effected as a matter of law on the termination of this Lease) without the consent of the Leasehold Mortgagee, not to be unreasonably withheld, conditioned or delayed, except as permitted in the subleases.

11.8.4 If there is more than one Leasehold Mortgagee, City shall enter into a New Lease with the Leasehold Mortgagee whose Leasehold Mortgage is senior in lien (or that has obtained the consent of any Leasehold Mortgagees whose Leasehold Mortgage is senior to the Leasehold Mortgage of such Leasehold Mortgagee) as the Leasehold Mortgagee entitled to the rights afforded by this Section 11.8.

11.9 Any rejection of this Lease by or on behalf of Tenant in any bankruptcy, reorganization, arrangement or similar proceeding that would otherwise cause this Lease to terminate, shall, without any action or consent by City, Tenant or any Mortgagee, effect the transfer of Tenant's interest hereunder to the Leasehold Mortgagee whose Leasehold Mortgage is most senior in lien or its nominee or designee. Upon any such transfer to a Leasehold Mortgagee, such Leasehold Mortgagee may (i) reject the transfer of this Lease upon giving

notice thereof to City no later than forty-five (45) days after notice from City of such transfer, in which case such Leasehold Mortgagee shall have no further obligations hereunder, or (ii) may request a new lease in accordance with the provisions of this Section 11.9. In the event that the Leasehold Mortgagee whose Leasehold Mortgage is most senior in lien shall fail either to effect the transfer of this Lease or request a new lease, then City shall notify all remaining Leasehold Mortgagees that such Leasehold Mortgagee failed to exercise such right whereupon each other Leasehold Mortgagee may, within twenty days after receiving such notice, have the same alternative rights, exercisable within the same period after receipt of such notice. If more than one Leasehold Mortgagee shall have elected to either effect such transfer or request such new lease (subject to the liens of all Leasehold Mortgagees senior in lien in each case) the Leasehold Mortgagee whose Leasehold Mortgage is most senior in lien shall be deemed to have exercised such right.

11.10 Additional Mortgagee Protections. In addition to the other rights, notices and cure periods afforded to Leasehold Mortgagees, City further agrees that:

(a) without the prior consent of each Leasehold Mortgagee (which consent is not to be unreasonably withheld, conditioned or delayed), to the extent required in the Leasehold Mortgage, City will neither agree to any modification or amendment of this Lease (other than an immaterial modification or amendment), nor accept a surrender or cancellation of this Lease;

(b) City shall consider in good faith any modification to this Lease requested by a Leasehold Mortgagee as a condition or term of granting financing to Tenant, so long as the same does not materially increase City's obligations, materially diminish Tenant's obligations, or diminish City's rights and immunities hereunder;

(c) the Leasehold Mortgagee whose Leasehold Mortgage is most senior in lien (or that has obtained the consent of any Leasehold Mortgagees whose Leasehold Mortgage is senior to the Leasehold Mortgage of such Leasehold Mortgagee) shall have the right to participate in any arbitration proceedings under Section 28.1.2, although only one Leasehold Mortgagee shall have such participation rights at any given time;

(d) the Leasehold Mortgagee whose Leasehold Mortgage is most senior in lien (or that has obtained the consent of any Leasehold Mortgagees whose Leasehold Mortgage is senior to the Leasehold Mortgage of such Leasehold Mortgagee) shall have the right to participate in the adjustments of any insurance claims of the nature set forth in Articles 8 and 9 and condemnation awards of the nature set forth in Article 10; provided, however, that only one Leasehold Mortgagee shall have such participation rights at any given time; and

(e) at the request of Tenant from time to time, City shall execute and deliver an instrument addressed to the holder of any Leasehold

Mortgage or Mezzanine Loan confirming that such holder is a Leasehold Mortgagee or Mezzanine Lender (provided, that City may require such Leasehold Mortgagee or Mezzanine Lender to provide such reasonably detailed information as is necessary for City to make such determination) and entitled to the benefit of all provisions contained in this Lease that are expressly stated to be for the benefit of Leasehold Mortgagees or Mezzanine Lenders.

11.11 Rights Among Leasehold Mortgagees. Notwithstanding anything to the contrary contained in this Lease, the Leasehold Mortgage most senior in lien (and the Leasehold Mortgagee under a such Leasehold Mortgage) shall be and shall be deemed to be the Leasehold Mortgage (and the Leasehold Mortgagee) most senior in lien for purposes of this Article 11, and such Leasehold Mortgagee under such Leasehold Mortgage most senior in lien shall constitute the Restoration Fund Depository, the Condemnation Proceeds Depository and the Impositions Depository under and as defined in this Lease.

11.12 Subleases.

11.12.1 Notwithstanding any provision of this Lease to the contrary, Tenant may grant any Sublease or license to any Person or Persons to use or occupy any portion of the Premises and/or the Improvements without the necessity of obtaining the consent of (or providing notice thereof to) City, and no such transaction shall constitute a Consent Transfer.

11.12.2 Each Sublease or license of any portion of the Premises shall provide that: (i) such Sublease or license is subject to this Lease; (ii) such Sublease shall expire on or prior to the Expiration Date or upon the earlier termination of the Term; and (iii) City shall have no obligation to the Subtenant or licensee under such Sublease or the licensor under such license, as the case may be, except as provided in Section 11.13 and/or any applicable Recognition Agreement.

11.13 Recognition Right.

11.13.1 From time to time, Tenant may deliver to City a copy of any sublease or license of any portion of the Premises (which may be unexecuted but which shall, in all other respects, be in final form), together with a summary of the material terms thereof (including, without limitation, a description of the subleased or licensed premises, the rent and the term of such sublease or license), prior to or promptly after execution and delivery of the same. In addition, if Tenant desires to qualify the sublease as a Qualifying Sublease in accordance with this Section 11.13.1, Tenant shall also submit reasonable evidence to support a finding that the rental is not less than the prevailing market rental for the applicable use. Such evidence may consist of relevant market data, comparable leases, appraisals and/or a sworn affidavit or declaration under penalty of perjury from the leasing broker (who may be either internal to Developer or a third party broker) that, in his or her professional judgement based on then-current experience with comparable properties, the rental is not less than the prevailing market rental for the applicable use. If Tenant submits a sworn broker affidavit or declaration under penalty of perjury in reliance on comparable properties, then upon City's request, Tenant shall also provide, on a confidential basis, supporting information relied upon by the broker to make

such determination and/or shall coordinate discussions between the broker and appropriate City staff to provide support. Within thirty (30) days after receipt of the same by City, City shall notify Tenant whether same is a "**Qualifying Sublease**". City shall have the right to designate any sublease or license as a Qualifying Sublease; provided, however, that City shall be required to designate any sublease or license a Qualifying Sublease if (i) a Leasehold Mortgagee has executed a non-disturbance agreement with respect to such sublease or license or (ii) the Subtenant or licensee thereunder is an unrelated third party Subtenant or licensee of a space lease consisting of (I) not less than twenty-five thousand (25,000) square feet of office space at a rental not less than the prevailing market rental or (II) a retail or restaurant space under a space lease or license with a term of not less than five (5) years at a rental not less than the prevailing market rental (the Subtenant or licensee under any Qualifying Sublease, a "**Qualifying Subtenant**"). If City shall determine that any sublease or license is a Qualifying Sublease, then the provisions of Section 11.13.2 shall apply. If City shall determine that any sublease or license is not a Qualifying Sublease, City shall provide to Tenant written notice thereof, setting forth the reason for such determination in reasonable detail. If Tenant disputes such determination in writing within ten (10) days after its receipt of such notice from City, such dispute shall be resolved in accordance with Article 28 hereof.

11.13.2 In the event City acquires or succeeds to the interest of Tenant under a Qualifying Sublease (the date upon which such event occurs hereinafter referred to as the "**Succession Date**"), then, provided that on the Succession Date no event of default exists and is continuing under such Qualifying Sublease which would permit the City thereunder to terminate such Qualifying Sublease or exercise any dispossess remedies provided for in such Qualifying Sublease, then (i) such Qualifying Sublease shall continue as a direct lease between City and the Qualifying Subtenant upon all of the terms, covenants, conditions and agreements set forth in the Qualifying Sublease and remaining to be performed, with the same force and effect as if City, as landlord under the Qualifying Sublease, and the Qualifying Subtenant as tenant under the Qualifying Sublease, entered into a lease (on such terms, covenants and conditions, including any renewals thereof) as of the date of the termination of this Lease, for a term equal to the unexpired term of the Qualifying Sublease, (ii) at the request of either party, City and the Qualifying Subtenant shall execute and exchange an instrument confirming such direct lease relationship, but the failure of either party to execute such instrument shall not affect their rights and obligations with respect to said direct lease relationship, and (iii) the Qualifying Subtenant shall be bound by said direct lease relationship and to attorn to City and recognize City as its landlord and shall pay its rent, additional rent and all other sums due under the Qualifying Sublease at the address designated by City by written notice to such Qualifying Subtenant from time to time. Upon the request of City, Tenant or the Qualifying Subtenant, City and the Qualifying Subtenant shall promptly execute a recognition agreement (a "**Recognition Agreement**") in the form of Exhibit K attached hereto, with only such changes as may be reasonably requested by a Qualifying Subtenant to meet its corporate leasing requirements (for example, as may be required of nationally-recognized brands as a pre-requisite to leasing), in favor of a Qualifying Subtenant, which Recognition Agreement shall provide that, in the event this Lease shall be terminated on account of the default of Tenant, City shall recognize and honor the terms of the Sublease between such Qualifying Subtenant and Tenant as a direct Lease between City and the Qualifying Subtenant and shall not disturb or interfere with such Qualifying Subtenant's possession of the premises under its Sublease due to such termination or

otherwise, on the condition that: (a) City shall not be subject to any offsets or defenses that a Qualifying Subtenant might have as to Tenant or to any claims for damages against Tenant as its landlord, nor shall City be obligated to fund to, or for the benefit of, a Qualifying Subtenant, any then undisbursed (as of the effective date of such recognition) tenant improvement or refurbishment allowance or other allowances or monetary concessions; (b) City shall not be required or obligated to credit a Qualifying Subtenant with any rent, additional rent, security deposits, security or other amounts delivered or paid by such Qualifying Subtenant to Tenant; and (c) a Qualifying Subtenant shall make full and complete attornment to City, as its landlord, under a written agreement executed by City and such Qualifying Subtenant, so as to establish direct privity of contract between City and such Qualifying Subtenant with the same force and effect as though the Qualifying Sublease was originally made directly between City and the Qualifying Subtenant.

The provisions of this Section 11.13.2 are self-operative and shall apply, without any further action by any party, upon a determination in accordance with this Section that a sublease or license is a Qualifying Sublease, whether or not the parties enter into a Recognition Agreement as provided above.

ARTICLE 12
REPAIRS AND MAINTENANCE

12.1 Repairs. During the Term, Tenant shall, at its sole cost and expense, operate, maintain and repair (including the making of all necessary replacements, whether ordinary or extraordinary) the Premises, the Improvements, the Buildings (and every part of each of them) and all water, sewer, gas and other utility connections, pipes and mains that are located on the Premises (unless the same is within the operational control of City, a public utility company or any other independent third party) in good and safe order and condition, reasonable wear and tear (which could not be avoided by good maintenance practices) excepted, provided, however, that Tenant's obligations with respect to Restoration resulting from a Casualty or Condemnation shall be as provided in Articles 9 and 10. Tenant's obligations under this Section 12.1 include the maintenance of all common areas in a safe, clean and attractive condition, free of graffiti, and the maintenance of landscaped areas in an attractive and thriving condition. Tenant shall not commit or suffer waste to the Premises. Subject to Articles 9 and 10, all repairs to the Premises made by Tenant shall utilize workmanship and materials comparable or higher in quality and class to the original work and shall be made in compliance with (a) all Applicable Laws (including, for the avoidance of doubt, all Environmental Laws) and (b) the CC&Rs.

ARTICLE 13
CHANGES, ALTERATIONS AND ADDITIONS

13.1 Initial Improvements. Tenant shall construct and complete, or cause to be constructed and completed, the Required Initial Infrastructure, the Required Buildings and the Required Retail Buildings and shall use its best efforts to construct and complete the Additional Initial Buildings, all in accordance with the requirements of the DDA, including without limitation, Article 9 thereof (Construction Obligations). Notwithstanding the foregoing, Tenant

shall have the right to transfer its obligations to construct and complete all or any portion of the Required Buildings, the Required Retail Buildings or the Additional Initial Buildings to the Phase Developer for Phase 1 by providing written notice thereof to City. Upon such notice, City and Tenant shall enter into an amendment to this Lease to remove the obligation to construct and complete (or use best efforts to construct and complete) the transferred amount of the Required Buildings, the Required Retail Buildings or the Additional Initial Buildings so transferred, effective upon a corresponding amendment to this Lease with the Phase Developer assuming such obligation.

13.2 Subsequent Improvements. After such Required Initial Infrastructure and Required Buildings have been Substantially Completed (or with City's consent, during the period that Tenant is constructing the Initial Improvements), Tenant shall have the right to add such additional Improvements and/or Buildings and make, construct, reconstruct, replace, modify and enhance the Required Initial Infrastructure and Required Buildings, and such additional Improvements and/or Buildings and/or such other Improvements within the Premises as it shall deem necessary, convenient or appropriate, including the right to demolish existing Improvements that in Tenant's good faith judgment, have become obsolete, unlawful, or uneconomic, or otherwise are not consistent with Tenant's plans for the optimal use of the Premises, including any Improvements (and any additions to existing Buildings or Improvements) as are required under Articles 9, 10 and 11 (any such demolition, replacement, alteration, rebuilding or addition of improvements, a "**Capital Improvement**"); provided, that Tenant shall complete all such Capital Improvements in compliance with the following requirements:

13.2.1 No Capital Improvement shall be undertaken unless and until Tenant shall have procured from all Governmental Authorities all permits, consents, certificates and approvals required from any Governmental Authority having jurisdiction for the applicable Capital Improvement which are required to be obtained prior to the commencement of the proposed Capital Improvement (each approval, an "**Improvement Approval**"). City, at the sole cost and expense of Tenant, shall promptly execute and deliver any applications for Improvement Approvals that require the execution by the fee owner of the Premises, and otherwise cooperate with Tenant as reasonably required or requested by Tenant in order for Tenant to obtain all Improvement Approvals, provided such documents or instruments do not impose any liability or obligation on City (unless paid by Tenant or against which City is indemnified by Tenant in a manner reasonably satisfactory to City) or reduce any of the rights of City under this Lease in more than a *de minimis* manner. True copies of all such Improvement Approvals shall be delivered by Tenant to City prior to commencement of any proposed Capital Improvement.

13.2.2 All Capital Improvements shall be made with reasonable diligence and continuity (subject to Force Majeure) and in a good and workmanlike manner and in compliance with (i) all Improvement Approvals and (ii) all other Applicable Laws.

13.2.3 No construction of any Capital Improvement shall be commenced until Tenant shall have delivered to City original insurance policies, or certificates of insurance with respect to such policies together with copies of such policies, issued by responsible insurers and bearing notations evidencing the payment of premiums or installments thereof then due or accompanied

by other evidence satisfactory to City of such payments, for the insurance required by Article 8. If, under the provisions of any casualty, liability or other insurance policy or policies then covering the Premises or any part thereof, any consent to such Capital Improvement by the insurance company or companies issuing such policy or policies shall be required to continue and keep such policy or policies in full force and effect, Tenant, prior to the commencement of construction of such Capital Improvement, shall obtain such consent and pay any additional premiums or charges therefor that may be imposed by said insurance company or companies.

13.2.4 As-Built PlansUpon completion of any Capital Improvement, Tenant shall furnish to City a complete set of "as-built" plans for such Capital Improvement together with a copy of the Certificate of Occupancy issued therefor, to the extent a modification thereof was required.

13.3 TitleTitle to all additions, alterations, improvements and replacements made to the Improvements, including, without limitation, the Capital Improvements, shall forthwith vest in City as provided in Section 2.5, without any obligation by City to pay any compensation therefor to Tenant.

ARTICLE 14
REQUIREMENTS OF PUBLIC AUTHORITIES AND OF INSURANCE UNDERWRITERS AND POLICIES

14.1 Compliance with Applicable Law. Subject to this Lease, Tenant shall comply, and shall cause Tenant's contractors and subcontractors and all Subtenants and other occupants of the Premises to comply, with all Applicable Law without regard to the nature or cost of the work required to be done, extraordinary, as well as ordinary; provided, however, that (i) the foregoing shall not apply to obligations that are the responsibility of City under this Lease, the DDA or any other Project Document and (ii) Tenant shall be entitled to avail itself of any variances, waivers, grandfather exceptions or similar relief as may be available from time to time.

14.2 Right to Contest. Tenant, at its sole cost and expense, may contest, by appropriate proceedings prosecuted diligently and in good faith, the validity or applicability of any Applicable Law; provided, that: (a) City shall not be subject to civil liability or criminal penalty or to prosecution for a crime, nor shall the Premises (including the City's fee interest therein) or any part thereof be subject to being sold, forfeited, condemned or vacated, by reason of non-compliance, by reason of such contest; (b) if an adverse decision in such proceeding or the failure to pay any judgment resulting from such adverse decision could reasonably result in the imposition of a lien in the amount of two million dollars ($2,000,000) or more against the Premises, then before the commencement of such contest, Tenant shall furnish to City the bond of a surety company reasonably satisfactory to City, or other deposit or security in each case in form, substance and amount reasonably satisfactory to City, and shall indemnify City against the cost of such compliance and liability resulting from or incurred in connection with such contest or non-compliance (including the costs and expenses in connection with such contest); (c) Tenant shall keep City regularly advised as to the status of such proceedings; (d) such contest shall be prosecuted with diligence and in good faith to final adjudication, settlement, compliance or other disposition of Applicable Law so contested; (e) such contest, and any disposition thereof

(including the cost of complying therewith and paying all fines, penalties, interest, fees, costs and expenses in connection therewith), shall be at the sole cost and expense of and shall be paid by Tenant; (f) promptly after disposition of the contest, Tenant shall comply with such Applicable Law to the extent determined by such contest; (g) there is no existing Event of Default, (h) if the consent of any Leasehold Mortgagee or lender under a Mezzanine Loan is required in order for Tenant to commence such contest, such consent has been obtained and evidence thereof provided to City; and (g) notwithstanding any bond, deposit or other security furnished to City, Tenant shall comply with any Applicable Law in accordance with the applicable provisions of this Lease if the Premises, or part thereof, shall be in danger of being forfeited or if City is in danger of being subject to criminal liability or penalty, or civil liability, in connection with such contest.

14.3 Environmental Requirements.

14.3.1 Requirements Applicable to Tenant.

(a) Subject to City performing its obligations relating to Environmental Activities and/or environmental conditions under this Lease, (x) Tenant shall not undertake, permit or knowingly suffer any Environmental Activity with respect to the Premises other than (i) in compliance with Applicable Law and (ii) in such manner as shall keep the Premises free from any lien imposed in respect of or as a consequence of such Environmental Activity, and (y) Tenant shall take all commercially reasonable steps to assure that any Environmental Activity undertaken within the Premises is undertaken in such a manner as to provide prudent safeguards against potential risks to human health and the environment.

(b) [Reserved].

14.3.2 [Reserved].

14.3.3 Right to Audit. City shall have the right from time to time and at its expense to conduct, following reasonable advance notice of at least fifteen (15) Business Days, an environmental audit of the Premises, if and only if there are commercially reasonable indications of a material breach of Tenant's obligations under this Section 14.3, and in each case, Tenant shall reasonably cooperate with the conduct of the audit by City, subject to the rights of the Subtenants under their Subleases (which City shall not violate). City shall use commercially reasonable efforts to minimize interference with the existing uses and occupancies of the Premises (and City shall not cause or create in any manner any material interference with the use and business operations of the Subtenants) and shall repair any damage to the Premises resulting from City's entry and/or audit of such property. In the event any such audit shall indicate that Tenant shall have committed a material breach of its obligations under this Section 14.3, Tenant shall bear the reasonable costs of such audit.

ARTICLE 15
DISCHARGE OF LIENS

15.1 Creation of Liens. Subject to Section 15.2, and except as otherwise expressly provided in this Lease, Tenant shall not create or permit to be created any lien, encumbrance or charge upon the Premises or any part thereof, the income therefrom or any assets of, or funds appropriated to, City, and Tenant shall not suffer any other matter or thing whereby the estate, right and interest of City in the Premises or any part thereof might be impaired.

15.2 Discharge of Liens. If any mechanic's, laborer's or materialman's lien (other than a lien arising out of any work performed by or on behalf of City) or other lien, encumbrance or charge is at any time filed or asserted in violation of Section 15.1 against the Premises or any part thereof, Tenant shall (a) within forty-five (45) days after notice of such filing or assertion (or sooner if necessary to prevent the enforcement or foreclosure of such lien), cause the same to be discharged of record by payment, deposit, bond, order of a court of competent jurisdiction or otherwise, and (b) indemnify, defend, protect and hold City harmless from and against any and all Claims, Damages and Costs arising out of such lien and/or the sums claimed to be due which give rise to such lien. If Tenant fails to cause the lien to be so discharged of record within such forty-five (45) day period (or such shorter period as is necessary to prevent the enforcement or foreclosure of such lien), then, in addition to any other rights or remedies, City may, but shall not be obligated to, discharge the lien either by paying the amount claimed to be due or by procuring the discharge of the lien by deposit or by bonding proceedings. Any amount so paid by City, including all reasonable costs and expenses incurred by City in connection therewith, together with interest thereon at the Default Rate from the respective dates of City's making of the payment or incurring of the costs and expenses until the date of actual repayment to City of such amounts, shall constitute Additional Rent and shall be paid by Tenant to City within ten (10) days after demand. However, Tenant shall not be required to discharge any such lien if Tenant is contesting the same in good faith by proceedings in which the enforcement and foreclosure of such lien is stayed and has furnished a cash deposit, a security bond or other such security reasonably satisfactory to City in an amount sufficient to pay such lien including interest and penalties.

15.3 No Authority to Contract in Name of City. Nothing contained in this Lease shall be deemed as constituting the consent or request of City, express or implied, by inference or otherwise, to any contractor, subcontractor, laborer or materialman for the performance of any labor or the furnishing of any materials for any specific improvement, alteration to or repair of the Premises or any part thereof, nor as giving Tenant any right, power or authority to contract for or permit the rendering of any services or the furnishing of materials that would give rise to the filing of any lien against City's interest in the Premises, or any assets of, or funds appropriated to, City.

ARTICLE 16
DELIVERY OF POSSESSION AND CONDITION OF TITLE

16.1 As-Is Condition. Except as otherwise expressly provided in this Lease or in the other Project Documents, no representations or warranties, express or implied, have been made by or on behalf of City in respect of the Premises or the status of title or the physical condition

thereof, including the environmental condition thereof and the zoning or other laws, regulations, rules and orders applicable thereto, the amount of Impositions that may be assessed or the use that may be made of the Premises, and Tenant accepts possession of the Premises in its "**AS IS,**" "**WITH ALL FAULTS**" condition on the Commencement Date. Except as otherwise expressly provided in this Lease or in the other Project Documents, (a) Tenant has full responsibility for the condition, alteration, maintenance, management, repair and replacement of the Premises, (b) City has no obligation whatsoever to perform any work or make any repairs with respect to the Premises, to furnish any services with respect to the Premises, or to incur any expenses with respect to the Premises, and (c) City has no responsibility with respect to the condition of the Premises (including any latent defects). Tenant expressly acknowledges and agrees that City has not made and is not making, and Tenant, in executing and delivering this Lease, is not relying upon, any warranties, representations, promises or statements, except to the extent that the same are expressly set forth in this Lease or the other Project Documents.

16.2 Tenant's Representations. Tenant hereby represents and warrants to City as of the Commencement Date that:

16.2.1 Tenant is a limited liability company duly organized and existing in good standing under the laws of the State of Delaware, and qualified to do business in the State of California;

16.2.2 Tenant has the full right, power, authority and legal capacity to execute and deliver this Lease, to execute and deliver the instruments referred to herein, and to enter into and fully perform the transactions contemplated hereby, or thereby;

16.2.3 All actions and consents required by Tenant to authorize the transactions contemplated by this Lease have been duly performed and obtained;

16.2.4 All Persons who execute this Lease and the instruments contemplated by this Lease on behalf of Tenant will be duly authorized and empowered on behalf of Tenant to do so and to enter into all transactions contemplated by this Lease, and by such instruments;

16.2.5 The execution, delivery and consummation of the transactions contemplated hereby and performance of this Lease have not and will not conflict with any provisions of any federal, state or other governmental laws or regulations to which Tenant is subject, or conflict with, result in any breach of, or constitute a default under, any mortgage, deed of trust, lease, bank loan or credit agreement, corporate charter, bylaws or other instrument or agreement to which Tenant is a party or by which Tenant or its assets may be bound or affected;

16.2.6 This Lease is a legal, valid and binding obligation of Tenant, enforceable against Tenant in accordance with its terms, except to the extent that such enforcement may be limited by applicable bankruptcy, insolvency and other similar laws affecting creditors' rights generally;

16.2.7 There are no actions, suits or proceedings pending or, to the knowledge of Tenant, threatened against or affecting Tenant, at law or in equity or before any Governmental Authority which would impair Tenant's ability to perform its obligations under this Lease; and

16.2.8 Tenant is (i) in compliance with the Patriot Act, as applicable; (ii) in compliance with the Office of Foreign Assets Control sanctions and regulations promulgated under the authority granted by the Trading with the Enemy Act, 12 U.S.C. § 95 (a) et seq., and the International Emergency Economic Powers Act, 50 U.S.C. § 1701, et seq., in each case as applicable and as amended or replaced from time to time; and (iii) a Person that (w) is not, and has never been, under investigation by any Governmental Authority for, and has not been charged with or convicted of a crime under, 18 U.S.C. §§ 1956 or 1957 (as amended or replaced from time to time) or any predicate offense thereunder; (x) has never been assessed a civil penalty under, or had any of its funds seized, frozen or forfeited in any action relating to, any anti-money laundering laws or predicate offenses thereunder; (y) has taken such steps and implemented such policies as are reasonably necessary to ensure that it is not promoting, facilitating or otherwise furthering, intentionally or unintentionally, the transfer, deposit or withdrawal of criminally-derived property, or of money or monetary instruments that are (or that Tenant suspects or has reason to believe are) the proceeds of any illegal activity or that are intended to be used to promote or further any illegal activity; and (z) has taken such steps and implemented such policies as are reasonably necessary to ensure that it is in compliance with all laws and regulations applicable to its business for the prevention of money laundering and with anti-terrorism laws and regulations, with respect both to the source of funds from its investors and from its operations, which steps include the development and implementation of an anti-money laundering compliance program within the meaning of section 352 of the Patriot Act, to the extent Tenant is required to develop such a program under the rules and regulations promulgated pursuant to section 352 of the Patriot Act.

16.3 City's Representations. City hereby represents and warrants to Tenant as of the Commencement Date that:

16.3.1 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 Lease, to execute and deliver the instruments referred to herein, and to enter into and fully perform the transactions contemplated hereby, or thereby;

16.3.2 All actions and consents required by City to authorize the transactions contemplated by this Lease have been duly performed and obtained;

16.3.3 All Persons who execute this Lease and the instruments contemplated by this Lease on behalf of City will be duly authorized and empowered on behalf of City to do so and to enter into all transactions contemplated by this Lease, and by such instruments;

16.3.4 The execution, delivery and consummation of the transactions contemplated hereby and performance of this Lease have not and will not conflict with any provisions of any federal, state or other governmental laws or regulations to which City is subject, or conflict with, result in any breach of, or constitute a default under, any mortgage, deed of trust, lease, bank loan or credit agreement, corporate charter, bylaws or other instrument or agreement to which City is a party or by which City or its assets may be bound or affected;

16.3.5 There are no actions, suits or proceedings pending or, to the knowledge of City, threatened against or affecting City, at law or in equity or before any Governmental Authority which would impair City's ability to perform its obligations under this Lease; and

16.3.6 This Lease is a legal, valid and binding obligation of City, enforceable against City in accordance with its terms, except to the extent that such enforcement may be limited by applicable bankruptcy, insolvency and other similar laws affecting creditors' rights generally.

ARTICLE 17
CITY NOT LIABLE FOR INJURY OR DAMAGE, ETC.

17.1 No Liability for Injury. Subject to the provisions of this Lease, and the Project Documents, City shall not in any event whatsoever be liable to Tenant or to any other Person for any injury or damage happening on, in or about the Premises and its appurtenances to Tenant or to any other Person, nor for any injury or damage to the Premises or to any property belonging to Tenant or to any other Person, that may be caused by any fire or breakage, or by the use, misuse or abuse any of the Improvements, or the streets or sidewalk area within the Premises or that may arise from any other cause whatsoever, except to the extent any of the foregoing shall have resulted from City Fault.

17.2 No Liability for Utility Failure. Subject to the provisions of this Lease, and the Project Documents, City (in its proprietary capacity as landlord under this Lease) shall not be liable to Tenant or to any other Person for any failure of water supply, gas or electric current, nor for any injury or damage to any property of Tenant or of any other Person or to the Premises, Improvements or Buildings caused by or resulting from gasoline, oil, steam, gas, electricity, or hurricane, tornado, flood, wind or similar storms or disturbances, or water, rain or snow which may leak or flow from the street, sewer, gas mains or subsurface area or from any portion of the Premises or the Buildings, or leakage of gasoline or oil from pipes, appliances, sewer or plumbing works therein, or from any other place, nor for interference with light or other incorporeal hereditaments by anybody, or caused by any public or quasi-public work, except to the extent any of the foregoing shall have resulted from City Fault.

ARTICLE 18
INDEMNIFICATION OF CITY AND OTHERS

18.1 Indemnification. Tenant, to the fullest extent permitted by law, shall indemnify, defend and save City and its agents, directors, Affiliates, officials, officers, managers, members, managing agents, contractors, servants and employees (collectively, the "**City Indemnitees**"), harmless from and against any and all loss, cost, liabilities, suits, obligations, fines, damages, penalties, claims, costs, charges and expenses (including engineers', architects' and attorneys' fees and charges) (collectively, "**Claims, Damages and Costs**") that may be suffered by, imposed upon or incurred by or asserted against any of the City Indemnitees by reason of any of the following occurring during the Term, except to the extent that the same shall have been caused in whole or in part by City Fault (or other conduct that otherwise is the subject of City's indemnification under Section 12.2.2):

18.1.1 any negligent or tortious act or failure to act of the Tenant Parties or any of them on or about or within the Premises or any part thereof during the Term and after the Term for so long as Tenant, or any Person holding through or under Tenant, remains in possession of the Premises; or

18.1.2 any accident, injury (including death at any time resulting therefrom) or damage to any Person or property occurring in or on or about the Premises or any part thereof during the Term and after the Term for so long as Tenant, or any Person holding through or under Tenant, remains in possession of the Premises, without regard to the scope or amount of insurance actually carried by Tenant; or

18.1.3 any breach or default by Tenant under this Lease; or

18.1.4 any claims made or created by any Subtenants in respect of the Premises against any City Indemnitee during or after the Term (including claims for return of security deposits and prepaid rent); or

18.1.5 any holdover by Tenant, or by any Person(s) holding under or through Tenant, after the Term, except where such Person(s) are entitled to remain in possession by virtue of City's express agreement.

18.2 Obligations Not Affected by Insurance. The obligations of Tenant under this Article 18 shall not be affected or limited in any way by the presence or absence in any case of insurance coverage or by the failure or refusal of any insurance carrier to perform any obligation on its part under insurance policies affecting the Premises.

18.3 Notice and Defense Process. If any claim, action or proceeding is made or brought against any of the City Indemnitees by reason of any event for which Tenant has agreed to indemnify the City Indemnitees in Section 18.1, then, upon demand by such City Indemnitee, Tenant shall resist or defend such claim, action or proceeding (in such City Indemnitee's name, if necessary) by the attorneys for Tenant's insurance carrier (if such claim, action or proceeding is covered by insurance maintained by Tenant) or (in all other instances) by such attorneys as Tenant shall select and such City Indemnitee shall approve, which approval shall not be unreasonably withheld, conditioned or delayed. Notwithstanding the foregoing, and except with respect to personal injury or other liability claims within the coverage limits afforded by Tenant's liability insurance and being defended by attorneys for, or approved by, Tenant's insurance carrier, a City Indemnitee may, in the event that there exists a dispute, an actual or potential conflict of interest or a divergence of interest that (in each case) would make it inadvisable in the good-faith judgment of such City Indemnitee to be (or continue to be) represented by such attorneys, engage its own attorneys to defend or to assist in its defense of such claim, action or proceeding, and the Tenant shall pay the reasonable fees and disbursements (including disbursements for expert witnesses and consultants) of such attorneys promptly as they are incurred. No City Indemnitee will unreasonably withhold, condition or delay its consent to any settlement proposed by Tenant of a matter that is fully covered by Tenant's indemnification hereunder; provided, that such settlement provides solely for the payment of money and does not impose any other material liability on such City Indemnitee.

18.4 Survival. The provisions of this Article 18 (and Section 12.2.2) shall survive the Expiration Date or any earlier termination of the Term with respect to actions or the failure to take any actions or any other matter arising prior to the Expiration Date or such earlier termination.

ARTICLE 19
RIGHT OF INSPECTION, ETC.

19.1 City Right of Inspection. Tenant shall permit City and its contractors, employees, agents and representatives to enter the Premises at all reasonable times and upon reasonable notice (except in cases of emergency, in which case no notice is required) for the purpose of (a) inspecting the Premises, (b) determining whether or not Tenant is in compliance with its obligations under this Lease, (c) making any necessary repairs to the Premises and performing any work therein that City is entitled to perform under Section 20.1, (d) showing the Premises to potential purchasers or to lenders or potential lenders, and during the last two years of the Term to potential tenants; provided, that, except in the event of an emergency and except as otherwise provided in this Lease, City shall have delivered to Tenant notice specifying such repairs or work and Tenant shall have failed to complete such repairs or such work as soon as reasonably possible, and in all cases within thirty (30) days after the giving of such notice (subject to Force Majeure), or if such repairs or such work cannot reasonably be completed during such thirty day period, to have commenced and be diligently pursuing the same (subject to Force Majeure). Notwithstanding the foregoing, City's right to inspect the interior of any completed structure or Building shall be further limited to the extent that Tenant has only limited rights to enter same in accordance with any agreements with Subtenants and other occupants.

ARTICLE 20
RIGHT TO PERFORM COVENANTS

20.1 City Right to Perform Tenant Covenants. If City provides notice to Tenant of an event or circumstance that requires the action of Tenant which event or circumstance creates an emergency or in City's reasonable opinion creates a material risk of damage or injury to material interests of City and Tenant fails to commence to provide the required action within a reasonable period of time (which shall in no event be more than twenty (20) days after Tenant's receipt of any such notice), given the circumstances, after the receipt of such notice, then, without waiving any other rights or remedies which City may have under this Lease or at law or in equity, City may proceed to take the required action, and if such action was required under the terms of this Lease to be taken by Tenant, then City shall be entitled to reimbursement by Tenant of City's actual costs of taking such action, together with interest thereon at the Default Rate, such reimbursement to be made within thirty (30) days of Tenant's receipt of an invoice from City setting forth a reasonably particularized breakdown of such actual costs in connection with taking such action. If Tenant delivers to City within thirty (30) days after receipt of City's invoice an objection to the payment of such invoice, setting forth with reasonable particularity Tenant's reasons for its claim that such action did not have to be taken by City pursuant to the terms of this Lease, then City may submit such dispute to arbitration in accordance with the terms of Article 28. If City prevails in the arbitration and receives an award in its favor, Tenant shall pay the amount of the award to City within fifteen (15) Business Days after the date of the

award, together with interest at the Default Rate computed from the date of the expenditure to the date of payment by Tenant to City of the amount of the award.

20.2 Tenant's Self-Help Right. In the event that Tenant provides notice to City of an event or circumstance that requires the action of City with respect to any of its obligations under this Lease and City fails to commence to provide the required action within a reasonable period of time (which shall in no event be less than twenty (20) days after City's receipt of any such notice, except in the event of an emergency), given the circumstances, after the receipt of such notice, then Tenant may proceed to take the required action upon delivery of an additional ten (10) Business Days' notice (or one Business Day notice in the event of an emergency) specifying that Tenant is taking such required action (and if City commences to provide the required action within such additional ten (10) Business Days (or one Business Day, as applicable) and thereafter prosecutes the action to completion with reasonable diligence, Tenant shall have no rights under this Section 20.2 to take such action), and if such action was required under the terms of this Lease to be taken by City, then Tenant shall be entitled to reimbursement by City of Tenant's actual costs of taking such action, together with interest thereon at the Default Rate. If City does not deliver a detailed objection to Tenant, within thirty days after receipt of an invoice by Tenant of its actual costs of taking action which Tenant claims should have been taken by City, and if such invoice from Tenant sets forth a reasonably particularized breakdown of such actual costs in connection with taking such action on behalf of City, then Tenant shall be entitled to deduct from Rent payable by Tenant under this Lease, the amount of its actual costs (and interest thereon at the Default Rate) set forth in such invoice. If, however, City delivers to Tenant within thirty (30) days after receipt of Tenant's invoice an objection to the payment of such invoice, setting forth with reasonable particularity City's reasons for its claim that such action did not have to be taken by Tenant pursuant to the terms of this Lease, then Tenant may submit such dispute to arbitration in accordance with the terms of Article 28. If Tenant prevails in the arbitration and receives an award in its favor, City shall pay the amount of the award to Tenant within fifteen (15) Business Days after the date of the award, together with interest at the Default Rate computed from the date of the expenditure to the date of payment by City to Tenant of the amount of the award.

20.3 Time to Perform an Act, or Cure Non-Performance, if a Date is Not Otherwise Specified. If no specific date for the time to perform an act required by this Lease, or to cure the failure to perform such act, is stated in this Lease, the Party obligated to perform such act must perform the act within a reasonable time in the circumstances.

ARTICLE 21
PERMITTED USES

21.1 Permitted Use. Tenant shall occupy the Premises for the purposes of (i) constructing, maintaining, financing, refinancing, operating, developing, subleasing, repairing, altering, rebuilding, restoring and otherwise using the Premises, the Buildings and the Improvements as contemplated by this Lease, the DDA, the Project Documents and any applicable Authorizations, (ii) any other uses specifically permitted in this Lease, consistent with any applicable DAP approved for the Premises, (iii) incidental uses thereto or in furtherance thereof and (iv) any other purposes approved by City in its sole and absolute judgment (collectively, the "**Permitted Uses**"), and for no other use or purpose.

21.2 No Unlawful Use. Tenant shall not use or occupy the Premises, nor knowingly permit or suffer the Premises or any part thereof to be used or occupied, for any unlawful, illegal or extra-hazardous business, use or purpose, or in such manner as to constitute a nuisance of any kind (public or private) or that unreasonably interferes with the beneficial use of other property. With reasonable promptness following the discovery of any such unpermitted, unlawful, illegal or extra-hazardous use, nuisance or interference with other property, Tenant, at its sole cost and expense, shall commence to take all necessary actions, legal and equitable, to compel the discontinuance of such use.

21.3 Compliance with CEQA Mitigation Measures. Tenant shall perform, or cause to be performed all Mitigation Measures identified in the Project MMRP that are both the responsibility of the project sponsor (including its successors in interest and contractors) and applicable to the Premises, as such measures are more particularly identified in Exhibit E attached hereto (the "**Applicable MMRP Measures**"). Tenant shall insure that all Subtenants and other occupants of all of any part of the Premises are provided with a copy of the Project MMRP and Applicable MMRP Measures and that they comply with the Applicable MMRP Measures as the same apply to their particular uses.

21.4 No Adverse Possession. Tenant shall not knowingly suffer or permit the Premises or any portion thereof to be used, and shall take all necessary actions to prevent the Premises or any portion thereof from being used, by the public in such manner as might reasonably tend to impair title to the Premises or any portion thereof, or in such manner as might reasonably make possible a claim or claims of adverse usage, prescriptive rights or adverse possession by the public, as such, or of implied dedication of the Premises or any portion thereof.

ARTICLE 22
EVENTS OF DEFAULT; CONDITIONAL LIMITATIONS, REMEDIES, ETC.

22.1 Events of Default. Subject to the provisions of Article 29, each of the events listed in Sections 22.1.1 through 22.1.9 shall be an "**Event of Default**" hereunder. To be effective, each notice required to be given by City to Tenant under this Section 22.1 shall be sent, contemporaneously with notice to Tenant, to the Persons listed on Exhibit L and to each Leasehold Mortgagee and Mezzanine Lender that has made a written request to City that a copy of any such notice:

22.1.1 if Tenant fails to pay any item of Rent, or any part thereof, when it becomes due and payable and such failure continues for ten (10) days after notice of such failure by City to Tenant specifying such failure;

22.1.2 if Tenant fails to observe or perform one or more of its other obligations under this Lease (for the avoidance of doubt, not including matters or failures covered by Sections 22.1.1 and 22.1.3 through 22.1.9), and such failure continues for thirty (30) days after notice of such failure from City to Tenant specifying such failure (unless such failure requires work to be performed, acts to be done, or conditions to be removed that, by their nature or because of Force Majeure, cannot reasonably be performed, done or removed, as the case may be, within such

thirty-day period, in which case no Event of Default shall be deemed to exist as long as Tenant begins curing the same within such thirty-day period and, subject to Force Majeure, diligently and continuously prosecutes the same to completion); provided, however, that notwithstanding any provision of this Lease to the contrary, an Event of Default described in this Section 22.1.2 shall not be grounds for termination of this Lease under this Article 22 unless the nature of Tenant's failure to observe or perform one or more of its other obligations under this Lease materially impairs the interest of City in this Lease and the Premises and City has no other adequate remedy for such Event of Default;

22.1.3 if Tenant fails to discharge any mechanic's, laborer's or materialman's lien or other lien, encumbrance or charge that is its obligation to discharge under the terms of this Lease within the applicable time period provided in this Lease;

22.1.4 if Tenant fails to maintain any of the insurance required to be maintained by Tenant under the terms of this Lease;

22.1.5 if a levy under execution or attachment is made against the Premises and such execution or attachment has not been vacated or removed by court order, bonding or otherwise within a period of thirty (30) days;

22.1.6 if Tenant makes an assignment for the benefit of creditors;

22.1.7 if Tenant files a voluntary petition under Title 11 of the United States Code or if such petition is filed against it, and an order for relief is entered, or if Tenant shall file any petition or answer seeking, consenting to or acquiescing in any reorganization, arrangement, composition, readjustment, liquidation, dissolution, or similar relief under the present or any future federal bankruptcy code or any other present or future applicable federal, state or other statute or law, or shall seek or consent to or acquiesce in or suffer the appointment of any trustee, receiver, custodian, assignee, sequestrator, liquidator or other similar official of Tenant, or of all or any substantial part of its properties or of the Premises or any interest therein of Tenant;

22.1.8 if within ninety (90) days after the commencement of any proceeding against Tenant seeking any reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar relief under the present or any future federal bankruptcy code or any other present or future applicable federal, state or other statute or law, such proceeding shall not have been dismissed, or if, within ninety (90) days after the appointment, without the consent or acquiescence of Tenant, of any trustee, receiver, custodian, assignee, sequestrator, liquidator or other similar official of Tenant or of all or any substantial part of its properties or of the Premises or any interest therein of Tenant, such appointment shall not have been vacated or stayed on appeal or otherwise, or if, within ninety days after the expiration of any such stay, such appointment shall not have been vacated.

22.1.9 if a Material Breach (as defined in the DDA) on the part of Tenant as the Phase Developer occurs under the DDA (so long as it is in effect); provided, however, that the City's remedies shall be limited to the remedies set forth in the DDA and shall not result in a termination of this Lease unless City exercises its termination rights under the DDA for the Material Breach as to Tenant acting in its capacity as Phase Developer.

22.2 Primary Remedies; Termination of this Lease. If any Event of Default occurs:

22.2.1 Subject to the provisions of Section 22.1.2 and Section 22.1.9, City shall have the right at any time thereafter to give notice to Tenant stating that this Lease shall terminate on the date specified in such notice, which date shall be not less than thirty (30) days after the giving of such notice, and if City gives such notice, then this Lease shall terminate on such date; upon such termination, Tenant immediately shall quit and surrender the Premises and the provisions of Article 27 shall apply; and

22.2.2 Following an Event of Default by Tenant, City shall also have the right, with or without terminating this Lease, to re-enter the Premises pursuant to legal proceedings or pursuant to any notice provided by law and eject all parties in possession therefrom. Without terminating this Lease and with or without re-entering the Premises, City may, at any time and from time to time following an Event of Default, either recover all Rent provided for hereunder as it becomes due or re-let the Premises, or any part or parts thereof, for the account of Tenant, or otherwise, receive and collect the rents therefor, applying the same first to the payment of such expenses as City may have paid, assumed or incurred in recovering possession of the Premises, including reasonable costs, expenses and attorneys' fees, and for placing the same in good order and condition, or preparing or altering the same for re-letting, and all other expenses, commissions and charges paid, assumed or incurred by City in or in connection with re-letting the Premises, and then to the fulfillment of the covenants of Tenant to be performed under this Lease. No reentry or taking possession of the Premises by City pursuant to this Section 22.2.2 shall be construed as an election to terminate this Lease or Tenant's liability for the payment of Rent or other charges due or accruing hereunder, or as an acceptance of Tenant's surrender of the Premises, unless a written notice of such intention is given to Tenant or unless the termination thereof is decreed by a court of competent jurisdiction. Notwithstanding any reletting without termination by City because of any Event of Default, City may at any time after such reletting elect to terminate this Lease for any such Event of Default.

22.3 Effect of Termination. If this Lease is terminated as provided in Section 22.2.1, City shall have all the rights and remedies of a landlord provided by section 1951.2 of the California Civil Code, and shall be entitled to recover from Tenant, and cause Tenant to pay City on demand:

22.3.1 the worth at the time of the award of the unpaid Rent that had been earned at the time of termination;

22.3.2 the worth at the time of the award of the amount by which the unpaid Base Rent that would have been earned after termination until the time of the award exceeds the amount of such rental loss that Tenant proves could have been reasonably avoided;

22.3.3 the worth at the time of the award of the amount by which the unpaid Base Rent after the time of award until the Expiration Date exceeds the amount of such rental loss that Tenant proves could be reasonably avoided;

22.3.4 any other amount necessary to compensate City for all the detriment proximately caused by Tenant's failure to perform its obligations under this Lease or which in the

ordinary course of events would be likely to result therefrom including, without limitation, all costs and expenses incurred by City in (i) retaking possession of the Premise, including reasonable attorney's fees, (ii) maintaining or preserving the Premises, (iii) preparing the Premises for a new tenant, including repairs or alterations to the Premises, and (iv) leasing commissions; and

22.3.5 Such other amounts in addition to or in lieu of the foregoing as may be permitted from time to time by Applicable Law.

As used in Sections 22.3.1 and 22.3.2 above, the "worth at the time of award" is computed by allowing interest at the rate of ten percent (10%). As used in Section 22.3.3 above, the "worth at the time of award" is computed by discounting such amount at the discount rate of the Federal Reserve Bank of San Francisco at the time of award plus one percent (1%).

22.4 Injunction. In the event of any breach or threatened breach by a Party of any of the covenants, agreements, terms or conditions contained in this Lease, the non-breaching Party shall be entitled to seek to enjoin such breach or threatened breach and shall have the right to invoke any rights and remedies allowed at law or in equity or by statute or otherwise as though re-entry, summary proceedings, and other remedies were not provided for in this Lease. To the extent permitted by law, each Party hereby waives any requirement for the posting of bonds or other security in any such action.

22.5 Rights Cumulative. Subject to the provisions of this Lease and Applicable Law, each right and remedy of each of City and Tenant provided for in this Lease shall be cumulative and shall be in addition to every other right or remedy provided for in this Lease or now or hereafter existing at law or in equity or by statute or otherwise, and the exercise or beginning of the exercise by a Party of any one or more of its rights or remedies provided for in this Lease or now or hereafter existing at law or in equity or by statute or otherwise shall not preclude the simultaneous or later exercise by such Party of any or all other rights or remedies provided for in this Lease or now or hereafter existing at law or in equity or by statute or otherwise.

22.6 Enforcement Costs. Tenant shall reimburse City, as Additional Rent, for all costs and expenses incurred by City in connection with any action or proceeding brought by City, or to which City may be made a party, by reason of any failure by Tenant in the performance or observance of any of the terms, covenants or conditions on Tenant's part to be observed or performed under this Lease. In the event City is the prevailing party in the case of an action or proceeding brought by City or if City has been made a party to an action or proceeding, Tenant shall also pay to City all costs and expenses (including reasonable attorneys' fees and disbursements) incurred by it in enforcing any of the covenants and provisions of this Lease and incurred in any action in which it was the prevailing party, and all such costs and expenses may be included in and form a part of any judgment entered in any related proceeding. Such amounts shall be paid to City within thirty (30) days after Tenant is billed for such costs and expenses.

22.7 Leasehold Mortgagee Protections. Nothing contained in this Article 22 shall be deemed to modify the provisions of Sections 12.7.

EXHIBIT G-1
FORM OF GROUND LEASE (PHASE 1)

ARTICLE 23
NOTICES

23.1 Notice Addresses. Whenever this Lease permits or requires that a notice, demand, request, consent, approval or other communication 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), with a confirmatory copy to be delivered thereafter by duplicate notice in accordance with any of clauses (a) or (b) of this Section 23.1, in each case to the Parties at their addresses set forth on Exhibit L. A Party may change the address(es) to which any Notice is to be delivered to such Party by furnishing ten days' notice of such change(s) to the other Parties in accordance with the provisions of this Section 23.1. The attorney for any Party may send Notices on that Party's behalf.

23.2 Effectiveness. In addition to the requirements for effectiveness set forth in Section 23.1, to be effective, every notice given to a Party under the terms of this Lease 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 Lease 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.

23.3 When Notices Deemed Given. Every Notice shall be deemed to have been given or served (a) if given by personal delivery or overnight delivery service, upon delivery thereof, or (b) if given by telephonic facsimile transmitting machine, upon delivery by such means to the addressee, 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 23.3 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).

23.4 Notices to Mortgagees. Notwithstanding any provision of this Lease to the contrary, (a) if a Leasehold Mortgagee or Mezzanine Lender notifies City in writing of its identity and address, any Notice of default given by City hereunder to Tenant shall also be given contemporaneously to such Leasehold Mortgagee or Mezzanine Lender with a copy thereof, if requested, to such Leasehold Mortgagee's or Mezzanine Lender's attorneys and other Persons, in each case to the addresses specified in the request, and (b) no such Notice of default shall be valid as against such Leasehold Mortgagee or Mezzanine Lender unless and until City complies with this Section 23.4.

EXHIBIT G-1
FORM OF GROUND LEASE (PHASE 1)

ARTICLE 24
NO FEE SUBORDINATION; RESTRICTIONS ON SUBORDINATION OF TENANT'S INTEREST; NO FEE MORTGAGES

24.1 No Fee Subordination. None of City's interest in this Lease or the Premises or City's fee interest in the Tasman Parcels shall be subject or subordinate to any mortgage, deed of trust or security instrument (including any Leasehold Mortgage or Mezzanine Loan) now or hereafter placed upon Tenant's interest in this Lease or upon Tenant without the prior consent of City, which consent may be granted or denied in City's sole and absolute discretion.

24.2 Restrictions on Subordination of Tenant's Interest. This Lease, and Tenant's interest in this Lease, shall not be subject or subordinate to any liens or encumbrances on City's fee estate in the Tasman Parcels or City's interest in this Lease or in a Major Occupant Lease, except for the Permitted Exceptions and any other liens or encumbrances created or consented to by Tenant, which consent may be granted or denied in Tenant's sole and absolute discretion.

24.3 No Fee Mortgages; No Transfers. City agrees that it will not subject its fee interest in the Premises, or its interest in this Lease or the Premises, to any mortgage, deed of trust or other security instrument of any kind without the prior consent of Tenant, which consent may be granted or denied in Tenant's sole and absolute discretion. As a major inducement to Tenant to enter into this Lease, and except as provided in Article 7 of this Lease, City agrees that in no case shall City sell, transfer, assign, or encumber, directly or indirectly, all or any portion of the Tasman Parcels, or any interest of City in the same, and City agrees to not negotiate to, or enter into any agreement to, do any of the foregoing.

24.4 No Impairment of Title.

24.4.1 Nothing contained in this Lease or any action or inaction by City shall be deemed or construed to mean that City has granted to Tenant any right, power or permission to do any act or make any agreement that may create, give rise to, or be the foundation for, any right, title, interest, lien, charge or other encumbrance other than this Lease upon the estate of City in the Premises. Without limiting the foregoing, Tenant shall not permit any portion of the Premises to be used by any Person (for the avoidance of doubt, including any Subtenant), at any time or times during the Term of this Lease, in such manner as might impair City's title to or interest in the Premises or any portion thereof, or in such manner as might reasonably make possible a claim or claims of adverse use, adverse possession, prescription, dedication, or other similar claims of, in, to or with respect to the Premises or any part thereof.

24.4.2 Notwithstanding the provisions of this Article 24 to the contrary, Tenant shall have the right to create customary and ordinary utility easements that are reasonably required in connection with the construction of the Improvements, any Restoration, or the operation of the Premises for the Permitted Uses; provided, that Tenant provides each such utility easement to City for its prior approval; and provided, further, that in no event shall City be subject to any liability whatsoever under such utility easements. In addition, City agrees to cooperate with Tenant in the execution, acknowledgment and recordation of the CC&Rs and any other restrictive declarations or easement agreements required by Governmental Authorities or Tenant, including any documents subordinating this Lease (but not City's fee interest in the Tasman

Parcels) to such restrictive declarations or easement agreements. Such restrictive declarations or easement agreements shall be in form and substance reasonably acceptable to City, City shall have no personal liability with respect to such other restrictive declarations or easement agreements, and all costs (including reasonable attorneys' fees) incurred by City in reviewing and/or executing and recording the same shall be at Tenant's sole cost and expense and shall be payable by Tenant within ten (10) Business Days of written demand by City.

ARTICLE 25
QUIET ENJOYMENT

25.1 City covenants that so long as this Lease is in full force and effect and there is no existing Event of Default, Tenant shall and may peaceably and quietly have, hold and enjoy the Premises for the term hereby granted without molestation or disturbance by or from City or any Person lawfully claiming through City, and free of any encumbrance created or suffered by City, except for (i) those encumbrances, liens or defects of title, created or suffered by Tenant and (ii) the Permitted Exceptions. This covenant shall be construed as running with the land with respect to the Tasman Parcels, to and against subsequent owners and successors in interest.

ARTICLE 26
ESTOPPELS

26.1 Tenant Estoppels. At any time, and from time to time, upon not less than fifteen (15) Business Days' notice by City, Tenant shall execute, acknowledge and deliver to City and to any other Person reasonably requested by City a statement certifying: (a) that this Lease and each other Project Document specified by City to which Tenant is a party 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) the date to which each obligation constituting Rent has been paid, (c) whether or not any other amounts due and owing by Tenant to City under this Lease or the other Project Documents specified by City have been paid, (d) whether or not, to Tenant's actual knowledge (without inquiry), City is in default in performance of any covenant, agreement or condition contained in this Lease or the other Project Documents specified by City, and, if so, specifying each such default of which Tenant has actual knowledge, and (e) as to any other matter with respect to this Lease or the other Project Documents specified by City as City may reasonably request.

26.2 City Estoppels. At any time, and from time to time, upon not less than fifteen (15) Business Days' notice by Tenant, City shall execute, acknowledge and deliver to Tenant and to any other Person reasonably requested by Tenant a statement certifying: (a) that this Lease and each other Project Document specified by Tenant 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) the date to which each obligation constituting Rent has been paid, (c) whether or not any other amounts due and owing by Tenant to City under this Lease or the other Project Documents specified by Tenant have been paid, (d) whether or not, to City's actual knowledge (without inquiry), Tenant is in default in performance of any covenant, agreement or condition contained in this Lease or the other Project Documents specified by Tenant and, if so, specifying each such default of which City has actual knowledge, and (e) as to

any other matter with respect to this Lease or the other Project Documents specified by Tenant as Tenant may reasonably request.

ARTICLE 27
SURRENDER AT END OF TERM

27.1 Surrender at End of Term. Subject to the provisions of this Lease, on the Expiration Date (or earlier termination of the Term), Tenant shall surrender and deliver up to City the Premises in its then-existing condition (subject to Section 2.5.2), reasonable wear and tear excepted, and subject to Section 11.10 and/or any applicable Recognition Agreement, free and clear of all lettings, occupancies, liens and encumbrances, other than those, if any, (a) in the case of liens and encumbrances, existing as of the Commencement Date, (b) in the case of liens and encumbrances, created, or consented to, by City or (c) that by their express terms and conditions extend beyond the Expiration Date or earlier termination and to which City has consented (which consent may be granted or withheld in City's sole and absolute discretion) may extend beyond the Expiration Date or earlier termination.

27.2 Delivery of Premises Agreements. On the Expiration Date (or on the earlier termination of the Term), Tenant shall deliver to City copies of each of the following in Tenant's possession: (a) all subleases in effect with respect to the Premises, and of any service and maintenance contracts then affecting the Premises, (b) maintenance records for the Premises, and other non-privileged books and records related to operation and maintenance of the Premises as reasonably requested by City (c) all licenses and permits then pertaining to the Premises (and, if assignable, shall assign same to City upon City's request), (d) permanent or temporary Certificates of Occupancy then in effect for each of the Buildings and (e) all warranties and guarantees then in effect which Tenant has received in connection with any work or services performed or equipment installed at the Premises or in the Improvements together, with duly executed assignments thereof to City, where applicable. Tenant shall cooperate with City to achieve an orderly transition of the Premises to City's control. City and Tenant shall, prior to the Expiration Date, (y) adjust for Impositions and all other appropriate expenses and income of the Premises, and (z) if a Memorandum of Lease has been recorded, execute a document in recordable form evidencing the termination of this Lease and all amendments thereto.

27.3 Condition of Property at Surrender. Any personal property of Tenant or of any Subtenant or other occupant of the Premises that shall remain on the Premises for thirty (30) days after the Expiration Date or the earlier termination of the Term and after the removal of Tenant or such Subtenant or other occupant from the Premises, may, at the option of City, be deemed to have been abandoned by Tenant or such Subtenant or other occupant and either may be retained by City as its property or be disposed of, without accountability, in such manner as City may see fit. City shall not be responsible for any loss or damage occurring to any such property owned by Tenant or any Subtenant or other occupant of the Premises. Tenant shall reimburse City for all costs and expenses incurred by City in connection with disposing of such property.

27.4 Survival. The provisions of this Article 27 shall survive the expiration or any termination of this Lease.

EXHIBIT G-1
FORM OF GROUND LEASE (PHASE 1)

ARTICLE 28
DISPUTE RESOLUTION

28.1 Dispute Resolution Procedures.

28.1.1 Whenever a dispute arises between the Parties which dispute is an Arbitrable Claim, subject to Section 3.4, the Parties shall attempt in good faith to resolve the dispute for a period of thirty (30) days after this Section 28.1.1 is invoked by either Party by notice to the other. If the dispute remains unresolved at the end of the thirty- (30-) day period, Tenant shall have the right to refer such dispute to City Manager. If such dispute remains unresolved for an additional period of twenty-one (21) days after any such referral to City Manager, despite good faith efforts by Tenant to resolve the same through discussions with City Manager, then the Parties shall have the right to seek a resolution of the dispute under Section 28.1.2. As to any Arbitrable Claim (except with respect to the payment of money) to determine whether a matter would, with the passage of time, constitute an Event of Default, such passage of time shall not commence to run until any such affirmative arbitrated determination. As to any Arbitrable Claim submitted to arbitration with respect to the payment of money, to determine whether a matter would, with the passage of time, constitute an Event of Default, such passage of time shall not commence to run in the event that the Party that is obligated to make the payment does in fact make the payment to the other Party. Such payment can be made "under protest", which shall occur when such payment is accompanied by a good faith notice stating the reasons that the Party has elected to make a payment under protest. Such protest will be deemed waived unless the subject matter identified in the protest is submitted to arbitration as set forth in this Article 28. Nothing in this Section 28.1.1 shall require a Party to postpone instituting any injunctive proceeding or to pursue resolution under this Section 28.1.1 if it believes in good faith that such postponement will cause irreparable harm to such Party.

28.1.2 An "**Arbitrable Claim**" means any dispute under or relating to this Lease, subject to Section 3.4, where and only where this Lease shall expressly provide that a matter is an Arbitrable Claim, or where the Parties have expressly agreed in writing that the matter is an Arbitrable Claim (which agreement either Party may enter into or refuse to enter into in its sole and absolute discretion. In the event of such a dispute, and following compliance with Section 28.1.1, either Party may submit an Arbitrable Claim to binding arbitration by giving notice thereof to the other Party (the "**Arbitration Notice**"). The following provisions shall apply to any such arbitration:

(a) Arbitrators. The arbitrator ("**Arbitrator**") of Arbitrable Claims will be selected by mutual agreement of the parties from a list of pre-approved Arbitrators attached hereto as Exhibit M (the "**Pre-Approved Arbitrators List**"). The Arbitrator will hear all Arbitrable Claims unless the Arbitrator is not available to meet the time schedule set forth herein, in which case the Parties may agree to direct the dispute to another Arbitrator on the Pre-Approved Arbitrators List. If none of the Arbitrators listed is able or willing to serve, the parties shall mutually agree on the selection of an Arbitrator to serve for the purposes of this dispute. The Arbitrator appointed must meet the Arbitrators' Qualifications. The "**Arbitrator's Qualifications**" shall be defined as at least ten (10) years' experience in a

real property professional capacity in the general subject area of potential Arbitrable Claims, such as a real estate economist, real estate developer, real estate leasing broker or construction manager or other construction professional in the County of Santa Clara. The Parties shall review the Pre-Approved Arbitrators List on an annual basis, determine each Arbitrator's continued availability and willingness to serve, and may at that time or from time to time, seek to add or subtract arbiters from the Pre-Approved Arbitrator List, by notice in writing to the other Party. Any such notice will be accompanied by supporting documentation of the new proposed Arbitrator's qualifications or with the reasons for seeking to remove an Arbitrator from the Pre-Approved Arbitrators List, as applicable. The other Party shall have fifteen (15) Business Days to respond in writing to such request, and failure to respond shall be deemed consent so long as the notice shall include a statement providing that the failure to respond in such fifteen (15) Business Day period shall be deemed consent. If the other Party objects, the Parties shall confer pursuant to Section 28.1.1 and thereafter such disputes (if still unresolved after conferring) shall be referred to arbitration pursuant to Section 28.1.2. Notwithstanding the foregoing, if based upon the annual review or at any time during the Term, the Parties become aware that an Arbitrator has become unavailable to serve in any prospective Arbitration or has expressed an unwillingness to continue to serve, the Parties shall replace that Arbitrator with a new Arbitrator mutually agreed-upon by the Parties.

(b) Election to Participate in Arbitration. The Parties shall submit the Arbitrable Claim to arbitration by notifying the Arbitrator of the dispute within ten (10) Business Days after the giving of the Arbitration Notice. Thereafter, within ten (10) Business Days, each Party to the dispute shall submit to the Arbitrator and serve on the other Party to the arbitration a short statement of the dispute and a proposed discovery and hearing schedule.

(c) Preliminary Hearing. Within twenty (20) Business Days after the giving of the Arbitration Notice, the Arbitrator shall conduct, either telephonically or in-person, a preliminary hearing. At the preliminary hearing the Arbitrator shall decide discovery and briefing issues and set dates, including a hearing date. In resolving discovery issues, the Arbitrator shall consider expediency, cost effectiveness, fairness, and the needs of the Parties for adequate information with respect to the dispute.

(d) Retention of Consultants. The Parties by mutual agreement may retain consultants to assist the Arbitrator in the course of Arbitration, if requested by the Arbitrator. In his or her request, the Arbitrator shall provide to all Parties to the dispute an explanation for the need for the consultant, the consultant's identity, hourly rate, and the estimated costs of the service. All Parties to the dispute must approve the retention of the

consultant and, if retention of the consultant is approved, the Parties will share the cost of the consultant equally. The consultant's cost shall not exceed ten thousand dollars ($10,000) (increased by ten percent (10%) at the end of each period of five (5) Lease Years) without the prior written consent of the Parties to the dispute.

(e) Commencement of Arbitration. The arbitration hearing shall commence no later than sixty (60) days after the initial preliminary hearing, unless the Parties to the dispute mutually agree to extend the date or the Arbitrator extends the date.

(f) Additional Procedural Requirements. The procedural rules of the arbitration under this Section 28.1.2 shall be supplemented by any non-conflicting arbitration procedures of other alternative dispute resolution providers as may be mutually agreed upon by the Parties from time to time, applicable to commercial arbitration, and may be modified by agreement of the Parties.

(g) Decision of Arbitrator. The Arbitrator shall make a written decision, specifying the reasons for the decision, within twenty (20) calendar days after the hearing. Each Party will give due consideration to the Arbitrator's decision prior to pursuing further legal action, which decision to pursue further legal action shall be made in each Party's sole and absolute discretion.

(h) Time Period to Complete Arbitration. The arbitration shall be completed within eighty (80) calendar days of the preliminary hearing, unless the Parties to the dispute mutually agree to extend the date or the Arbitrator extends the date.

(i) If either Party protests the determination of the Arbitrator, such Party may commence a lawsuit in the Superior Court for Santa Clara County, it being understood that the review of the Court shall be limited to the question of whether or not the Arbitrator's determination is arbitrary, capricious or without a rational basis. No evidence or information about the matter in dispute shall be introduced or relied upon in any such actions or proceedings that has not been submitted to the Arbitrator in accordance with Section 28.1.2(c).

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

(k) Submission. Unless otherwise directed by the Arbitrator or agreed by the Parties to a given dispute, the Parties involved in the dispute

shall strive to make joint submissions to the Arbitrator. The Arbitrator 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).

(l) Except as expressly set forth in Section 28.1.1, it is expressly understood and agreed that the pendency of a dispute hereunder shall at no time and in no respect constitute a basis for either Party not to comply with, or otherwise fully perform in accordance with, this Lease.

ARTICLE 29
LIMITATION OF LIABILITY

29.1 Liability of City. Notwithstanding anything in this Lease to the contrary, the liability of City or of any other Person who has at any time acted as City hereunder for damages or otherwise shall be limited to City's interest in the Premises, including the rents and profits therefrom, the proceeds of any insurance policies covering or relating to the Premises, any awards payable in connection with any condemnation of the Premises or any part thereof, and any other rights, privileges, licenses, franchises, claims, causes of action or other interests, sums or receivables appurtenant to the Premises. Notwithstanding anything in this Lease to the contrary, neither City nor any such Person nor any of the members, managers, trustees, directors, officers, shareholders, owners, partners, employees, agents or servants of City or any such Person shall have any liability (personal or otherwise) hereunder beyond City's interest in the Premises, and no other property or assets of City or any such Person or any of the members, managers, trustees, directors, officers, shareholders, owners, partners, employees, agents or servants of any of them shall be subject to levy, execution or other enforcement procedure for the satisfaction of Tenant's remedies hereunder.

29.2 Liability of Tenant. The liability of Tenant, or of any Person (other than a guarantor or provider of Adequate Security) who has at any time acted as Tenant hereunder, for damages or otherwise shall be limited to Tenant's interest in the Premises, including the rents and profits therefrom, the proceeds of any insurance policies covering or relating to the Premises, any awards payable in connection with any condemnation of the Premises or any part thereof, any funds held by a Depository pursuant to any of the provisions of this Lease, and any other rights, privileges, licenses, franchises, claims, causes of action or other interests, sums or receivables appurtenant to the Premises. Neither Tenant nor any such Person nor any of the members, managers, trustees, directors, officers, employees, agents or servants of any of them shall have any liability (personal or otherwise) hereunder beyond Tenant's interest in the Premises, and no other property or assets of Tenant or any such Person or any of the members, managers, trustees, directors, officers, employees, agents or servants of either shall be subject to levy, execution or other enforcement procedure for the satisfaction of City's remedies hereunder.

EXHIBIT G-1
FORM OF GROUND LEASE (PHASE 1)

ARTICLE 30

FORCE MAJEURE; EXTENSION OF TIMES OF PERFORMANCE

30.1 Force Majeure. In addition to the specific provisions of this Lease, a Party shall not be deemed to be in default under this Lease, including all Exhibits, on account of any delay in such Party's performance to the extent the delay results from Force Majeure (as defined below). "**Force Majeure**" means any delay suffered by a Party in performing an obligation or exercising a right or meeting a deadline to the extent such delay is caused by any of the following: war; acts of terrorism; insurrection; strikes or lock-outs not caused by, or outside the reasonable control of, the Party claiming an extension; riots; floods; earthquakes; fires; casualties; acts of God; acts of the public enemy; epidemics; quarantine restrictions; freight embargoes; lack of transportation not caused by, or outside the reasonable control of, the Party claiming an extension; governmental restrictions or priority; environmental conditions existing or discovered on or affecting the Premises or any portion thereof, including those resulting from the investigation or remediation of such conditions; litigation that enjoins construction or other work on the Premises or any portion thereof, causes a lender to refuse to fund a loan or to accelerate payment on a loan, or would cause a reasonably prudent developer either to forbear from commencing construction or other work on the Premises or portion thereof or to suspend construction or other work; disruptions in the public or private financing markets that delay or materially increase the cost of public or private financing for the Project; unusually severe weather; inability to secure necessary labor, materials or tools; delays of any contractor, subcontractor or supplier; moratorium, as defined in California Government Code Section 66452.6(f); litigation, ballot measures or referenda challenging City's or another regulatory body's approval of the Project (or any part thereof) or any of the Project Documents; the inability to obtain on a timely basis other approvals required for commencement and completion of the improvements contemplated for the Project (assuming that Tenant is using commercially reasonable efforts to obtain such approvals); actions or inquiries by a Governmental Authority that results in a delay; the occurrence of construction cost premiums that render development of the Premises or portion thereof commercially uneconomic.

30.2 Period of Force Majeure. The period of Force Majeure shall commence to run from the time of the commencement of the cause and, subject to Section 30.3, shall run for the duration of the event of Force Majeure. The Party claiming Force Majeure shall provide notice to the other applicable Parties of such Force Majeure within a reasonable time following the commencement of the cause. If, however, notice by the Party claiming such extension is sent to the other Parties more than sixty (60) days after the commencement of the cause, the period shall commence to run only sixty (60) days before the giving of such notice, provided that the Party claiming the extension gives notice within a reasonable time following the commencement of the cause.

30.3 Limitations. Notwithstanding anything to the contrary in this Lease, in the case of Force Majeure due to litigation, in no event shall Force Majeure extend for a period greater than three (3) months after a final settlement or non-appealable judgment is issued or affirmed, except that in the case of litigation that invalidates or voids any existing or future Authorizations or would otherwise have a material adverse effect on the ability of Tenant to undertake the performance of the act that is subject to the Force Majeure delay, for example, commencement

or completion of improvements, (including, without limitation, an adverse ruling under the California Environmental Quality Act), the period of Force Majeure shall extend for such additional time as may be required by the City to prepare additional or revised Authorizations and/or environmental documents and for the City to consider the revised Authorizations for re-approval in accordance with the terms of the applicable final settlement or unappealable decision.

ARTICLE 31
MISCELLANEOUS

31.1 Entire Agreement; Amendment. This Lease and the other Project Documents contain all of the promises, agreements, conditions, inducements and understandings between City and Tenant relative to the matters set forth herein and therein. The only way to amend or otherwise modify this Lease is for the Parties that are to be bound by such amendment or modification to sign and deliver a written instrument that expresses the intent to amend or otherwise modify this Lease.

31.2 Waiver. Any waiver of any provision of this Lease by a Party must be in writing and signed by a Person having authority to do so on behalf of such Party. Any waiver shall be only for such period and subject to such conditions as shall be specified in the written instrument effecting the same. Any waiver shall be effective only in the specific instance and for the specific purpose for which given.

31.3 Captions and Table of Contents. The titles of the Articles and Sections and names of defined terms in this Lease are for convenience of reference only and are not intended to define, limit or describe the scope or intent of this Lease or otherwise affect the interpretation of this Lease. The Table of Contents is for the purpose of convenience of reference only and is not intended to be a part of this Lease or to be used in interpreting this Lease.

31.4 Extensions of Time.

31.4.1 City or Tenant may in their sole discretion extend the time for the performance of any term, covenant or condition of this Lease 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 Lease or any other default in, or breach of, this Lease.

31.4.2 In addition to matters set forth in Section 31.4.1, the Parties may in their sole discretion extend the time for performance by any of them of any term, covenant or condition of this Lease by a written instrument signed by authorized representatives of such Parties without the execution of a formal recorded amendment to this Lease, and any such written instrument shall have the same force and effect and impart the same notice to third parties as a formal recorded amendment to this Lease. For the purposes of this Section 31.4, City's authorized representative shall be the City Manager.

31.5 Interpretation. Wherever in this Lease 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 Lease, including its Exhibits, reference is made to the Table of Contents, any Article, Section, Exhibit, Attachment or any defined term, the reference shall be deemed to refer to the Table of Contents, Article, Section, Exhibit, Attachment or defined term of this Lease. Any reference to an Article or a Section includes all subsections and subparagraphs of that Article or Section. The use in this Lease 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. The Recitals are a part of this Lease; however, in the event of a conflict between the Recitals and the remaining provisions of this Lease, the remaining provisions shall prevail.

31.6 More than One Person. If more than one Person is named as or becomes Tenant hereunder, City may require the signatures of each such Person on any notice given by Tenant hereunder 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 Lease, each Person named as or that becomes Tenant shall be fully, and jointly and severally, liable for all of Tenant's obligations hereunder.

31.7 Time of Performance.

31.7.1 All performance (including cure) dates expire at 5:00 p.m. City of Santa Clara 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 Lease.

31.7.2 If the last day of any period to give notice, reply to a notice, meet a deadline or to 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.

31.7.3 Time is of the essence in the performance of all the terms and conditions of this Lease.

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

31.9 No Brokers. Each of the Parties warrants and represents to the other Party that neither it nor any of its Affiliates have dealt with any broker, finder or like entity or agent in connection with this Lease or the transactions contemplated hereby, or on account of introducing

the Parties, the preparation or submission of brochures, the negotiation or execution of this Lease or the execution of the transactions contemplated hereby. If any Person claims to have acted or dealt with Tenant or City in connection with this Lease and claims that it is entitled to a fee of any kind, the Party through which such Person is claiming such entitlement shall indemnify and hold harmless the other Party against any such claim and shall reimburse such other Party for any costs or expenses (including reasonable attorneys' fees and disbursements) incurred in defending itself against any such claim.

31.10 Governing Law. This Lease shall be governed by and construed in accordance with the internal laws of the State of California, without regard to principles of conflicts of law. All references in this Lease to California or federal laws, regulations 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.

31.11 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 permitted successors and assigns.

31.12 Relationship of the Parties. None of the provisions in this Lease 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.

31.13 Construction. This Lease shall be construed without regard to any presumption or other rule requiring construction against the Party causing this Lease to be drafted. In the event of any action, suit, arbitration, dispute or proceeding affecting the terms of this Lease, no weight shall be given to any deletions or striking out of any of the terms of this Lease contained in any draft of this Lease 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.

31.14 Incorporation of Exhibits. Each Exhibit listed in the List of Exhibits is a part of this Lease.

31.15 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 Lease.

31.16 Numbers.

31.16.1 Generally. For purposes of calculating a number under this Lease 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.

31.16.2 Number of Days. References in this Lease to days shall be to calendar days, unless otherwise specified.

31.17 No Gift or Dedication. Except as otherwise specified in this Lease, this Lease 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. Tenant shall have the right to prevent or prohibit the use of any portion of the property leased by it, including common areas and buildings and improvements, by any Persons for any purpose inimical to the operation of a private, integrated mixed-use project as contemplated by this Lease.

31.18 Correction of Technical Errors. If by reason of inadvertence, and contrary to the intention of Tenant and City, errors are made in this Lease 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 Lease or any of its Exhibits, Tenant and City by mutual agreement may correct such error by memorandum executed by both of them and replacing the appropriate pages of this Lease, and no such memorandum or page replacement shall be deemed an amendment of this Lease.

31.19 Severability. If any term or provision of this Lease or the application thereof to any Person or circumstances shall, to any extent, be invalid or unenforceable, the remainder of this Lease, or the application of such term or provision 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 Lease shall be valid and be enforced to the fullest extent permitted by law.

31.20 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 Lease 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 Lease, and to rely solely on the remedies provided for in this Lease with respect to any breach of this Lease by any other Party.

31.21 Consents and Approvals. Whenever a consent or approval is required or permitted to be given by any Party under this Lease, it shall not be unreasonably withheld, conditioned or delayed unless the consent or approval is explicitly stated in this Lease to be within the "sole discretion" (or words of similar import) of the Party whose consent or approval is sought. Unless explicitly stated otherwise, a consent or approval by the City shall mean the consent or approval of the City Manager. A Party that denies a consent or approval under this Lease, or that gives a conditional consent or approval, shall in giving such denial or conditional consent or approval state the reasons therefor in reasonable detail, unless such consent or approval is explicitly stated in this Lease to be within the "sole discretion" (or words of similar import) of the Party whose consent or approval is sought. It is understood and agreed that the granting of any consent or approval by a Party to another Party under this Lease to perform any act requiring such Party's consent or approval under this Lease, 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 a consent or approval (other than a consent or approval explicitly stated in this Lease to be within the "sole discretion,"

or words of similar import, of the City), 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. Notwithstanding the foregoing, it is specifically acknowledged by all Parties that this Section 31.22 shall not apply to any consent or approval given by a public entity in its land use or regulatory capacity. Such consents and approvals shall be governed by the standards of review generally accorded by the state courts of California.

31.22 Counterparts. This Lease 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 Lease shall become effective when the Parties have duly executed and delivered signature pages to this Lease to each other. Delivery of this Lease may be effectuated by personal 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, but the Party delivering signatures by electronic communication shall thereafter promptly deliver original signatures by personal delivery, mail or overnight courier.

31.23 Survival. Termination of this Lease shall not affect (i) the right of any Party to enforce any and all indemnifications set forth herein to the extent they relate to the period before termination and (ii) any provision of this Lease that, by its express term, is intended to survive the expiration or termination of this Lease.

31.24 Press Releases. Except as may be required by Applicable Law, no press release, publicity notice or announcement regarding or in any way directly or indirectly referring to any of the terms or provisions of this Lease or any other Project Document, or the transactions contemplated hereby or thereby, shall be made or caused to be made by Tenant or any Affiliate of Tenant without the prior consent of City, which consent may be granted or denied in City's sole and absolute discretion. Tenant shall furnish to City advance copies of any press release, publicity notice or announcement which it desires to make public with respect to this Lease and/or the transactions contemplated hereby. Notwithstanding the foregoing, City may, in response to inquiries from the press, confirm the fact that Tenant has entered into a ground lease of a portion of the Site; provided, however, whether or not in response to any such inquiry, Tenant shall not disclose or confirm any of the terms or provisions of this Lease or any other Project Document.

31.25 Recording of Memorandum. This Lease is not to be recorded. However, concurrently herewith the Parties have executed and acknowledged a memorandum of this Lease substantially in the form of Exhibit N, which is to be recorded by Tenant, at its expense, in the Official Records promptly following the execution and delivery of this Lease.

31.26 Nondiscrimination.

31.26.1 There shall be no discrimination against or segregation of any person or group of persons on any basis listed in subdivision (a) or (d) of section 12955 of the California Government Code, as those bases are defined in sections 12926, 12926.1, subdivision (m) and

paragraph (1) of subdivision (p) of section 12955, and section 12955.2 of the California Government Code, or on the basis of age, race, color, creed, sex, sexual orientation, gender identity, marital or domestic partner status, disabilities (including AIDS or HIV status), religion, national origin or ancestry by Tenant or any occupant or user of the Premises in the sale, lease, rental, sublease, transfer, use, occupancy, tenure or enjoyment of the Premises, or any portion thereof. Neither Tenant itself (nor any person or entity claiming under or through it), nor any occupant or user of the Premises or any transferee, successor, assign or holder of any interest in the Premises or any person or entity claiming under or through such transferee, successor, assign or holder, shall establish or permit any such practice or practices of discrimination or segregation in connection with the Premises, including with reference to the selection, location, number, use or occupancy of buyers, tenants, vendees or others. But such person shall not be in default of its obligations under this Section 31.26 where there is a judicial action or arbitration involving a bona fide dispute over whether such person is engaged in discriminatory practices and such person promptly acts to satisfy any judgment or award against such person.

31.26.2 Any transferee, successor, assign, or holder of any interest in the Premises, or any occupant or user thereof, whether by contract, lease, rental, sublease, license, deed, deed of trust, Mortgage or otherwise, and whether or not any written instrument or oral agreement contains the above prohibitions against discrimination, shall be bound by, and shall not violate in whole or in part, directly or indirectly, the nondiscrimination requirements set forth above. The covenants in this Section 31.26 shall be covenants running with the land and they shall be: (i) binding for the benefit and in favor of City, as beneficiary and the owner of any other land or of any interest in any land in the Project, as beneficiary, and their respective successors and assigns; and (ii) binding against Tenant, its successors and assigns to or of the Premises and any Improvements thereon or any portion thereof or any interest therein, and any party in possession or occupancy of the Premises or the Improvements thereon or any portion thereof.

31.27 Tax Benefits. To the extent permitted by law, notwithstanding City's interest in the Premises, Tenant shall have the right to all depreciation deductions, investment tax credits and other similar tax benefits attributable to any construction, demolition and Restoration performed by Tenant or attributable to the ownership of the Improvements. City, from time to time, shall execute and deliver such instruments as Tenant shall reasonably request in order to effect the provisions of this Section 31.27, and Tenant shall pay City's reasonable costs and expenses thereof. City makes no representations as to the availability of any such deductions, credits or tax benefits.

31.28 No Merger. Except as otherwise expressly provided in this Lease, there shall be no merger of this Lease or the leasehold estate created hereby with the fee estate in the Premises or any part thereof by reason of the same Person acquiring or holding, directly or indirectly, this Lease or the leasehold estate created hereby or any interest in this Lease or in such leasehold estate as well as the fee estate in the Premises or any part thereof.

31.29 Sales Tax. Tenant shall use commercially reasonable efforts to adopt sales tax reporting procedures allowable under Applicable Law that will provide City (in its capacity as a Governmental Authority) the greatest allocation of California sales tax revenues feasible, and shall use include a provision in all applicable contracts requiring its general construction contractors, vendors and Building occupants to adopt these procedures (or such other

commercially reasonable procedures allowable under Applicable Law), including by designating the Premises as the place of sale and place of use of materials, goods, and services to be used in connection with the construction and operation of the Premises. Tenant shall propose to City for its approval a process that will designate the Premises as the place of sale of fixtures furnished and installed by Tenant for the Premises, and to do the same with respect to construction materials used in connection with the Improvements. Notwithstanding the foregoing, the failure of such general construction contractors, vendors and Building occupants to allocate sales tax revenues to the City shall not constitute a breach by Tenant under this Lease. Tenant shall bear all costs associated with its obligations under this Section 31.29.

31.30 Acceptance of Rent. The acceptance by City of any Rent or other payments due hereunder with knowledge of the breach of any of the terms, covenants or provisions of this Lease by Tenant shall not be construed as a waiver of any such breach. The acceptance at any time or times by City of any sum less than that which is required to be paid by Tenant shall, unless City specifically agrees otherwise in writing, be deemed to have been received only on account of the obligation for which it is paid, and shall not be deemed an accord and satisfaction notwithstanding any provisions to the contrary written on any check or contained in any writing transmitting the same. Failure by City to insist upon the strict performance by Tenant of any of the provisions of this Lease or to exercise any right, remedy or election herein contained or permitted by law shall not constitute or be construed as a waiver or relinquishment for the future of such provision, right, remedy or election, but the same shall continue and remain in full force and effect. The waiver by City of any breach of this Lease shall not be deemed a waiver of any future breach.

31.31 Independent Covenants. Each covenant, agreement, obligation or other provision of this Lease on Tenant's part to be performed, shall be deemed and construed as a separate and independent covenant of Tenant, not dependent on any other provision of this Lease.

31.32 Attorney's Fees. Should any Party institute any action or proceeding in court or other dispute resolution mechanism permitted or required under this Lease, 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 31.32 shall include attorneys' fees on any appeal. For purposes of this Lease, reasonable fees of 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.

31.33 Governmental Authority. City is entering into this Lease in its capacity as the fee owner of the Premises and not as a Governmental Authority.

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EXHIBIT G-1
FORM OF GROUND LEASE (PHASE 1)

102106901.7

EXHIBIT G-1
FORM OF GROUND LEASE (PHASE 1)

IN WITNESS WHEREOF, Tenant and City have executed this Lease as of the Commencement Date.

CITY:

CITY OF SANTA CLARA, a municipal corporation

By: _____
Name:
Title: City Manager

Approved as to form:

By: _____
Name:
Title: City Attorney

Authorized Pursuant to City Council Resolution No. 16-8340

TENANT:

EXHIBIT G-1
FORM OF GROUND LEASE (PHASE 1)

ATTACHMENT 1
Public Financing and Special Tax Matters

[ADD IF APPLICABLE]

This Attachment will include relevant leasehold provisions necessary to implement public financing vehicles such as Mello-Roos Community Facilities Districts ("**CFD's**") to the extent approved by City and Master Developer under the DDA. Matters to be included in this Attachment 1 will include Tenant's acknowledgement of the formation of the Mello-Roos District, designation of Improvement Areas, the authorization to levy Special Taxes, the authorization to issue Bonds, the conditions for the issuance of Bonds, the special tax rates in the Rate and Method for each Improvement Area, the Applicable Rate and Method, the use of the proceeds of the Bonds and the Special Taxes for CFD Improvements and Services, the ability to securitize the issuance of Bonds in another Improvement Area by the Applicable Special Taxes, the boundaries of the Mello-Roos District and the Improvement Areas, and other matters related to the Mello-Roos District.

In addition, the Tenant will be covenant to cooperate in the execution of such documents (and to obtain such documents from any Mortgagee) as may be reasonably required for the formation and implementation of the CFD; not to contest, protest or otherwise challenge actions taken by City and Master Developer necessary to authorize and implement the CFD; provide such representations and warranties as are reasonably required to implement the CFD; and to take all such further actions as are reasonably required to implement the CFD, including, without limitation, formation of the CFD, payment of special taxes and issuance of bonds by the City thereunder.

The provisions of this Attachment 1 shall be consistent with the terms and conditions of a CFD as approved by the City Council and Master Developer and shall be in such form as is reasonably approved by the City Manager in consultation with the City Attorney without further approval of the form of Ground Lease by the City Council.

EXHIBIT G-1
FORM OF GROUND LEASE (PHASE 1)

EXHIBIT A-1
Legal Description of Premises

ENGINEERS / SURVEYORS / PLANNERS

TASMAN PARCEL

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

BEGINNING at the point of intersection of the Westerly sideline of the Union Pacific Railroad (UPRR) with an Easterly prolongation of a Northerly sideline of Stars and Stripes Drive, from which the intersection of said Westerly sideline of UPRR with the Northerly sideline of Tasman Drive (as said last-mentioned intersection is shown on the Record of Survey map recorded in Book 345 of Maps, at Pages 1 through 8, Santa Clara County Records) bears, South 27° 23' 56" East, 260.41' feet distant; thence along the Westerly sideline of the UPRR

1. South 27° 23' 56" East, 260.41' feet, to said intersection of the Westerly sideline of UPRR with the Northerly sideline of Tasman Drive; thence leaving the Westerly sideline of the UPRR and along the Northerly sideline of Tasman Drive as shown on the Record of Survey map recorded in Book 345 of Maps, at Pages 1 through 8, Santa Clara County Records the following five courses
2. South 62° 58' 45" West, 60.69 feet to an angle point; thence
3. South 49° 35' 12" West, 172.69 feet to an angle point; thence
4. South 55° 17' 27" West, 403.61 feet to an angle point; thence
5. South 62° 59' 29" West, 162.15 feet to the beginning of a tangent curve to the left; thence
6. 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
7. South 63° 11' 39" West, 150.97 feet to an angle point; thence
8. South 63° 10' 24" West, 14.76 feet to an angle point; thence
9. South 60° 42' 14" West, 120.03 feet to an angle point; thence
10. South 46° 39' 25" West, 41.19 feet to an angle point; thence
11. 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
12. North 26° 03' 52" West, 394.25 feet to an angle point; thence
13. South 63° 56' 08" West, 15.50 feet to an angle point; thence
14. North 26° 03' 52" West, 9.17 feet to the Northerly sideline of Stars and Stripes Drive as said sideline is shown on that certain Record of Survey map recorded in Book 570 of

Maps, at Page 5, Santa Clara County Records; thence leaving the Easterly boundary of said Parcel Three, and along said Northerly sideline of Stars and Stripes Drive

15. North 63° 57' 01" East, 1053.06 feet to the beginning of a tangent curve to the right, having a radius of 334.28 feet, as shown on said Record of Survey map; thence leaving said sideline and along an Easterly prolongation of said sideline

16. North 63° 57' 01" East, 365.15 feet to the POINT OF BEGINNING.

Containing 11.29 acres, more or less.

The distances as shown in this description are Grid distances. To obtain ground level distances multiply any distance shown above by the factor 1.00005310.

Description prepared by BKF Engineers, in June, 2016.

PROFESSIONAL LAND SURVEYOR
DAVID S. DARLING
L.S. 7625
STATE OF CALIFORNIA

Signed David Darling 6/16/2016
Date

EXHIBIT G-1
FORM OF GROUND LEASE (PHASE 1)

EXHIBIT A-2
Map of Premises

[To be attached upon Ground Lease execution]

EXHIBIT B

FORM OF GUARANTY

GUARANTY

THIS GUARANTY (this "Guaranty") dated as of [_____, 20__], is made by [_____], a [_____] ("Guarantor"), in favor of the CITY OF SANTA CLARA, a chartered municipal corporation (the "City").

RECITALS:

A. [_____], a [_____] ("Tenant"), and City are parties to that certain Ground Lease (City Place Santa Clara – Phase [ ]), dated as of [_____], 2[__] (the "Lease"), pursuant to which City ground-leases to Tenant certain premises (the "Premises"), as such premises is more particularly described in Exhibit A[-2] to the Lease. Terms used herein but not defined herein shall have the meanings given to such terms in the Lease.

B. Tenant desires to engage in a Consent Transfer, pursuant to which it proposes to transfer [**all**] [**a portion**] of the Lease and the Premises to [_____], a [_____] ("Transferee").

C. The Lease requires that Transferee have a Net Worth equal to or more than [[Seventy-Five Million Dollars ($75,000,000)][Twenty-Five Million Dollars ($25,000,000)], *increased by 10% on each five year anniversary of the Effective Date of the Lease, multiplied by the percentage of the total land area in the Phase that is being transferred*] (the "Net Worth Requirement"), and provides, further, that Transferee may satisfy the Net Worth Requirement either by meeting the Net Worth Requirement itself, or by providing a guaranty in the form of this Guaranty, covering all of Transferee's obligations under the Lease, as transferred (collectively, the "Obligations"), without limitation, from an entity that meets the Net Worth Requirement.

D. Because Transferee does not meet the Net Worth Requirement, Guarantor, an affiliate of Transferee that meets the Net Worth Requirement, is willing and desires to guaranty Transferee's full, prompt and complete payment and performance of the Obligations, as set forth in this Guaranty.

NOW, THEREFORE, in order to induce the City to approve the transfer to Transferee pursuant to the Lease, and in consideration thereof, Guarantor hereby agrees as follows:

AGREEMENT:

1. Guaranty.

1.1 Guarantor hereby absolutely, irrevocably and unconditionally guarantees the full, prompt and complete payment and performance when due of each and all of the Obligations.

EXHIBIT B

FORM OF GUARANTY

1.2 If the City institutes and prevails in any action or proceeding against Guarantor to enforce any of its rights or remedies under this Guaranty, then, in addition to any other recovery or relief, Guarantor shall pay to the City any and all costs, fees and expenses (including, without limitation, reasonable attorneys' fees and all out-of-pocket costs and expenses incurred by the City, including, without limitation, all court costs and other reasonable litigation expenses, such as expert witness fees, document copying expenses, exhibit preparation costs, courier expenses, postage and communication expenses) incurred by the City related thereto. The City shall be deemed to have prevailed in any such action or proceeding (without limiting the generality of the foregoing) if such action is dismissed upon the payment by the other party of the sums allegedly due or the performance of obligations allegedly not complied with, or if the City obtains substantially the relief sought by it in the action, irrespective of whether such action is prosecuted to judgment. The City shall also be entitled to its respective attorneys' fees and costs incurred in any post-judgment proceedings to collect the judgment. This provision is separate and several and shall survive the merger of this Guaranty into any judgment on this Guaranty.

2. Guaranty Absolute.

2.1 Guarantor guarantees that the Obligations will be paid and performed strictly in accordance with the terms of the Lease and any other agreement or instrument relating thereto, regardless of any law, regulation or order now or hereafter in effect in any jurisdiction affecting any of such terms or the rights of the City with respect thereto. The liability of Guarantor under this Guaranty shall be absolute and unconditional irrespective of:

(i) any lack of validity or enforceability of the Lease, the Obligations, or any other agreement or instrument relating thereto;

(ii) any change in the time, manner or place of performance of, or in any other term of, all or any of the Obligations, or any other amendment or waiver of or any consent to departure from the Lease;

(iii) any release or amendment or waiver of or consent to departure from any other guaranty, for all or any of the Obligations; or

(iv) any other circumstance which might otherwise constitute a defense available to, or a discharge of, Transferee in respect of the Obligations or Guarantor in respect of this Guaranty.

2.2 Notwithstanding any termination of this Guaranty or any other agreement evidencing the Obligations, if at any time any payment of any of the Obligations (from any source) is rescinded, set aside, recouped, or is repaid or must otherwise be returned by the City (i) due to or upon the insolvency, bankruptcy or reorganization of Transferee, or any general partner or member of Transferee, or (ii) for any other circumstance caused by Transferee, this Guaranty shall continue to be effective or be reinstated, as the case may be, all as though such payment had not been made.

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FORM OF GUARANTY

3. Waiver of Subrogation. Guarantor hereby absolutely and irrevocably waives any and all (i) rights which it may have or may now or hereafter acquire by way of subrogation, reimbursement, contribution or indemnity against Transferee by virtue of any payment made under this Guaranty or otherwise (including, without limitation, any payment made by Transferee) in connection with the Lease and/or the Premises, and (ii) other claims or rights against Transferee relating to this Guaranty or the Obligations; provided, however, that upon the full and irrevocable payment, satisfaction and performance of all the Obligations, the termination of this Guaranty or the release of Guarantor pursuant to the terms hereof, then such rights of subrogation, reimbursement, contribution or indemnity against Transferee shall be reinstated.

4. Guaranty Independent; Waivers.

4.1 Guarantor agrees that (i) the obligations hereunder are independent of and in addition to the undertakings of Transferee pursuant to the Lease, any other guaranties given in connection with the Lease and any other obligations of Guarantor to the City, (ii) a separate action may be brought to enforce the provisions hereof whether Transferee is a party in any such action or not, (iii) the City may at any time, or from time to time, in its sole discretion and without notice of any kind to Guarantor, (A) extend or change the time of payment or performance and/or the manner, place or terms of payment or performance of all or any of the Obligations; and (B) settle or compromise with Transferee, and/or any other person liable thereon, any and all of the Obligations, and/or subordinate the payment of same, or any part thereof, to the payment of any other debts or claims, which may at any time be due or owing to the City and/or any other person or corporation, and (iv) the City shall not be under any obligation to marshal any assets in favor of Guarantor or in payment of any or all of the Obligations.

4.2 Guarantor hereby waives (i) presentment, demand, protest, notice of acceptance, notice of dishonor, notice of nonperformance and any other notice with respect to any of the Obligations, and promptness in commencing suit against any party thereto or liable thereon, and/or in giving any notice to or making any claim or demand hereunder upon Guarantor, (ii) any right to require the City to (A) proceed against Transferee, (B) proceed against or exhaust any security held from Transferee or any other Person, or (C) pursue any remedy in the City's power whatsoever; (iii) any defense arising by reason of any disability or other defense of Transferee or by reason of the cessation from any cause whatsoever of the liability of Transferee other than the irrevocable payment and performance in full of the Obligations; (iv) to the fullest extent permitted by law, all rights and benefits under Section 2809 of the California Civil Code purporting to reduce a guarantor's obligations in proportion to the principal obligation; and (v) to the fullest extent permitted by law, (A) any defense arising as a result of the City's election, in any proceeding instituted under the Bankruptcy Code, of the application of Section 1111(b)(2) of the Bankruptcy Code, (B) any defense based on any borrowing or grant of a security interest under Section 364 of the Bankruptcy Code, and (C) without limiting the generality of the foregoing or any other provision hereof, all rights and benefits which might otherwise be available to the undersigned under California Civil Code Sections 2810, 2819, 2839, 2845, 2849, 2850, 2855, 2899, and 3433.

EXHIBIT B

FORM OF GUARANTY

4.3 Guarantor warrants that (i) this Guaranty is executed at Transferee's request, (ii) the City has not made any representation to Guarantor as to the creditworthiness of Transferee, and (iii) Guarantor assumes the responsibility for keeping informed of the financial condition of Transferee and of all other circumstances bearing upon the risk of nonperformance of the Obligations, and agrees that the City shall not have any duty to advise Guarantor of any information known to the City regarding any such financial condition or circumstances. Guarantor hereby irrevocably waives any defense which, absent this waiver, Guarantor would have that its obligations under this Agreement could be exonerated based upon the City's failure to inform Guarantor of the existing or ongoing financial condition of Transferee or of any other circumstances bearing upon the risk of nonperformance of the Obligations.

4.4 Guarantor warrants and agrees that each of the waivers set forth above is made with Guarantor's full knowledge of its significance and consequences and that under the circumstances the waivers are reasonable. If any said waivers are determined to be contrary to any application of law or public policy, such waivers shall nonetheless be effective to the fullest extent permitted by law.

5. Does Not Supersede Other Guaranties. The obligations of Guarantor hereunder shall be in addition to any obligations of Guarantor under any other guaranties of the Obligations and/or any obligations of Transferee or any other persons or entities heretofore given or hereafter to be given to the City, and this Guaranty shall not affect or invalidate any such other guaranties or obligations. The liability of Guarantor to the City shall at all times be deemed to be the aggregate liability of Guarantor under the terms of this Guaranty.

6. Representations and Warranties. Guarantor hereby represents and warrants as follows:

6.1 Validity of Guaranty.

(i) The execution, delivery and performance by Guarantor of this Guaranty will not violate any provision of law, any order of any court or agency of government, or any indenture, agreement or any other instrument to which Guarantor is a party or by which Guarantor or its property is bound, or be in conflict with, result in a breach of or constitute (with due notice and/or lapse of time) a default under any such indenture, agreement or other instrument, or result in the creation or imposition of any lien, charge or encumbrance of any nature whatsoever upon any of its property or assets (other than any lien, charge or encumbrance which may be created or imposed by this Guaranty).

(ii) This Guaranty, when delivered to the City, will constitute a legal, valid and binding obligation enforceable against Guarantor in accordance with its terms.

6.2 Other Information. All reports, papers and written data and information given to the City by Guarantor with respect to Guarantor are accurate and correct in all material respects and complete insofar as completeness may be necessary to give the City a true and accurate knowledge of the subject matter.

EXHIBIT B

FORM OF GUARANTY

6.3 Litigation. There is not now pending against or affecting Guarantor, nor to the knowledge of Guarantor is there threatened, any action, suit or proceeding at law or in equity or by or before any administrative agency in which there is a reasonable possibility of a determination adverse to Guarantor, which if adversely determined, could materially impair or affect the financial condition or operations of Guarantor.

6.4 Net Worth. As of the date of this Guaranty, Guarantor has a Net Worth equal to at least [***insert Minimum Net Worth amount specified above***].

7. Affirmative Covenants. Guarantor covenants and agrees that, so long as any part of the Obligations shall remain outstanding or unsatisfied, Guarantor will, unless the City shall otherwise consent in writing, maintain full and complete books of account and other records reflecting its financial condition, in commercially reasonable form, and consistent with generally accepted accounting practices, and provide to the City such information about the financial condition of Guarantor as the City shall reasonably request. The City shall have the right, upon reasonable advance notice, to inspect the books and records of Guarantor; provided, however, that, upon reasonable cause, the City shall have the right to audit the books and records of Guarantor.

8. Amendments, Etc. No amendment or waiver of any provision of this Guaranty nor consent to any departure by Guarantor therefrom shall in any event be effective unless the same shall be in writing and signed by the party sought to be charged, and then such waiver or consent shall be effective only in the specific instance and for the specific purpose for which given. No notice to or demand on Guarantor shall in any case entitle it to any other or further notice or demand in similar or other circumstances.

9. Notices. All notices, demands or requests provided for or permitted to be given pursuant to this Guaranty shall be in writing, and shall be personally delivered or sent by a nationally recognized same day or overnight courier or sent by registered or certified mail, postage prepaid, return receipt requested, or delivered or sent by telecopy or facsimile and shall be deemed received upon the earlier of (a) if personally delivered or sent by same day or overnight courier, the date of delivery to the address of the person to receive such notice, (b) if mailed, on the date of delivery as shown on the sender's registry or certification receipt, or (c) if given by telecopy or facsimile, when sent with confirmation of receipt. Any notice, request, demand, direction or other communication sent by telecopy or facsimile must be confirmed within forty-eight (48) hours by letter mailed or delivered in accordance with the foregoing, provided that failure to mail or deliver such confirmation within forty-eight (48) hours will not invalidate notice actually received by the individual to whom the telecopy or facsimile was addressed. Notices shall be addressed to the parties at their address set forth below:

If to Guarantor:

[_____]
[_____]
[_____]
[_____]
[_____]

EXHIBIT B

FORM OF GUARANTY

with a copy to:

[_____]
[_____]
[_____]
[_____]
[_____]

If to City:

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

with a copy to:

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

If to Transferee:

[_____]
[_____]
[_____]
[_____]
[_____]

with a copy to:

[_____]
[_____]
[_____]
[_____]
[_____]

If to Tenant:

[_____]
[_____]
[_____]
[_____]
[_____]

with a copy to:

EXHIBIT B

FORM OF GUARANTY

[_____]
[_____]
[_____]
[_____]
[_____]

Notice of change of address shall be given by written notice in the manner detailed in this paragraph. Rejection or other refusal to accept or the inability to deliver because of changed address of which no notice was given shall be deemed to constitute receipt of the notice, demand, request or communication sent.

10. No Waiver; Remedies. No failure on the part of the City to exercise and no delay in exercising any right or remedy hereunder shall operate as a waiver thereof; nor shall the City be estopped to exercise any such right or remedy at any future time because of any such failure or delay; nor shall any single or partial exercise of any right or remedy hereunder preclude any other or further exercise thereof or the exercise of any other right or remedy. The remedies herein provided are cumulative and not exclusive of any remedies provided by law.

11. Continuing Guaranty. This Guaranty is a continuing guaranty and a guaranty of both payment and performance and not of collectability, and shall (i) subject to the provisions of Section 2.2 hereof, remain in full force and effect until payment, performance and satisfaction in full of the Obligations and all other amounts payable under this Guaranty, (ii) be binding upon Guarantor and its permitted successors and assigns, and (iii) inure to the benefit of and be enforceable by the City and its successors, transferees and assigns. Neither this Guaranty nor any rights or obligations under this Guaranty may be assigned by Guarantor; however, notwithstanding anything to the contrary contained herein, Guarantor may from time to time provide a substitute guarantor hereunder, provided that the substitute guarantor must be reasonably approved by the City in writing and must meet the then applicable Net Worth Requirement (the "New Guarantor"). Upon the City's reasonable approval of the New Guarantor, satisfaction of the then applicable Net Worth Requirment, and the New Guarantor's assuming the obligations hereunder accruing from and after the date of such assumption, Guarantor shall be released of all further obligations and liabilities hereunder and this Guaranty shall terminate with respect to Guarantor.

12. Subordination. Any indebtedness of Transferee now or hereafter held by Guarantor which is unrelated to the Obligations guaranteed hereby is hereby subordinated to the Obligations, and such indebtedness of Transferee to Guarantor shall, after the occurrence of a default by Transferee in performance of the Obligations or under the Assignment Agreement, be collected, enforced and received by Guarantor as trustee for the City and be paid over to the City on account of the Obligations, but without reducing or limiting in any manner the liability of Guarantor under the other provisions of this Guaranty. Guarantor acknowledges that any indebtedness of Transferee now or hereafter held by Guarantor relating to the Obligations

guaranteed hereby has been irrevocably waived pursuant to Section 3 hereof, subject to the terms thereof.

13. Fraudulent Transfer Limitation. If, in any action to enforce this Guaranty, any court of competent jurisdiction determines that enforcement against Guarantor for the full amount of the Obligations is not lawful under or would be subject to avoidance under Section 548 of the United States Bankruptcy Code or any applicable provision of any comparable law of any state or other jurisdiction, the liability of Guarantor under this Guaranty shall be limited to the maximum lawful amount not subject to such avoidance.

14. Waiver of Right to Trial by Jury. Guarantor hereby waives any right to trial by jury with respect to any action or proceeding (i) brought by Guarantor, Transferee, the City relating to (A) the Assignment Agreement, and/or any understandings or prior dealings between the parties hereto, or (B) this Guaranty, or (ii) to which the City is a party. Guarantor hereby agrees that this Guaranty constitutes a written consent to waiver of trial by jury to the maximum extent allowed under California law as of the date hereof, and as California Law may hereinafter be revised or amended, and Guarantor does hereby constitute and appoint the City its true and lawful attorney-in-fact, which appointment is coupled with an interest, and Guarantor does hereby authorize and empower the City, in the name, place and stead of Guarantor, to file this Guaranty with the clerk or judge of any court of competent jurisdiction as a statutory written consent to waiver of trial by jury.

INITIALS: _____

[The remainder of this page has been intentionally left blank]

EXHIBIT B

FORM OF GUARANTY

15. Bankruptcy of Transferee. Notwithstanding any modification, discharge or extension of the Obligations or any amendment, modification, stay or cure of the City's rights which may occur in any bankruptcy or reorganization case or proceeding (state or federal) concerning Transferee whether permanent or temporary, and whether assented to by the City, Guarantor hereby agrees that it shall be obligated hereunder to pay and perform the Obligations and discharge its other obligations in accordance with the terms of the Obligations and the terms of this Guaranty in effect on the date hereof. Guarantor understands and acknowledges that by virtue of this Guaranty, it has specifically assumed any and all risks of a bankruptcy or reorganization case or proceeding with respect to Transferee. As an example and not in any way of limitation, a subsequent modification of the Obligations in any bankruptcy or reorganization case or proceeding concerning Transferee shall not affect the obligation of Guarantor to pay and perform the Obligations in accordance with their original terms.

16. Remedies. In the event that Guarantor shall fail to perform promptly after written notice given by City in the manner as herein provided, the City shall have the following remedies: (a) from time to time, without being required to exhaust any or all security, if any, held by the City, to require performance by Guarantor of any obligation on the part of Guarantor to be performed pursuant to the terms hereof, by action at law or in equity or both, and further to collect in any such action compensation for all loss, cost, damage, injury and expense sustained or incurred by the City as a consequence of such breach; and (b) any other right or remedy provided hereunder, at law or in equity. All remedies available to City are cumulative and not alternative.

17. Miscellaneous.

17.1 Time of Essence. Time is of the essence hereof.

17.2 Partial Invalidity. If any term, provision, covenant or condition hereof or any application thereof should be held by a court of competent jurisdiction to be invalid, void or unenforceable, all provisions, covenants and conditions hereof, and all applications thereof not held invalid, void or unenforceable shall continue in full force and effect and shall in no way be affected, impaired or invalidated thereby.

17.3 Headings. Section headings in this Guaranty are included for convenience of reference only and do not constitute a part of this Guaranty for any other purpose.

17.4 Governing Law. This Guaranty shall be governed by, and construed in accordance with, the internal laws of the State of California, without regard to principles of conflicts of law.

17.5 Entire Agreement. This Guaranty embodies the entire agreement and understanding between City and Guarantor pertaining to the subject matter of this Guaranty, and supersedes all prior agreements, understandings, negotiations, representations and discussions, whether verbal or written, of such parties, pertaining to that subject matter.

EXHIBIT B

FORM OF GUARANTY

17.6 Further Action. The Guarantor agrees to perform any further acts and to execute and deliver any other documents which may be necessary in the reasonable opinion of City to effectuate the provisions of this Guaranty.

[The remainder of this page has been intentionally left blank]

EXHIBIT B

FORM OF GUARANTY

IN WITNESS WHEREOF, the undersigned has duly executed and delivered this Guaranty as of the date first above written.

GUARANTOR:

[_____],
a [_____]

By: _____

Name: _____

Title: _____

EXHIBIT G-1
FORM OF GROUND LEASE (PHASE 1)

EXHIBIT C
Permitted Exceptions

[To be attached upon Ground Lease execution]

EXHIBIT G-1
FORM OF GROUND LEASE (PHASE 1)

EXHIBIT D
Additional Initial Buildings

[To be attached upon Ground Lease execution]

EXHIBIT E
PROJECT MMRP AND APPLICABLE MMRP MEASURES

[Attached hereto is the complete Project MMRP adopted by the City Council in connection with its approval of the Project. The report approved in connection with each Phase of the Project pursuant to Section 1.11 of Exhibit 2 of the Development Area Plans and Architectural Review – Submittal and Approval Procedures (the "DAP Procedures") will identify the specific mitigation measures under the Project MMRP that are applicable to such Phase. Consistent with such report, the Parties will attach to the final Lease for each Phase a modified version of the Project MMRP specifying those mitigation measures that are applicable to such Phase.]

MITIGATION MONITORING & REPORTING PROGRAM
City Place Santa Clara Project
Planning/CEQA File # PLN2014-10554/CEQ2014-01180
State Clearinghouse # 2014072078

Mitigation and Avoidance Measures	Action	Implementing Party	Monitoring Party	Timing [1]
LAND USE				
LU-1.1: Increase Residential Density in the City's General Plan. During the next General Plan Update cycle, the City shall explore permitting higher residential densities in the City as well as allowing residential land uses in existing non-residential areas. Where feasible, the City shall target strategic areas of the City, specifically those closest to major employment and transit hubs, for new residential land uses and/or increased residential density. In order to maintain projected 2035 jobs/housing ratios, the City shall explore permitting up to 11,000 units.	City to explore permitting higher residential densities in the City.	Director of Planning and Inspection	Director of Planning and Inspection	During the next General Plan Update cycle
AESTHETICS				
AES-1.1: Imported Material Storage. Soils from other parcels that are imported to Parcel 2 shall be stored in areas that are not within view of the Guadalupe River Trail. Alternatively, imported soils within view of the Guadalupe River Trail shall be distributed across Parcel 2 at a depth of 2 feet or less.	Project Developer to provide applicable provisions of construction contracts to the City incorporating requirement.	Project Developer/ Project Contractor	City Planning & Inspection Division	Prior to issuance of grading and building permits
AES-1.2: Early Implementation of Master Community Plan Landscaping Plan for Parcels 1 and 2. The existing golf course trees along the eastern edge of Parcel 2 shall be retained (leaving the view from the Guadalupe River trail unchanged) until such time as development on the eastern portion of Parcel 2 would necessitate their removal. The Project Developer shall implement the Landscaping Plan, as presented in the Master Community Plan, at the earliest feasible period, given the constraints and pacing of the development. Prior to planting and installation, the Landscaping Plan shall be submitted to the Planning Director for approval.	Project Developer to submit a landscape plan to replace removed trees to the City for review and approval.	Project Developer/ Project Contractor	City Director of Planning & Inspection	Prior to issuance of grading and building permits for Parcel 2
AES-2.1: Installation of Low-Profile Lighting. The Project Developer shall install low-profile, low-intensity lighting directed downward to minimize light and glare.	Project Developer to submit catalog cuts of the fixtures proposed to the City demonstrating compliance.	Project Developer	City Planning & Inspection Division	Concurrent with Architectural Review submittal,

[1] Where the timing of an action is specified as taking place before a permit is issued, that action must be taken with respect to the action underlying the permit, except where otherwise specifically noted.

Mitigation and Avoidance Measures	Action	Implementing Party	Monitoring Party	Timing [1]
				which may be included within Development Area Plans
AES-2.2: Installation of Shielded Fixtures. The Project Developer shall use shielded fixtures for street lighting and park lighting to minimize spill onto the public right-of-way and glare produced by the lighting on the Project site.	Project Developer to submit catalog cuts of the fixtures proposed to the City demonstrating compliance.	Project Developer	City Planning & Inspection Division	Concurrent with Architectural Review submittal, which may be included within Development Area Plans
AES-2.3: Treat Reflective Surfaces. The Project Developer shall ensure application of low-emissivity glass at exterior surfaces of the proposed structures for the purpose of reducing reflection of visible light that strikes the glass exterior and reduction in the amount of interior light being emitted through the glass.	Project Developer to provide evidence that low-emissivity glass at exterior surfaces will be used.	Project Developer	City Planning & Inspection Division	Concurrent with Architectural Review submittal, which may be included within Development Area Plans
AES-2.4: Provide Obstruction for Glare from Vehicle Headlights in the Proposed Garages. The Project Developer shall ensure that through the architectural design of the parking garages and through or in combination with landscaping or physical screening at the parking structures glare from vehicle headlights shall be screened from off-site viewers.	Project Developer to provide garage sections to City showing how vehicle headlights in the proposed garages will be obstructed.	Project Developer	City Planning & Inspection Division	Concurrent with Architectural Review submittal, which may be included within Development Area Plans
TRANSPORTATION				
TRA-1.1: Vehicle Trip Reduction with Transportation Demand Management (TDM). The Project Developer shall prepare and implement a TDM Plan approved by the Santa Clara Director of Planning and Inspection. The TDM Plan shall include trip reduction measures necessary to achieve an overall target of reducing Project office-	Project Developer to submit a TDM Plan to the City for each Development Area Plan	Project Developer / TMA	Department of Public Works Director of Planning and	Prior to the issuance of a certificate of occupancy for

Mitigation and Avoidance Measures	Action	Implementing Party	Monitoring Party	Timing [1]
generated daily traffic by a minimum of 4 percent and peak-hour traffic by a minimum of 10 percent, with an overall target of reducing Project residential-generated daily traffic by a minimum of 2 percent and peak-hour traffic by a minimum of 4 percent, compared to the traffic estimates used in this EIR. The TDM Plan shall also include and implement TDM Best Management Practices (BMPs) for the retail uses. The TDM Plan shall include measures to reduce the amount of vehicle traffic generated by City Place by shifting employees, customers, and residents from driving alone to using transit, carpooling, cycling, and walking modes through TDM measures, strategies, incentives, and policies. The TDM obligation in this measure is to apply for the lifetime of the Project. The TDM Plan may specify a phased implementation approach that provides initially for implementation of the TDM measures that are appropriate for multi-tenant offices (e.g., measures aimed at increased transit use and carpooling), which are expected to be developed during the first three phases of development, and then provide for TDM measures that are appropriate for large corporate office tenants in the remaining phases (such as shuttles). The Santa Clara Director of Planning and Inspection shall have the authority and discretion to permit modification of the measures provided that the modifications continue to achieve the overall trip reduction objective and/or the Santa Clara Director of Planning and Inspection is satisfied that all feasible TDM measures are being implemented if the overall trip reduction objective is not being met. Specific requirements as to the TDM Plan, its contents, target reductions, monitoring and remedial action are as follows: A. *Vehicle Trip Thresholds.* Vehicle trip reductions will be measured through counts of vehicles that enter and exit the site and by comparison of the results to established trip thresholds. As part of the annual TDM Plan monitoring process, as described below, vehicle trip generation estimates, based on the land uses and their sizes, will be prepared by a transportation professional funded by the Transportation Management Association described below, and working under the direction of the City, who will use the trip generation rates and internalization and public transit ridership reductions used in the EIR transportation analysis. The TDM reduction targets will be applied to create the thresholds. The estimates and thresholds will be reviewed and approved by the City's Traffic Engineer. While no thresholds are established for retail uses because it is difficult to enforce trip reductions for retail customers, this measure requires implementation of TDM BMPs for retail portions of the Project, as described below. B. *Transportation Management Association* Some TDM measures and strategies shall be incorporated into the design of the site and the buildings. A Transportation	and prior to each subsequent Development Area Plan, submit a TDM Plan reviewed by the third party. Submit an annual report documenting compliance with the TDM Plan.		Inspection	first building under each DAP for TDM Plan (or expansion of TDM Plan) associated with development under the DAP; obtain approval prior to certificate of occupancy; undertakes annual reporting, surveys and revisions to TDM Plan in accordance with mitigation measure.

Mitigation and Avoidance Measures	Action	Implementing Party	Monitoring Party	Timing [1]
Management Association (TMA) is a non-profit, organization that provides transportation services in a particular area, such as a commercial district, medical center or office park, controlled by members that are building owners or tenants in that area. A TMA shall be formed to oversee and coordinate implementation of the TDM measures to be implemented for the Project, including coordinating activities of the various employers and tenants. The TDM Plan shall identify the vehicle trip-reducing measures and strategies to be provided and implemented directly by the Project Developer, those to be implemented directly by the TMA and those to be implemented directly by individual tenants/employers, and any to be implemented directly by the City. The TDM Plan shall describe the roles and responsibilities of the TMA and its members, which shall be codified in a binding agreement with the City of Santa Clara, approved by the Director of Planning and Inspection, and recorded with the County of Santa Clara Clerk Recorder.				
C. *Office TDM Measures.* TDM measures that target office employees shall be described in detail in the TDM Plan, including information regarding the direct implementing party (e.g., Project Developer, TMA, City, and tenants and employers.), The following TDM measures shall be considered for inclusion in the TDM Plan for some or all portions of the office development, to the extent feasible and appropriate, either as part of an initial TDM Plan or as options for enhanced or remedial measures if trip reduction targets are not being met:				
• On-site Support Facilities: shuttle bus stops with shelters, bicycle paths and lanes, pedestrian paths linking buildings and transit stations, priority parking for carpools and vanpools				
• In-building Support Facilities: showers and changing rooms, bicycle storage rooms and bicycle racks, and bicycle repair stands, cafes, and fitness centers				
• Private shuttles for both long distance commute and last-mile service from nearby public transit				
• Ridesharing options for long distance commuters such as carpool and vanpool matching services				
• Guaranteed ride home services for commuters who carpool, take transit, or bicycle to work				
• Financial incentives such as pre-tax benefits for transit and bicycle expenses (e.g., Commuter Check) or subsidized transit passes (e.g., Commuter Checks, Clipper Cards or VTA EcoPass) for all employees				
• Additional support services for employees who use transit or rideshare, such as flexible work hours				
• A website and marketing program to disseminate information on commute				

Mitigation and Avoidance Measures	Action	Implementing Party	Monitoring Party	Timing [1]
options; access to TMA management services • A TDM information packet to be provided to all new City Place employees upon commencement of work at City Place and, the benefits of alternative commute methods stressed during new employee orientation programs • Incentives for employees to live in locations well served by transit or shuttles • Bike share pods to enable trips on-site and to nearby destinations to be made by bicycle • Car share services with cars on-site for use by employees (or others) who use alternative modes to travel to the site but need a car to run an errand, travel to a meeting, etc. • Multi-passenger demand responsive ride services for local employees that are competitive with drive alone including transportation network/ride-sharing services such as Uber Pool, Lyft Line and Chariot on-demand and crowd-sourced bus services • Yet-to-be developed new services, programs, strategies and emerging technologies • Congestion cordon (boundary) pricing scheme[2] • Parking management strategies such as paid parking and unbundled parking to restrict the parking supply[3] D. *Residential TDM Measures*. TDM measures that target residents shall be described in the TDM Plan, including information regarding the direct implementing party (e.g., Project Developer, TMA, City, tenants and employers). The following TDM measures shall be considered for inclusion in the TDM Plan for some or all portions of the residential development, to the extent feasible and appropriate, either as part of an initial TDM Plan or as options for enhanced or remedial measures if trip reduction targets are not being met: • Bicycle infrastructure improvements • Bicycle parking room or lockers • Bicycle riders guide • On-site bicycle repair facilities				

[2] Cordon pricing would entail charging vehicles a fee as they enter an area. The fees would be higher during congested periods. This type of strategy is most effective with limited access points and requires a high quality transit system to accommodate travel by a non-automobile mode.

[3] These parking management strategies can be paired with a residential permit parking program (RPPP) to ensure that Project residents seeking parking do not park in nearby neighborhoods.

Mitigation and Avoidance Measures	Action	Implementing Party	Monitoring Party	Timing [1]
• Financial subsidies for residents who commute by carpool, transit, walking or bicycle, such as VTA EcoPasses • A website and marketing program to disseminate information on commute options; access to TMA management services • Rideshare matching services • On-site shuttle services, shuttle bus stops with shelters, pedestrians path linking buildings and transit stations • Bus stops located near buildings • Pedestrian-oriented site design • Congestion cordon (boundary) pricing scheme • Parking management strategies such as paid parking and unbundled parking to restrict the parking supply. E. *Retail Site Design BMPs.* BMPs that target retail employees and customers shall be described in the TDM Plan, including information regarding the direct implementing party (e.g., Project Developer, TMA, City, tenants and employers). The following BMPs shall be considered for inclusion in the TDM Plan for some or all portions of the retail development, to the extent feasible and appropriate: • Bicycle infrastructure improvements • Bicycle rider encouragement program • Bicycle parking, showers and lockers • Bicycle riders guide • On-site bicycle repair facilities • Pre-tax commuter incentives • Rideshare matching services • On-site shuttle services, shuttle bus stops with shelters, pedestrians path linking buildings and transit stations • A website and marketing program to disseminate information on commute options; access to TMA management services • Bus stop locations near building entrances • Pedestrian-oriented site design • Congestion cordon (boundary) pricing scheme F. *Monitoring and Reporting.* The TDM Plan shall be monitored annually to gauge its effectiveness in meeting the thresholds; while general guidelines are provided here, the monitoring and reporting process shall be explained in detail in the				

Mitigation and Avoidance Measures	Action	Implementing Party	Monitoring Party	Timing [1]
TDM Plan. A transportation professional working at the City's direction and pursuant to a scope of work approved by the City's Traffic Engineer shall conduct traffic counts annually using mechanical counters or other devices approved by the City of Santa Clara to measure the daily and peak-hour entering and exiting vehicle volumes for a 72-hour period, Tuesday through Thursday. The counts shall include traffic counts at all City Place driveways, traffic counts at the driveways to office parking locations, and traffic counts at the driveways to residential parking locations. The counts shall be conducted when schools are in session and during non-holiday weeks with fair weather. The individual driveway volumes will be summed to provide the total site traffic volumes. The volumes at the driveways to the office and residential parking locations will be summed to provide the office- and residential-generated traffic volumes. The volumes will be compared to the trip thresholds to determine whether the reduction in vehicle trips is being met. The TMA will assist with the monitoring activities that will be conducted. In addition to monitoring driveway volumes, a survey will be developed by the transportation professional and administered in coordination with the TMA and individual office employers to determine actual mode splits for employees. The survey will also gather information on usage of individual TDM Plan components as well as gauge employee perception of the overall TDM Plan After an initial survey is conducted, subsequent surveys shall be conducted in years where the previous year's annual report has concluded that trip thresholds and trip reduction targets are not being met. The results of the annual vehicle counts and survey (if one is conducted that year) will be reported in writing by the transportation professional to the Santa Clara Director of Planning and Inspection. The report will include descriptions of the TDM measures in place, highlighting new or modified measures, summarize the results of the counts, summarize the results of the employee survey (if one is conducted that year), and conclude whether the trip thresholds and trip reduction targets are being met. The report (as well as any remedial action taken as a result) will be summarized in an annual informational report to the Planning Commission on the progress of TDM efforts throughout the City of Santa Clara. G. *Remedial Action*. If TDM Plan monitoring results show that the trip reduction targets are not being met, the TDM Plan shall be updated to identify replacement and/or additional feasible TDM measures to be implemented. The updated TDM Plan shall be submitted to the City and approved by the Santa Clara Director of Planning and Inspection. The updated TDM Plan shall also identify other TDM measures that were considered but determined to be infeasible or ineffective.				

Mitigation and Avoidance Measures	Action	Implementing Party	Monitoring Party	Timing [1]
The TMA shall oversee and coordinate the implementation of the feasible additional TDM measures and continue to explore methods of making other potential TDM measures feasible.				
TRA-1.2: Intersection Improvements. The intersection improvements and off-setting mitigation measures summarized in Table 3.3-20 shall be implemented, and Project Developer shall pay the fair-share contributions for the mitigation measures summarized in Table 3.3-20. The intent of the table is to identify, based on a preliminary feasibility determination, physically feasible intersection mitigation measures (e.g., lane additions) that increase the intersection's vehicle carrying capacity and reduce vehicle delay while fully mitigating the impacts. As described below, feasible mitigation measures that fully mitigate the impacts were identified at some locations. However, at other locations, measures that provide only partial mitigation were identified because of physical constraints. Although these mitigation measures do not fully address the impact, they do help reduce the severity of the impact. For intersections where there are no feasible physical improvements, off-setting mitigation measures were investigated. These measures would provide improvements to other modes of travel, thereby increasing the capacity of the transportation system. At some intersections no feasible improvement or off-setting mitigation measures were identified. The four potential entries are: • Full Mitigation: At the affected intersection, a physical modification to the intersection that would fully mitigate the impact was identified. This could be accomplished by adding vehicle lanes or upgrading an intersection to an interchange or "fly-over." These improvements would reduce vehicle delays and fully mitigate Project impacts at several intersections by allowing the intersections to operate at acceptable levels, with delays that would be lower than they would be under no-project conditions, or with less than a 4-second increase in critical delay at intersections that operate at unacceptable levels. • Partial Mitigation: At the affected intersection, a physical modification to the intersection that would partially mitigate the impact was identified. The proposed measure mitigates the impact during one peak hour but not the other or reduces the delay but not enough to mitigate the impact. • Off-setting Mitigation: In the North San José Deficiency Plan area, off-setting local street network, transit, bicycle, or pedestrian improvements were identified to accommodate future travel growth but not directly mitigate the intersection with the identified impact. • No Feasible Mitigation: No physical improvements or off-setting mitigation	Implement intersection improvements included in Table 3.3-20 of the Draft EIR and pay fair share contribution in accordance with Exhibit MMRP-1.	Project Developer (as noted in Table 3.3-20 of Draft EIR)	Department of Public Works	In accordance with Exhibit MMRP-1

Mitigation and Avoidance Measures	Action	Implementing Party	Monitoring Party	Timing [1]
measures were identified, typically because of physical limitations, costs, and/or right-of-way constraints.				

Some of the intersection improvements would require right-of-way (ROW) acquisition. A preliminary review of ROW constraints was done by viewing aerial photography as a part of the mitigation measure feasibility assessment. An intersection was identified as having ROW constraints if the mitigation measure would include widening the roadway or relocating aboveground utilities. (Use of the center median and "pork-chop" islands was not considered as roadway widening.) If the removal of bicycle facilities was required, the ROW required was defined as "possible." If the City makes a final determination that a portion or all of an improvement is not feasible because ROW cannot be acquired or for other reasons, the improvement, or infeasible portion, shall not be implemented and, if none of the improvement is feasible, and no off-setting mitigation measure is identified, that intersection shall be considered to have "no feasible mitigation."

The Project Developer's responsibility is included in Table 3-3.20, which indicates if the Project Developer would be wholly or partially responsible for the mitigation measure.

- As seen in the table, "100 percent" indicates that the cost and construction of the proposed mitigation measure is the full responsibility of the Project Developer. These are discrete mitigation measures that either fully or partially mitigate significant Project impacts.
- "Percent of total traffic" indicates that the Project Developer shall pay a fair-share contribution to the proposed mitigation measure, which is typically a larger transportation improvement, such as an expressway interchange, that has been identified in an adopted plan. Twelve of the intersections are on the County expressway system and are identified in the County's Expressway Plan to be upgraded to an interchange or "fly-over." The Project Developer shall pay its fair share toward these interchange upgrades per agreements between Santa Clara County and the City of Santa Clara.
- "Pay the North San José fee or fair-share contribution of alternative or off-setting mitigation" is identified for affected intersections in the North San José area. There are two options for these locations. The Project Developer can pay the North San José fee or a fair-share contribution for the mitigation measure or off-setting mitigation measure based on the Project's percent contribution of added traffic at the intersection.
- Where there is no feasible mitigation measure, no fair share is identified (0 percent).

Mitigation and Avoidance Measures	Action	Implementing Party	Monitoring Party	Timing [1]
The City-preferred mitigation measure is identified where there is more than one mitigation option.				
TRA-1.3: Prepare and Implement a Multimodal Improvement Plan. The Project Developer shall fund the preparation of (including CEQA review for) a Multimodal Improvement Plan (MIP) addressing at least the Congestion Management Program (CMP) intersections within the City of Santa Clara that are forecasted to operate at Level of Service F with the Project, either on a project level or cumulative basis. City shall reimburse the Project Developer for any cost of preparation of the MIP that exceeds the Project Developer's fair share of such cost. Such MIP shall be prepared in accordance with the guidelines and regulations of the Valley Transportation Authority (VTA) and shall be adopted by the City Council for submission to the VTA for consideration and approval no later than one year after approval of the Project. Once the MIP is adopted by the VTA, it shall be implemented in accordance with its terms and commensurate with the phasing of the development that its measures are intended to offset.	Provide requisite funding for City preparation of the MIP as City Costs under Development Agreement. City to prepare and approve MIP for submission to VTA, and implement MIP once it is approved.	Project Developer/ City	Department of Public Works and Division of Planning and Inspection	City to submit approved MIP to VTA within 1 year of project approval, and implement MIP according with its terms.
TRA-2.1: Traffic Signal Installation. Install a traffic signal at Intersection 109, Liberty Street/Taylor Street once the traffic volumes meet the warrant requirements. The intersection of Liberty Street/Taylor Street is located in San José; the installation of a traffic signal would need to be approved by the City of San José.	Project Developer shall provide funding for traffic signal installation at Liberty Street/Taylor Street in the City of San José and submit evidence of compliance to City.	Project Developer	Department of Public Works	Prior to issuance of building permits for the building that triggers improvement in accordance with Exhibit MMRP-1.
TRA-2.2: Traffic Signal Installation. Install a traffic signal at Intersection 114, Calle Del Sol/Calle De Luna, once the traffic volumes meet the warrant requirements.	Project Developer to install a traffic signal at Intersection 114, Calle Del Sol/Calle De Luna.	Project Developer	Department of Public Works	Prior to issuance of certificate of occupancy for the building that triggers improvement in accordance with Exhibit MMRP-1.

Mitigation and Avoidance Measures	Action	Implementing Party	Monitoring Party	Timing [1]
TRA-3.1: Freeway Segment Improvements. The Project Developer will make a voluntary contribution toward the VTP's 2040 Express Lane Projects (VTP 2040 project numbers H2, H3, H4, H5, H6, H7, and H15) and Countywide Freeway Traffic Operation System and Ramp Metering Improvements (VTP 2040 project number S83). These VTP 2040 projects (H2, H3, H4, H5, H6, H7, H15, and S83), once fully funded and constructed, will enhance travel choices for Project travelers and make more efficient use of the transportation network.	Project Developer shall pay per trip fee to the City in accordance with Exhibit MMRP-1.	Project Developer	Department of Public Works	Prior to issuance of certificate of occupancy for a new or expanded structure.
TRA-1a.1: Intersection Improvements for Existing with Project Phases 1, 2, and 3. The intersection improvements and off-setting mitigation measures summarized in Table 3.3-26 shall be implemented, and Project Developer shall pay the fair-share contributions for the mitigation measures summarized in Table 3.3-26. (This table also includes impacts and mitigation measures for the full Project for comparison purposes.) These improvements will reduce vehicle delays and fully mitigate Project impacts at several intersections by allowing the intersections to operate at acceptable levels, with delays that would be lower than they would be under no-project conditions, or with less than a 4-second increase in critical delay at intersections that operate at unacceptable levels. Table 3.3-26 also contains physical improvements for select intersections that will reduce the delay, but not to a level that mitigates the impact. Some of the intersection improvements would require ROW acquisition. A preliminary review of ROW constraints was done by viewing aerial photography as a part of the mitigation measure feasibility assessment. An intersection was identified as having ROW constraints if the mitigation measure would include widening the roadway or relocating aboveground utilities. (Use of the center median and "pork-chop" islands was not considered as roadway widening.) If the removal of bicycle facilities was required, the ROW required was defined as "possible." If the City makes a final determination that a portion or all of an improvement is not feasible because ROW cannot be acquired or for other reasons, the improvement, or infeasible portion, shall not be implemented and, if none of the improvement is feasible, and no off-setting mitigation measure is identified, that intersection shall be considered to have "no feasible mitigation."	See TRA-1.2	Project Developer	Department of Public Works	In accordance with Exhibit MMRP-1
TRA-5.1: Transportation Design Review. The site plans for Parcels 1 and 2 will undergo a design review by the City to ensure that City design standards are adhered to prior to construction. This review shall include an on-site intersection analysis prior to development plan approval. The on-site analysis shall include an intersection operations analysis to develop intersection traffic controls and lane geometries that	Project Developer to prepare site plans for Parcels 1 and 2 to be submitted to the City to ensure that City street	Project Developer	Department of Public Works	Concurrent with Development Area Plan submittal for

Mitigation and Avoidance Measures	Action	Implementing Party	Monitoring Party	Timing [1]
meet City of Santa Clara traffic standards. These parcels shall also be reviewed for: • Inbound queuing at parking facilities to ensure that queues do not block public streets and local streets • Emergency vehicle access and circulation • Vehicular circulation • Parking layout and circulation within the site • Bicycle access and circulation • Pedestrian access and circulation • Pedestrian access to and from transit stops • Truck circulation and loading dock access for commercial parcels	design and traffic standards are accommodated in each Development Area Plan.			each phase to the extent that data is available and with Architectural Review to the extent minor details are not known at DAP
TRA-6.1: Intersection Improvements With Access Variant Scheme. The intersection improvements summarized in Table 3.3-35 shall be implemented. These improvements will reduce vehicle delays and fully mitigate Project impacts at several intersections by allowing them to operate at acceptable levels, with delays that would be lower than they would be under no-project conditions, or with less than a 4-second increase in critical delay for intersections that operate at unacceptable levels. Table 3.3-35 also contains physical improvements for select intersections that will reduce the delay, but not to a level that fully mitigates the impact. Some of the intersection improvements would require ROW acquisition. A preliminary review of ROW constraints was done by viewing aerial photography as a part of the mitigation measure feasibility assessment. An intersection was identified as having ROW constraints if the mitigation measure would include widening the roadway or relocating aboveground utilities. (Use of the center median and "pork-chop" islands was not considered as roadway widening.) If the removal of bicycle facilities was required, the ROW required was defined as "possible." If the City makes a final determination that a portion or all of an improvement is not feasible because ROW cannot be acquired or for other reasons, the improvement, or infeasible portion, shall not be implemented and, if none of the improvement is feasible, that intersection shall be considered to have "no feasible mitigation."	Implement intersection improvements summarized in Table 3.3-35 of the Draft EIR and pay fair share contribution in accordance with Exhibit MMRP-1.	Project Developer	Department of Public Works	In accordance with Exhibit MMRP-1
TRA-6.2: Intersection Improvements for Phases 1, 2 and 3. The intersection improvements summarized in Table 3.3-36 shall be implemented. These improvements will reduce vehicle delays and fully mitigate Project impacts at several intersections by allowing the intersections to operate at acceptable levels, with delays that would be lower than they would be under no-project conditions, or with less than a 4-second increase in critical delay for intersections that operate at	Implement the intersection improvements for Phases 1, 2, and 3, as summarized in Table 3.3-36 of the Draft EIR	Project Developer	Department of Public Works	In accordance with Exhibit MMRP-1

Mitigation and Avoidance Measures	Action	Implementing Party	Monitoring Party	Timing [1]
unacceptable levels. Table 3.3-36 also contains physical improvements for select intersections that will reduce the delay, but not to a level that mitigates the impact. Some of the intersection improvements would require ROW acquisition. A preliminary review of ROW constraints was done by viewing aerial photography as a part of the mitigation measure feasibility assessment. An intersection was identified as having ROW constraints if the mitigation measure would include widening the roadway or relocating aboveground utilities. (Use of the center median and "pork-chop" islands was not considered as roadway widening.) If the removal of bicycle facilities was required, the ROW required was defined as "possible." If the City makes a final determination that a portion or all of an improvement is not feasible because ROW cannot be acquired or for other reasons, the improvement, or infeasible portion, shall not be implemented and, if none of the improvement is feasible, that intersection shall be considered to have "no feasible mitigation."	and pay fair share contribution in accordance with Exhibit MMRP-1.			
TRA-7.1: Sidewalk Gap Closure on Tasman Drive on the Lafayette Street overcrossing extending east to Calle Del Sol. The Project Developer shall construct a sidewalk on the north side of Tasman Drive on the Lafayette Street overcrossing and extending east to Calle Del Sol. The Project Developer shall fully fund the construction of this sidewalk segment between the Project frontage on Tasman Drive and Calle Del Sol.	Project Developer to construct a sidewalk on the north side of Tasman Drive on the Lafayette Street overcrossing, extending east to Calle Del Sol.	Project Developer	Department of Public Works	Prior to the issuance of certificate of occupancy for first building within Phase 1
TRA-14.1: Signalized Intersection Improvements. The intersection improvements and off-setting mitigation measures summarized in Table 3.3-20 shall be implemented and Project Developer shall pay the fair-share contributions for the mitigation measures summarized in Table 3.3-20, The Project Developer shall also pay the fair-share contribution for the additional intersections or off-setting mitigation measure identified in Table 3.3-50. The improvements will reduce vehicle delays and fully mitigate cumulative impacts at several intersections by allowing the intersections to operate at acceptable levels, with delays that would be less than they would be under no-project conditions, or with less than a 4-second increase in critical delay for intersections that operate at unacceptable levels. Table 3.3-50 also contains physical improvements for select intersections that will reduce the delay, but not to less than no-project conditions such that the Project's effects would remain cumulatively considerable. Some of the intersection improvements would require ROW acquisition. A preliminary review of ROW constraints was done by viewing aerial photography as a part of the mitigation measure feasibility assessment. An intersection was identified	Project Developer to implement intersection improvements mitigation measures summarized in Table 3.3-20 of the Draft EIR and pay the fair-share contributions for the mitigation measures in accordance with Exhibit MMRP-1.	Project Developer	Department of Public Works	In accordance with Exhibit MMRP-1

Mitigation and Avoidance Measures	Action	Implementing Party	Monitoring Party	Timing [1]
as having ROW constraints if the mitigation measure would include widening the roadway or relocating aboveground utilities. (Use of the center median and "pork-chop" islands was not considered as roadway widening.) If the removal of bicycle facilities was required, the ROW required was defined as "possible." If the City makes a final determination that a portion or all of an improvement or mitigation is not feasible because ROW cannot be acquired or for other reasons, the improvement, or infeasible portion, shall not be implemented and, if none of the improvement is feasible, that intersection shall be considered to have "no feasible mitigation."				
TRA-16.1: Intersection Improvements for Cumulative with-Project Access Variants. The intersection improvements summarized in Table 3.3-54 shall be implemented. Some of the intersection improvements would require ROW acquisition. A preliminary review of ROW constraints was done by viewing aerial photography as a part of the mitigation measure feasibility assessment. An intersection was identified as having ROW constraints if the mitigation measure would include widening the roadway or relocating aboveground utilities. (Use of the center median and "pork-chop" islands was not considered as roadway widening.) If the removal of bicycle facilities was required, the ROW required was defined as "possible." If the City makes a final determination that a portion or all of an improvement or mitigation is not feasible because ROW cannot be acquired or for other reasons, the improvement, or infeasible portion, shall not be implemented and, if none of the improvement is feasible, that intersection shall be considered to have "no feasible mitigation."	Project Developer to implement the intersection improvements summarized in Table 3.3-54 of the Draft EIR and pay the fair-share contributions for the mitigation measures in accordance with Exhibit MMRP-1.	Project Developer	Department of Public Works	In accordance with Exhibit MMRP-1
TRA-18.1: Construction Management. Prior to the issuance of each building permit, the Project Developer and construction contractor shall meet with the Public Works Department to determine traffic management strategies to reduce, to the maximum extent feasible, traffic congestion during construction of the Project and develop acceptable detour routes for emergency vehicles and for shuttles to the Great America ACE/Capitol Corridor station. The City will coordinate with appropriate transit agencies. The Project Developer shall prepare a Construction Management Plan for review and approval by the Public Works Department, which shall share the plan with interested the Capitol Corridor Joint Power Authority, the VTA, and ACE for review and comment. The plan, which shall be implemented during construction, shall include at least the following items and requirements: • A set of comprehensive traffic control measures, including detour signs if required, lane closure procedures, sidewalk closure procedures, signs, cones for drivers, and designated construction access routes. • Notification procedures for adjacent property owners, the public, transit operators,	Project Developer to prepare and submit a Construction Management Plan for the purpose of managing traffic and reducing traffic congestion during construction. City to review and approve Plan.	Project Developer/ Project Contractor	Department of Public Works	Prior to issuance of each building permit

Mitigation and Avoidance Measures	Action	Implementing Party	Monitoring Party	Timing [1]
and public safety personnel regarding when detours and lane closures will occur. • Location of construction staging areas for materials, equipment, and vehicles (must be located on the Project site). • Identification of haul routes for movement of construction vehicles that would minimize impacts on vehicular, pedestrian, and transit vehicle traffic, circulation and safety; and provision for monitoring surface streets used for haul routes so that any damage and debris attributable to the haul trucks can be identified and corrected. Construction vehicles shall be required to use designated truck/haul routes. • Provisions for removal of trash generated by Project construction activity. • A process for responding to and tracking complaints pertaining to construction activity. • Construction vehicles and construction workers shall not be allowed to park in adjacent residential neighborhoods. Construction vehicles will be required to park either in the construction zone or in the temporary parking lots.				
TRA-19.1: Modified City's Traffic Management and Operations Plan (TMOP) and Prepare a Project-Specific Traffic and Parking Management Plan. Modify the City's TMOP to include plans to direct stadium traffic to the new parking locations on the site. (Some of the office parking areas will be used during special events.) A separate traffic and parking management plan shall be developed for the Project by the Project Developer and approved by the Director of Planning and Inspection and/or the Director of Public works. This plan would address: • Parking areas to be used by office employees (versus stadium parking); • Project customer/employee parking (versus stadium parking); • Access and egress routes for vehicles to the site, taking into consideration the lane and roadway segment closures used to direct stadium traffic; • A communications plan to inform customers and employees of game-day operations; and • Operational improvements such as signal timing and coordination to maximize efficiency of the streets during peak periods. Performance goals that reflect a successful traffic and parking management plan would be contained in the plan and may include items such as: • Maintaining vehicular access to the Project with acceptable increases in travel times compared to non-game day conditions; • Limited vehicle queuing within the Project site such that no internal circulation roadways are blocked; and	Project Developer to modify the City's TMOP to include plans to direct stadium traffic to the new parking locations on the site, and a site traffic and parking management plan for review and approval by City.	Project Developer	Director of Planning and Inspection and/or Director of Public Works	Prior to the issuance of first certificate of occupancy within each DAP area

Mitigation and Avoidance Measures	Action	Implementing Party	Monitoring Party	Timing [1]
• Limited vehicle queuing extending from parking facilities within the Project onto external public roadways. Even with mitigation, the local streets near the Project site would operate at an unacceptable LOS due to vehicle demand exceeding capacity. Widening roadways or intersections to increase capacity was considered as mitigation but rejected due to utility and secondary impacts. Street widening would provide capacity that would be needed only on game days and not at other times. The City of Santa Clara General Plan has policies to discourage the widening of existing roadways without first considering operational improvements such as the items included in the existing TMOP and items that will be included in the TDM Plan.				
AIR QUALITY				
AQ-2.1: Utilize Clean Diesel-Powered Equipment during Construction to Control Construction-Related Reactive Organic Gas (ROG) and Oxides of Nitrogen (NO_X) Emissions. The Project Developer shall ensure that all off-road diesel-powered equipment used during construction between 2017 and 2022 is equipped with the U.S. Environmental Protection Agency (EPA) Tier 3 or cleaner engines, except for specialized construction equipment for which an EPA Tier 3 engine is not available. Consistent with advancements of the statewide fleet average, the Project Developer shall ensure that all off-road diesel-powered equipment used during construction between 2023 and 2030 is equipped with EPA Tier 4 engines, except for specialized construction equipment for which an EPA Tier 4 engine is not available. This requirement will ensure construction equipment remains cleaner than the fleet-wide average.[4]	Project Developer to provide to City applicable provisions of construction contracts requiring that all off-road diesel-powered equipment used for construction between 2017 and 2022 is equipped with the U.S. EPA Tier 3 or cleaner engines and that all off-road diesel-powered equipment used for construction between 2023 and 2030 is equipped with EPA Tier 4 engines.	Project Developer/ Project Contractor	City Planning & Inspection Division	Prior to grading or building permit issuance
AQ-2.2: Use Modern Fleet for On-Road Material Delivery and Haul Trucks during Construction. The Project Developer shall ensure that all on-road heavy-duty diesel trucks with a gross vehicle weight rating of 19,500 pounds or greater used at	Project Developer to provide to City applicable provisions of	Project Developer/ Project	City Planning & Inspection Division	Prior to grading or building permit issuance

[4] As explained in MM AQ-6.1, below, as necessary to reduce cancer risk to on-site sensitive receptors related to construction diesel particulate matter emissions to a level below the BAAQMD, the Project Developer may need to use Tier 4 equipment after occupancy of on-site residences or daycare centers, or may use other appropriate measures (see AQ-6.1). If Tier 4 equipment is used earlier than 2023, this may reduce the amount of mitigation required in MM AQ-2.4.

Mitigation and Avoidance Measures	Action	Implementing Party	Monitoring Party	Timing [1]
the Project site comply with EPA 2007 on-road emissions standards for PM10 and NO_X (0.01 grams per brake horsepower-hour [g/bhp-hr] and 0.20 g/bhp-hr, respectively).	construction contracts requiring the use of modern fleet for on-road material delivery and that haul trucks comply with EPA 2007 on-road emissions standards for PM10 and NOX.	Contractor		
AQ-2.3: Implement Bay Area Air Quality Management District (BAAQMD) Additional Construction Mitigation Measures to Reduce Construction-Related Dust and Exhaust Emissions. The Project Developer shall require all construction contractors to implement the specific construction mitigation measures below to reduce fugitive dust and equipment exhaust emissions. Emission reduction measures shall include, at a minimum, the following measures. Alternative measures may be identified by the Project Developer or its contractor, as appropriate, provided that they are as effective as the measures below. Alternative measures shall be submitted to the City of Santa Clara for approval. • All exposed surfaces shall be watered at a frequency adequate to maintain minimum soil moisture of 12 percent. Moisture content can be verified by lab samples or moisture probe. If water infiltration into landfill refuse layers is a concern, non-toxic soil stabilizers may be used instead. • All excavation, grading, and/or demolition activities shall be suspended when average wind speeds exceed 20 miles per hour (mph) for a period of 2 hours or more. • Windbreaks (e.g., fences) shall be installed on the windward side(s) of actively disturbed areas of construction. Windbreaks shall have at maximum 50 percent air porosity. • Exposed ground areas that are to be reworked more than 1 month after initial grading should be sown with fast-germinating native grass seed and watered appropriately until vegetation is established. If grass seeding is not feasible, then non-toxic soil stabilizers may be used. • All construction trucks and equipment, including tires, involved in ground disturbance or transit through loose soil areas shall be washed off prior to leaving the site. • Site accesses to a distance of 25 feet from the paved road shall be treated with a 6- to 12-inch compacted layer of wood chips, mulch, or gravel. Alternatively, a rumble plate may be used in place of chips, mulch, or gravel.	Project Developer to provide to City applicable provisions of construction contracts requiring the use of BAAQMD additional construction mitigation measures to reduce construction-related dust and exhaust emissions.	Project Developer/ Project Contractor	City Planning & Inspection Division	Prior to grading and building permit issuance

Mitigation and Avoidance Measures	Action	Implementing Party	Monitoring Party	Timing [1]
• Sandbags or other erosion control measures shall be installed to prevent silt runoff to public roadways from sites with a slope greater than 1 percent. • Idling time of diesel powered construction equipment shall be limited to 2 minutes. • All construction equipment, diesel trucks, and generators shall be equipped with Best Available Control Technology for emission reductions of PM and NOX. • All contractors shall use equipment that meets the California Air Resources Board's (ARB's) most recent certification standard for off-road heavy-duty diesel engines.				
AQ-2.4: Offset NO_X Emissions Generated during Construction that Are above BAAQMD NOX Average Daily Emission Threshold. The Project Developer shall track construction activity, estimate emissions, and enter into a construction mitigation contract with BAAQMD to offset NO_X emissions that exceed BAAQMD NOX average daily threshold of 54 pounds per day. The average daily emissions shall be calculated on an annual basis by determining total construction-related NO_X emissions in each calendar year and dividing by the number of actual workdays in that calendar year. BAAQMD will use the mitigation fees provided by the Project Developer to implement emissions reduction efforts that offset Project NO_X emissions that exceed BAAQMD threshold. Implementation of this mitigation measure shall apply only to Phase 1 through Phase 4 construction on Parcels 4 and 5 because only construction on Parcels 4 and 5 has the potential to exceed the BAAQMD average daily NO_X threshold on an annual basis, depending on construction sequencing and overlapping activity. This mitigation includes the following specific requirements: • The Project Developer shall require construction contractors to provide annual construction activity monitoring data for Phases 1 through 4 to estimate actual construction emissions, including the effect of equipment emissions reduction measures. The Project Developer shall submit the annual construction activity monitoring data and an estimate of actual annual construction emissions to the City and BAAQMD for review by February 1 of each year for the prior construction year. The City shall examine the construction activity monitoring to ensure it is representative, and BAAQMD shall examine the emissions estimate to ensure it is calculated properly. • After acceptance of the emissions estimates by BAAQMD for the prior year, the Project Developer shall submit mitigation fees to BAAQMD to fund offsets for the portion of annual emissions that exceed the average daily NOX threshold. The mitigation fees shall be based on the mitigation contract with BAAQMD (see discussion below) but shall not exceed the emissions-reduction project cost-effectiveness limit set for the Carl Moyer Memorial Air Quality Standards	City construction mitigation contracts with BAAQMD. Project Developer to provide to City annual construction activity monitoring data for City verification that the data is representative.	Project Developer/ Project Contractor	City Planning & Inspection Division	Approval of agreement prior to grading and building permit issuance, annual submittal of evidence documenting compliance and of construction activity monitoring data during construction of Phases 1 through 4 on Parcels 4 and 5..

Mitigation and Avoidance Measures	Action	Implementing Party	Monitoring Party	Timing [1]
Attainment Program (Carl Moyer Program) for the year in which mitigation fees are paid. The current Carl Moyer Program cost-effectiveness limit is $18,030 per weighted ton of criteria pollutants (NOX + ROG + [20*PM]). An administrative fee of 5 percent shall be paid by the Project Developer to BAAQMD to implement the program. • The mitigation fees shall be used by BAAQMD to fund projects that are eligible for funding under the Carl Moyer Program guidelines or other BAAQMD emissions-reduction incentive programs that meet the Carl Moyer Program cost-effectiveness threshold and are real, surplus, quantifiable, and enforceable. • The Project Developer shall enter into a mitigation contract with BAAQMD for the emissions-reduction incentive program. The mitigation contract shall include the following: o Identification of appropriate off-site mitigation fees required for the Project. o Timing for submission of mitigation fees. o Processing of mitigation fees paid by the Project Developer. o Verification of emissions estimates submitted by the Project Developer. o Verification that off-site fees are applied to appropriate mitigation programs within the SFBAAB. The mitigation fees shall be submitted within 4 weeks after BAAQMD accepts an emissions estimate provided by the Project Developer showing that the average daily NOX threshold was exceeded (when measured on an annual basis).				
AQ-6.1: Assess Construction Diesel Particulate Matter (DPM) Emissions Potential Prior to Construction, Utilize Clean Diesel-Powered Equipment, Filtration Systems, and/or other Measures as Necessary to Reduce Cancer Risks Associated with DPM during Construction. The Project Developer shall implement the following measures, as necessary, to reduce cancer risks associated with DPM during construction to a level less than BAAQMD incremental cancer risk threshold of 10 in 1 million: • Revised Health Risk Assessment (HRA): The Project Developer may choose to assess the potential construction DPM emissions later in the design phase, but prior to construction, and to prepare a revised HRA using updated construction equipment activity data and submit to the City for review. If the revised HRA demonstrates, to the satisfaction of the City, that the cancer risk for construction of the entire Project at all potentially exposed on-site and off-site sensitive receptors will be less than BAAQMD threshold cited, then no additional mitigation is necessary. If the revised HRA demonstrates, to the satisfaction of the City, that the cancer risk for construction of the entire Project at some of the on-site or off-site	Project Developer to provide revised HRA (optional) or provide updated modeling and applicable provisions of construction contracts and/or building plans including measures to reduce cancer risks. City to review and approve revised HRA (optional to project Developer) or approve applicable provisions of construction contracts and building plans if no	Project Developer/ Project Contractor	City Planning & Inspection Division	Prior to construction that is planned to occur after the first occupancy of on-site residences or daycare centers and/or prior to residential or day care building permit issuance if Project Developer

Mitigation and Avoidance Measures	Action	Implementing Party	Monitoring Party	Timing [1]
sensitive receptors will be less than presented in the EIR but still over the BAAQMD threshold, then some of the mitigation below may not be necessary. • As necessary to reduce cancer risks below the BAAQMD threshold in light of projected DPM emissions and exposure and other mitigation (MM AQ-2.1 through MM AQ-2.3 and MM GHG-1.1), one or more of the following measures shall be implemented and the Project Developer will provide updated modeling to the City demonstrating that all on-site risks are reduced to below the BAAQMD threshold level: o Tier 4 Construction Equipment. If on-site and residences and daycare centers are occupied, the Project Developer shall ensure that all off-road diesel-powered equipment used during construction after occupancy of on-site residences or on-site daycare centers is equipped with EPA Tier 4 or cleaner engines, except for specialized construction equipment for which an EPA Tier 4 engine is not available. This requirement would be in addition to the clean diesel requirements in Mitigation Measure AQ-2.1. o Install Filtration Systems on Ventilation and Recirculation Systems. Filtration systems shall be installed on ventilation and recirculation systems within on-site residences and for the heating, cooling, or ventilation systems serving daycare centers. All filters must be rated MERV-13 or higher. The Project Developer shall submit a plan for installation and maintenance of all filters in accordance with the manufacturer's recommendations to the City prior to approval of the first building permits. o If on-site and residences and daycare centers are occupied, the Project Developer shall employ other reduction measures, such as High Performance Renewable (HPR) Diesel Fuel, that would reduce DPM. Proposals for alternative reduction measures shall be submitted to the City for review and approval, including evidence of the particulate reduction and/or risk reduction effectiveness of the proposed alternative measures.	HRA is prepared or if revised HRA shows that cancer risks would not be below regulatory thresholds.			desires to incorporate measures into structure
GREENHOUSE GAS EMISSIONS				
GHG-1.1: Utilize Alternative Fuels during Construction. Require construction contractors to use alternative fuels in at least 30 percent of the construction equipment that uses diesel fuel. Alternative fuels may include electricity, compressed natural gas (CNG), biodiesel (B-20), or renewable diesel, such as diesel high-performance renewable (HPR).	Developer to provide to City applicable provisions of construction contracts requiring adequate use of alternative fuels.	Project Developer/ Project Contractor	City Planning & Inspection Division	Prior to grading and building permits.

Mitigation and Avoidance Measures	Action	Implementing Party	Monitoring Party	Timing [1]
GHG-1.2: Operational GHG Emissions Reduction Measures. The Project Developer shall implement the operational GHG emissions reduction strategies described below: 1. Energy Efficiency: The Project's energy efficiency shall be 15 percent better than the base case energy model developed pursuant to the 2013 Title 24 requirements or shall meet the Title 24 requirements that are applicable at the time of issuance of the building permits for individual phases, whichever is more stringent (Climate Action Plan [CAP] Measure 2.1).[5] 2. On-site Solar Energy: The Project already includes on-site photovoltaics (PV) solar to meet 10 percent of electricity demand. The Project shall obtain renewable energy electricity corresponding to 50 percent[6] of on-site electricity demand by 2030 through a combination of on-site solar, purchase of renewable energy or other measures (CAP Measure 2.4). This requirement may be phased in as follows: 2020 – 15%; 2025 – 29%; 2030 – 50%. If the Project Developer can demonstrate, to the City's satisfaction, that through Project design, adopted State or federal regulations, or other assured actions that the Project's emissions overall will meet the 2030 metric identified in this document without the implementation of this particular measure of its full implementation, then this measure (or its full implementation) may be waived by the City. 3. Food Waste: All retail restaurants shall be required to participate 100 percent in any extant City food waste and composting programs and any that may be developed in the future (CAP Measure 4.1). 4. Electrical Landscaping Equipment: The Project shall include installation of electrical outlets near all maintained landscaping areas to allow for the use of electrical landscaping equipment (CAP Measure 5.1). In the landscaped City Center, only electrical landscape equipment shall be used. Use of electrical landscaping equipment shall not be required for the extensive natural landscaping contemplated at the edges of the City Center and at Parcels 1, 2, and 3. 5. Electrical Vehicle Charging/Preferential Parking (CAP Measure 6.3). The Project shall provide preferential parking in all parking lots for electric vehicles and shall also provide charging equipment, as follows:	#1, 4, 5, 6, 7, 11, 12: Building and landscape plans. #2: Annual reporting unless Project Developer demonstrates at building permit issuance that goal will be met. #10, 13: Ground leases to require implementation of measures and incorporation of operational measures into subleases.	Project Developer	City Planning & Inspection Division	#1, 4, 5 6, 7, 11, 12: Prior to building permit issuance #2: Prior to building permit issuance unless the developer wishes to demonstrate that emissions will meet the 2030 metric. #3, 8, 9, 10: Prior to execution of ground leases; provisions must be included in each applicable ground lease.

[5] The CEC intends for residential buildings in 2020 and later to be zero net energy (ZNE) and commercial buildings in 2030 or later to be ZNE, but because pending regulations are not yet adopted, this cannot be assumed in this analysis.

[6] CAP measure 1.1 requires the City's utility (SVP) to replace coal power within its portfolio with natural gas by 2020 and includes a stretch goal to replace the coal power with a combination of 50% natural gas and 50% renewable energy by 2035. Thus the CAP stretch goal is to increase renewable energy within its portfolio from 2020 to 2035. The 29 percent value for the mitigation above was calculated as the difference between the CAP Measure 1.1 reduction amount for the stretch goal for 2035 (71%) and the CAP Measure 1.1 reduction amount for 2020 (42%). As discussed in text, the Project has less than significant impact in comparison to the BAAQMD service population efficiency threshold based on the AB 32 target for 2020. Since the EIR finds that the project's emissions are significant for the period after 2020, the use of the difference in the CAP Measure 1.1 between 2020 and 2035 is appropriate to the impact identified for the Project.

Mitigation and Avoidance Measures	Action	Implementing Party	Monitoring Party	Timing [1]
a. Residential Use: A total of 10 percent of the required parking spaces shall be provided with a listed cabinet, box, or enclosure and connected to a conduit that links the parking spaces to the electrical service in a manner approved by the building and safety official. Of the listed cabinets, boxes, or enclosures provided, 50 percent shall have the necessary electric vehicle supply equipment installed to provide active charging stations that are ready for use by residents. The remainder shall be installed at such time as they are needed for use by residents. Electrical vehicle batteries and charging technology may change substantially over the next 15 years. As such, the City shall have the discretion to modify the specific requirements for this measure over time, provided that 10 percent of the spaces have electrical service and 5 percent have active charging, depending on what the technology at the time requires.				
b. Commercial Use: New commercial uses shall provide the electrical service capacity necessary as well as all conduits and related equipment necessary to serve 2 percent of the parking spaces with charging stations in a manner approved by the City's Building Official. Of these parking spaces, 50 percent shall initially be provided with the equipment necessary to function as online charging stations upon completion of the Project. The remainder shall be installed at such time as they are needed for use by customers, employees, or other users. Electrical vehicle batteries and charging technology may change substantially over the next 15 years. As such, the City shall have the discretion to modify the specific requirements for this measure over time, provided that two percent of the spaces have electrical service and one percent have active charging, depending on what the technology at the time requires.				
6. Shade Trees: Where surface parking lots are not covered by PV solar, shade trees shall be planted to reduce urban heat island effects on adjacent buildings (CAP Measure 7.1).				
7. Urban Cooling: Any uncovered parking lots or spaces shall use light-colored pavement (CAP Measure 7.2).				
8. Leases for businesses that base a diesel truck fleet within the Project site: Ensure those fleets meet the highest CARB engine-tier standard in place at the time of issuance of the building permits for the building that such businesses occupy, or the execution of a lease, whichever comes first.				
9. Electrical hook-ups at loading docks for businesses that will receive deliveries from refrigerated diesel trucks: Stipulate in the lease agreement for such businesses a requirement to use the hook-ups if the trucks will be idling for more than two minutes.				

Mitigation and Avoidance Measures	Action	Implementing Party	Monitoring Party	Timing [1]
10. Leases for business receiving deliveries: Prohibit all diesel-powered trucks from idling for more than 2 minutes. 11. Solar hot water heating systems: Incorporate for appropriate applications, including any swimming pools and buildings with swimming pools. 12. Electric heat pumps, or other energy-efficiency techniques, including radiant systems: Include for space heating and cooling, under appropriate circumstances.				
NOISE				
NOI-1.1: Prepare and Implement a Construction Noise Control Plan to Reduce Construction Noise at Adjacent Land Uses. The Project Developer shall develop a noise control plan that requires that the Project construction activities comply with the City Code noise limits. The requirements and limitations specified in the plan shall be determined by phase and/or parcel and/or subsections of a parcel or phase. The construction noise control plan shall require the following: • The Project Developer shall appoint a Project noise coordinator who will serve as the point of contact for noise-related complaints during Project construction. The Project noise coordinator shall transmit all construction noise-related complaints to the construction contractor, and the construction contractor shall enhance or refine the noise best management practices discussed herein to address the received noise complaints to the extent feasible. The contact information for the Project noise coordinator shall be sent to residents in the greater vicinity of the Project site that could be affected by Project noise and municipalities affected by Project construction noise. • Construction activities that have the potential to generate noise that is detectable at adjacent residential land uses or within 300 feet of a residentially zoned property shall occur only during the times listed below. Activities that would result in no detectable noise at adjacent land uses, such as interior painting, would not be limited by the hours below. o Between 7:00 a.m. and 6:00 p.m. Monday through Friday. o Between 9:00 a.m. and 6:00 p.m. on Saturdays. o No duration in time on holidays or Sundays. • Construction contractors shall specify noise-reducing construction practices that will be employed to reduce construction noise for construction activities that would occur outside of the prohibited hours specified in the City Code and that would have the potential to exceed the receiving zone noise limits specified in the City Code. The measures determined by the Project Developer shall be reviewed and approved by the City prior to the issuance of building permits. Measures that can be used to limit noise include, but are not limited to, those listed below.	Project Developer to provide noise control plan for City review and approval.	Project Developer/ Project Contractor	City Planning & Inspection Division	Prior to issuance of the first building permit within each Development Area Plan area

Prior to commencement of an Appraisal, the parties shall review (i) all matters of any type or nature which affect title to the Premises or any interest therein and (ii) the then-current operations of the Premises and each of the City and the Tenant shall have the right to identify any additional entitlement or regulatory approvals and documents pertaining to the Premises and not listed above that are to be designated as part of the Project Documents and considered by the appraiser in the preparation of such Appraisal.

III. Appraisal Standards:

Each Appraisal shall be a self-contained report based on a comprehensive study and analysis and setting forth, in detail, all data, analysis, and conclusions, as necessary and typical of a complete, self-contained appraisal report. Each Appraisal shall be prepared in accordance with the Standards of Professional Appraisal Practice and the Code of Professional Ethics promulgated by the Appraisal Institute to the extent then in effect (the "**AI Standards**"), or its then-equivalent, should the Appraisal Institute no longer be operating; provided, that, in the event of a conflict, ambiguity or inconsistency between the AI Standards and these Instructions, these Instructions shall govern and control in all respects.

IV. Appraisal Principles:

Each Appraisal shall be prepared in accordance with the following principles:

1. The Fair Market Value shall be calculated as if the Premises were vacant and unimproved by any structures, buildings, improvements, fixtures, additions, alterations and betterments of whatsoever nature or description, including, without limitation, all Infrastructure Improvements and Buildings included in any DAP approved for the Premises.

2. The Fair Market Value shall be calculated as if the Premises were not benefitted by any other Infrastructure Improvements, including, without limitation, any Infrastructure Improvements installed under the Premises, in the Landfill Parcel or elsewhere. Without limiting the foregoing, the Fair Market Value shall reflect any burdens, limitations, restrictions, constraints or impacts upon the Premises, whether arising from or under any of the Project Documents (other than the Ground Lease), in respect of any Infrastructure Improvements, or otherwise existing, including, without limitation, any restrictions on development or use of the Premises, any third-party property rights or other rights appurtenant thereto, any regulatory restrictions applicable to the Premises, and any negative or affirmative covenants of any kind or nature whatsoever that are applicable to the Premises (including, without limitation, any restrictions, third-party rights or covenants related to the City's obligations with respect to the Landfill). Notwithstanding the foregoing, the Fair Market Value shall not reflect, and in preparing their Appraisals the appraisers shall not consider, any incremental and/or unusual additional on-site and off-site costs of development due to the fact that the Premises are located on a landfill (e.g., additional construction and engineering costs for foundation, methane gas monitoring and collection, settlement slab, increased utility costs and the like), including any of the types of additional costs that are contemplated by Premium Costs as established under the DDA.

EXHIBIT H

Appraisal Instructions

I. Introduction:

These Appraisal Instructions (these "**Instructions**") constitute an integral part of that certain Ground Lease (City Place Santa Clara – Phase [ ]) (the "**Ground Lease**"), dated as of _____, 2___, by and between the City of Santa Clara, California, a chartered municipal corporation, as landlord ("**City**"), and [*Insert Tenant*], a [_____], as tenant ("**Tenant**"). All capitalized terms used herein but not otherwise defined herein shall have the meaning ascribed to such terms in the Ground Lease.

These Instructions shall govern preparation and delivery of each appraisal (each, an "**Appraisal**") of the [Phase [ ] Airspace Parcel][Tasman Parcels] Fee Fair Market Value (the "**Fair Market Value**") for purposes of calculating the Base Rent adjustment under Sections 3.4.1 through 3.4.6 of the Ground Lease in each of the 45th Project Lease Year and the 70th Project Lease Year.

These Instructions shall constitute the sole instructions to be utilized by the appraiser in preparing an Appraisal.

II. Documents Applicable to Premises:

City and Tenant agree that the Premises are presently subject to or otherwise affected by each and all of the following (collectively, the "**Project Documents**"), to the extent such Project Documents remain in effect and apply to the Premises at the time of preparation of an Appraisal:

1. The CC&Rs;
2. the DDA;
3. the Development Agreement;
4. the Landfill Operation and Management Agreement;
5. the Ground Lease;
6. the MCP;
7. the Non-Water Corrective Action Plan;
8. the Post-Closure Land Use Plan;
9. the Post-Closure Permit;
10. the Project MMRP;
11. the Revised Closure Plan;
12. the Revised Post-Closure Maintenance Plan;
13. the Waste Discharge Requirements;
14. the Water Corrective Action Plan; and
15. any other Authorizations heretofore and hereafter received for any portion of the Project and agreements entered into pursuant to the DDA, together with all exhibits thereto, as any of the foregoing may be amended from time to time.

EXHIBIT G-1
FORM OF GROUND LEASE (PHASE 1)

EXHIBIT G
[Reserved]

EXHIBIT G-1
FORM OF GROUND LEASE (PHASE 1)

EXHIBIT F
Required Buildings

[To be attached upon Ground Lease execution]

ID	Intersection	Mitigation	Total Cost	Basis of Cost
84	Gold Street/Gold Street connector	Convert northbound through lane to a shared left-turn/through lane, add second northbound left-turn lane and a second eastbound right-turn lane (move pedestrian crossing to north leg of intersection).	**$735,100**	In order to avoid modifications to existing electrical transmission line towers, the City waived the mitigation requirement to add a second northbound left turn lane. The City also agreed to include a surveillance camera at the intersection as requested by the City of San Jose. The cost estimate was prepared by BKF Engineers and accepted by the City. The estimated cost includes $685,100 for the intersection mitigation and an additional $50,000 for the surveillance camera requested by the City of San Jose. The estimated cost assumes that 11' lanes will be implemented and the work associated with the addition of the surveillance camera does not require a new signal controller or installation of equipment to the control station.
109	Liberty St/Lewis St	Signalize.	**$300,000**	The City of San Jose requested that the intersection not be signalized per the mitigation. The City of Santa Clara will provide the City of San Jose with the monetary equivalent of the cost of installing a signal. BKF Engineers estimated and the City of Santa Clara concurred with a cost for signalization of $300,000.
123	Great America Pkwy/ Gold Street connector	Add a second northbound right-turn lane (from Int. 57 dual westbound right-turn lanes).	**$ --**	The cost of this work is included in the cost estimate for intersection #57.

EXHIBIT MMRP-1

City Place Santa Clara Project – Costs for Certain Full Funding Responsibility Improvements

Planning/CEQA File # PLN2014-10554/CEQ2014-01180

State Clearinghouse # 2014072078

ID	Intersection	Mitigation	Total Cost	Basis of Cost
48	Lawrence Expressway/ US 101 SB Ramps	Convert eastbound left turn lane to a shared left/right turn lane.	**$13,500**	The cost estimate was prepared by BKF Engineers and accepted by the City. The cost estimate assumes that the work is limited to striping.
55	Lawrence Expwy/ Homestead Rd	Add a third eastbound through lane and a third westbound through lane (Yahoo! Santa Clara Campus TIA, August 2009; City of Sunnyvale Citywide Deficiency Plan, September 2005; and City of Santa Clara Traffic Mitigation Program, June 2011).	**$2,841,800**	The cost estimate was prepared by BKF Engineers and accepted by the City. The cost estimate assumes that 10' turn lanes and 11' through lanes will be implemented. While the Project has 100% responsibility for this mitigation, the project's responsibility for the cost is reduced by previous contributions made by Yahoo ($96,060) and the County of Santa Clara ($400,000). Right of way for this mitigation has been previously dedicated by Kaiser negating the need for the Project to acquire any right of way for mitigation. The Project will make a monetary contribution equal to its cost responsibility in lieu of constructing the mitigation.
57	Great America Pkwy/SR 237 WB Ramps	Add third westbound left-turn lane and associated receiving lane under underpass. Add a second westbound right-turn lane.	**$2,351,652**	The Total Cost includes both local road work and freeway ramp work. The cost estimate was prepared by BKF Engineers and accepted by the City. The cost of the local road work is estimated at $963,508 and the freeway ramp work at $1,388,144. Since the freeway ramp work will be performed concurrently with the intersection mitigation, the estimated cost of the freeway ramp work is deducted from the Freeway Fair Share voluntary contribution amount.
82	San Tomas Expwy/ Pruneridge Ave	Partial Mitigation: Add a second northbound left-turn lane.	**$271,900**	The cost estimate was prepared by BKF Engineers and accepted by the City after concurrence with the cost by the County. The estimate assumes that the second northbound left turn lane will be implemented by the County as part of the San Tomas widening project.

ID	Intersection	Jurisdiction/ CMP[20]	Mitigation Measure[21]	Impact Peak Hour	Project Trips	Project Phase
96	Lafayette Street/ Montague Expressway WB Ramps	Santa Clara	Add second westbound right-turn lane with an overlap phase and a second southbound left-turn lane.	AM	6,730	Phase 7
84	Gold Street/Gold Street Connector	San José[26]	Convert northbound through lane to a shared left-turn/through lane, add a second northbound left-turn lane and second eastbound right-turn lane. (move pedestrian crossing to north leg of intersection).	AM	7,180	Phase 7
114	Calle Del Sol/Calle Del Luna	Santa Clara	Signalize.	PM	8,340	Phase 7
90	Lafayette Street/Calle De Luna	Santa Clara	Reconstruct the westbound approach to include two left-turn lanes and one right-turn lane.	AM	8,970	Phase 8
13	Calle Del Sol/Tasman Drive*	Santa Clara	Add a westbound right-turn lane. Reconfigure southbound approaches to include two left-turn lanes and one right-turn lane with overlap phase.	PM	9,380	Phase 8
73	Bowers Avenue/ Monroe Street	Santa Clara	Add a northbound and a southbound left-run lane. Change the northbound and southbound from split to protected left-turn phasing.	PM	10.420	Phase 8
94	Lafayette Street/ Agnew Road	Santa Clara	Add a second eastbound left-turn lane and a second southbound left-turn lane.	PM	10,420	Phase 8
109	Liberty Street/Taylor Street	San José[27]	Signalize. Off-setting Mitigation: Construct traffic control devices to divert traffic from entering the Alviso neighborhood.**	PM	10,420	Phase 8

Notes:

Based on information concerning funding sources and status of planning for and construction of transportation improvements identified in the EIR as being 100% the responsibility of the Project Developer, the City Engineer has made relatively minor changes to the responsibilities for implementing such measures; those adjustments are reflected in this table.

* Intersection improvement identified at this intersection under existing or background no-project conditions. See Appendix 3.3-D of the *City Place Santa Clara Project Draft Environmental Impact Report* (October 2015).

** City-preferred mitigation option.

Source: Fehr & Peers, 2016.

[26] An LOS D threshold is used for study intersections within San José, including CMP designated intersections. Santa Clara County intersections in San José use an LOS E threshold.

[27] An LOS D threshold is used for study intersections within San José, including CMP designated intersections. Santa Clara County intersections in San José use an LOS E threshold.

ID	Intersection	Jurisdiction/ CMP[20]	Mitigation Measure[21]	Impact Peak Hour	Project Trips	Project Phase
71	Bowers Avenue/ Central Expressway	Santa Clara County (CMP)	Partial Mitigation: Add third southbound left-turn lane and third eastbound left-turn lane.**	PM	3,650	Phase 2
57	Great America Parkway/SR 237 WB Ramps	San José (CMP)[22]	Add third westbound left-turn lane and associated receiving lane under underpass. Add a second westbound right-turn lane. Include safe and convenient bicycle and pedestrian facilities along Great America Parkway. Intersections #58 and #123 would also need to be modified to accommodate these intersection improvements.[23]	AM	2,690	Phase 3
58	Great America Parkway/SR 237 EB Ramps	Santa Clara (CMP)	Add third southbound through lane and a second eastbound right-turn lane.[24]	AM	2,690	Phase 3
123	Great America Parkway/Gold Street Connector	San José	Add a second northbound right-turn lane.[25]	AM	2,690	Phase 3
79	San Tomas Expressway/Benton Street*	Santa Clara County	Add a second eastbound left-turn lane.	AM	3,140	Phase 3
120	De La Cruz Boulevard/ Laurelwood Road	Santa Clara	Reconfigure the northbound and southbound approaches to include one left-turn lane, one through, and one shared through/right-turn lane; change the phasing from split to protected in the northbound and southbound directions; and increase cycle length.	AM	3,140	Phase 3
14	Lick Mill Boulevard/ Tasman Drive	Santa Clara	Partial Mitigation: Reconfigure northbound and southbound approach to two left-turn lanes, one through lane, and one right-turn lane. Change the northbound/southbound signal phasing from split to protective. Add a second westbound left-turn lane.	PM	4,690	Phase 3
23	Lick Mill Boulevard/ Montague Expressway	Santa Clara County	Add a third southbound left-turn lane.	PM	5,730	Phase 4

[22] An LOS D threshold is used for study intersections within San José, including CMP designated intersections. Santa Clara County intersections in San José use an LOS E threshold.

[23] Intersection #58 (Great America Parkway/SR 237 EB Ramps) and #123 (Great America Parkway/Gold Street Connector) are not impacted intersections, but would need to be modified to accommodate the improvements at Intersection #57 (Great America Parkway/SR 237 WB Ramps).

[24] Intersection #58 (Great America Parkway/SR 237 EB Ramps) and #123 (Great America Parkway/Gold Street Connector) are not impacted intersections, but would need to be modified to accommodate the improvements at Intersection #57 (Great America Parkway/SR 237 WB Ramps).

[25] Intersection #58 (Great America Parkway/SR 237 EB Ramps) and #123 (Great America Parkway/Gold Street Connector) are not impacted intersections, but would need to be modified to accommodate the improvements at Intersection #57 (Great America Parkway/SR 237 WB Ramps).

EXHIBIT MMRP-1

City Place Santa Clara Project – Intersection Mitigation Sensitivity Analysis Results: Full Funding Responsibility

Planning/CEQA File # PLN2014-10554/CEQ2014-01180

State Clearinghouse # 2014072078

ID	Intersection	Jurisdiction/ CMP[20]	Mitigation Measure[21]	Impact Peak Hour	Project Trips	Project Phase
22	Agnew Road-De La Cruz Boulevard/ Montague Expressway	Santa Clara County (CMP)	Partial Mitigation: Add a second northbound left-turn lane.	AM	450	Phase 1
54	Lawrence Expressway/Benton Street	Santa Clara County	Partial Mitigation: Add a second southbound left-turn lane and a second eastbound left-turn lane.	AM	2,240	Phase 2
55	Lawrence Expressway/ Homestead Road	Santa Clara County (CMP)	Add a third eastbound through lane and a third westbound through lane (Yahoo! Santa Clara Campus TIA, August 2009; City of Sunnyvale Citywide Deficiency Plan, September 2005; and City of Santa Clara Traffic Mitigation Program, June 2011).	AM	2,240	Phase 2
76	San Tomas Expressway/Walsh Avenue	Santa Clara County	Partial Mitigation: Add a second eastbound left-turn lane.	AM	2,240	Phase 2
82	San Tomas Expressway/ Pruneridge Avenue	Santa Clara County	Partial Mitigation: Add a second northbound left-turn lane.	AM	2,240	Phase 2
8	Great America Parkway/Tasman Drive*	Santa Clara (CMP)	Partial Mitigation: Add a southbound right-turn lane and add a third westbound left-turn lane.	PM	2,610	Phase 2
48	Lawrence Expressway/US 101 SB Ramps	Santa Clara County	Convert eastbound left-turn lane to a shared left-/right-turn lane.	PM	2,610	Phase 2
59	Great America Parkway/Yerba Buena (Great America) Way	Santa Clara	Partial Mitigation: Add a second westbound right-turn lane with an overlap phase and a second southbound left-turn lane.	PM	3,650	Phase 2
60	Great America Parkway/Old Mountain View-Alviso Road	Santa Clara	Partial Mitigation: Add a second eastbound left-turn lane.	PM	3,650	Phase 2

[20] CMP = Congestion Management Program intersection (VTA).

[21] Partial Mitigation: The proposed mitigation measure mitigates the impact at one but not the other peak hour or reduces the delay but not enough to mitigate the impact.

Site access improvements will be built as required by DAP conditions of approval.

EXHIBIT MMRP-1
City Place Santa Clara Project – Intersection Mitigation Implementation
Planning/CEQA File # PLN2014-10554/CEQ2014-01180
State Clearinghouse # 2014072078

With Each Development Area Plan

Each DAP application 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 City (with assistance of consultants as desired) will peer review the data in the application and will determine at DAP approval for the development proposed in the DAP (1) the number of trips projected to result and the allocation of such 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.

As Development Occurs

The Project Trip thresholds set forth in the table below, *Intersection Mitigation Sensitivity Analysis Results: Full Funding Responsibility*, establish the number of Project Trips at which each of the required intersection mitigation measures that are wholly the Project's responsibility to implement must be in place. The Project Phase column of the table is informational and not controlling.

Prior to the issuance of each building permit for a new building, using the calculated number of vehicle trips from the DAP application, Developer will calculate and submit to City the cumulative number of Project trips that will result from all prior development within the Project for which building permits have been issued plus the proposed new building. If the cumulative number of Project Trips meet or exceed any of the intersection Project Trip thresholds, the mitigation measures identified for each of those intersections shall be completed prior to issuance of the certificate of occupancy for the building for which the new permit is being sought, except that, for Intersections 48, 55, 57, 82, 84, 109 and 123, Developer will instead fund the mitigation measures at the costs specified in the table below, *Costs for Certain Full Funding Responsibility Improvements*, prior to the issuance of the pertinent building permit. Any building permits for renovations, remodeling or changes in use to previously permitted and occupied buildings prior to the completion of all Full Funding Responsibility intersection mitigations that result in net new vehicle trips will be subject to the same process.

Prior to the issuance of a building permit for each new building, the Developer shall pay to City a transportation fair share fee of $2,474.18 per PM peak hour trip based on the calculated number of vehicle trips for each new building. The per trip fair share fee was determined by summing the Project's fair share of the estimated costs of mitigation measures for impacts to intersections located in the Cities of Santa Clara, San Jose, Sunnyvale, and those under the jurisdiction of the County of Santa Clara, totaling $14,292,901 plus the Project's voluntary contribution to the Santa Clara Valley Transportation Authority (VTA) for impacts to freeway segments in Santa Clara and San Mateo Counties in the amount of $16,164,220, divided by the 12,310 PM peak hour trips projected to be generated by the Project. The fee will be allocated among pertinent jurisdictions as follows: VTA 53.07%; County of Santa Clara 32.97%; City of San Jose 13.25%; City of Sunnyvale 0.11%; and City of Santa Clara 0.60%. Any building permits for renovations, remodeling or changes in use to previously permitted and occupied buildings that result in net new vehicle trips will be subject to the fee on the basis of net new PM peak hour vehicle trips until the full amount of the combined fair share fee and voluntary contribution of $30,457,121 has been paid, after which no additional fee shall be paid.

Mitigation and Avoidance Measures	Action	Implementing Party	Monitoring Party	Timing
UTILITIES AND SERVICE SYSTEMS				
SW-UT-1: Identify Underground and Overhead Utilities and Provide Coordination with Utility Providers. Prior to construction of the soundwall, the Project Developer shall identify all underground and overhead utilities within the footprint of the soundwall. If utilities are present, the Project Developer shall coordinate with the appropriate utility owners regarding utility shutoff during construction and relocation, as necessary.	Project Developer to identify all underground and overhead utilities within the footprint of the soundwall and provide documentation to City of coordination with the appropriate utility owners regarding utility shutoff during construction and relocation for review and approval.	City Planning & Inspection	City Planning & Inspection	Prior to issuance of grading and building permits

Mitigation and Avoidance Measures	Action	Implementing Party	Monitoring Party	Timing
	secure approval as required. Project Developer to incorporate resulting measures into project plans.			
HYDROLOGY AND WATER QUALITY				
SW-WQ-1: Prepare a Hydrology and Water Quality Technical Report. Prior to construction of the soundwall, the Project Developer shall prepare a hydrology and water quality technical report to evaluate the existing drainage and stormwater conditions at the soundwall site. The technical report shall include recommendations for drainage and stormwater controls to minimize impacts related to changes in drainage patterns that would result from the soundwall. The Project Developer shall be required to implement the report's recommendations.	Project Developer to provide to City a hydrology and water quality technical report to evaluate the existing drainage and stormwater conditions at the soundwall site for review and approval.	Project Developer	City Planning & Inspection Division	Prior to issuance of grading and building permits
HAZARDS AND HAZARDOUS MATERIALS				
SW-HAZ-1: Prepare a Phase I Environmental Site Assessment. Prior to construction of the soundwall, the Project Developer shall conduct a Phase I Environmental Site Assessment. Where the potential to encounter hazardous materials or waste is identified, the Project Developer shall prepare and implement a soil/groundwater handing plan that identifies measures to properly dispose of contaminated materials. Measures could include worker education and training, as appropriate, and site-specific controls to avoid risks to workers and adjacent residents or others.	Project Developer to submit Phase I Environmental Site Assessment to City. Project Developer to implement soil/groundwater handling plan to City for review and approval.	Project Developer	Department of Public Works	Prior to issuance of grading and building permits

Mitigation and Avoidance Measures	Action	Implementing Party	Monitoring Party	Timing
be modified based on discussion with the California Department of Fish and Wildlife (CDFW). Buffers shall remain in place as long as the nest is active or young remain in the area and are dependent on the nest. If a burrowing owl nest is identified during pre-construction surveys, no-activity buffers will adhere to the recommendations in the 2012 California Department of Fish and Game Staff Report on Burrowing Owl Mitigation.	measures.			and prior to ground disturbance for surveys
SW-BIO-3: Site-Specific Surveys and Species/Habitat Avoidance, Minimization, and Compensation Measures. The Project Developer, in consultation with a qualified biologist, shall conduct a site-specific surveys for special-status species, sensitive habitats, wetlands and waters of the United States, and nesting birds. If found, the Project Developer and its contractor shall implement avoidance and minimization measures, where feasible. Where avoidance is not possible, the Project Developer shall compensate for lost habitat on a minimum 1:1 basis. Compensation for lost habitat will be determined in consultation with CDFW/U.S. Fish and Wildlife Service (USFWS), as appropriate. The Project Developer shall obtain all required permits from the U.S. Army Corps of Engineers (USACE), the Regional Water Quality Control Board, and CDFW and USFWS as appropriate. The Project Developer shall provide buffer fencing and species relocation, as necessary, if permitted by CDFW/USFWS. Additionally, if special-status species or habitats are identified during the site-specific surveys, a Worker Environmental Awareness Training Program for construction personnel will be conducted by a qualified biologist retained by the Project Developer. The program will provide workers with information on their responsibilities with regard to the special-status species. The training will provide a physical description of the special-status species that have potential to occur and be affected by construction activities to each construction crew prior to the initiation of the crew's construction activities. The worker awareness training will also provide details regarding each species' habitat and legal protections, a photo of relevant species, and contact information for the primary biologist.	Project Developer to conduct site-specific surveys for special-status species, sensitive habitats, wetlands and waters of the United States, and nesting birds and provide to City for review and approval. If special status species are found, Project Developer to submit documentation to City detailing protective measures for review and approval.	Project Developer/ Qualified biologist	City Planning & Inspection Division	Prior to issuance of grading and building permits
GEOLOGY AND SOILS				
SW-GEO-1: Prepare a Geotechnical Investigation. Prior to construction of the soundwall, the Project Developer shall prepare a geotechnical investigation to evaluate the potential for geologic, seismic, and soil risks. The geotechnical investigation shall include recommendations to abate any potential risks. If risks are identified, the Project Developer shall implement the recommendations included in the geotechnical investigation.	Project Developer to provide to City geotechnical investigation for review and approval. City and Developer to submit such report to regulatory agencies and	Project Developer/City	City Planning and Inspection Division	Prior to issuance of grading and building permits

Mitigation and Avoidance Measures	Action	Implementing Party	Monitoring Party	Timing
to address specific research questions. If it occurs, data recovery shall emphasize the understanding of the archaeological deposit's structure, including features and stratification, horizontal and vertical extent, and content, including the nature and quantity of artifacts.				
SW-CR-3: Stop Work if Human Remains Are Encountered during Ground-Disturbing Activities. If human remains are discovered (in either an archaeological or construction context), all work within proximity of the remains shall stop so that the archaeological monitor can examine the remains. The County Coroner shall be notified to make a determination as to whether the remains are of Native American origin. If the remains are determined to be Native American, the coroner shall notify the NAHC immediately. The NAHC shall notify those persons it believes are most likely descended from the deceased Native American. Once the 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 State CEQA Guidelines.	Project Developer to submit to City applicable provisions of construction contracts including applicable requirements.	Project Developer/ Project Contractor	County Coroner/ NAHC	Prior to issuance of grading and building permits
BIOLOGICAL RESOURCES				
SW-BIO-1: Replace Removed Trees on a 2:1 Basis. The Project Developer shall replace all trees removed as part of soundwall construction at a minimum of 2:1, or more, as required by the local tree ordinance.	Project Developer to provide to City report documenting plans to replace all trees removed at a 2:1 ratio for review and approval.	Project Developer	City Planning & Inspection Division	Prior to issuance of grading and building permits
SW-BIO-2: Preconstruction Surveys. The Project Developer and its contractors shall avoid conducting vegetation removal during the migratory bird nesting season (February 1–August 31) if feasible. If construction activities must commence during the migratory bird nesting season, the Project Developer shall retain a qualified wildlife biologist to conduct a survey for nests of migratory birds. Surveys for nesting migratory birds shall occur within 3 days prior to the commencement of ground disturbance and vegetation removal. If an active nest is discovered, a no-disturbance buffer zone around the nest tree or shrub (or, for ground-nesting species, the nest itself) shall be established. The no-disturbance zone shall be marked with flagging or fencing that is easily identified by the construction crew and shall not affect the nesting bird or attract predators to the nest location. In general, the minimum buffer zone widths shall be as follows: 50 feet (radius) for non-raptor ground-nesting species, 50 feet (radius) for non-raptor shrub- and tree-nesting species, and 300 feet (radius) for raptor species. Buffer widths may	Project Developer to provide to City provisions of construction contracts including pertinent requirements. If construction occurs in the nesting season, Project Developer to submit to City agreement with qualified wildlife biologist requiring surveys and protective	Project Developer/ Project Contractor/ Qualified wildlife biologist	City Planning & Inspection Division	Prior to issuance of grading and building permits for biologist and construction contracts; prior to commence-ment of grading for biologist agreements;

Mitigation and Avoidance Measures	Action	Implementing Party	Monitoring Party	Timing
shall ensure that all off-road diesel-powered equipment used during construction between 2023 and 2030 is equipped with EPA Tier 4 engines. This requirement will ensure that construction equipment remains cleaner than the fleet-wide average. • The Project Developer shall ensure that all on-road heavy-duty diesel trucks with a gross vehicle weight rating (GVWR) of 19,500 pounds or greater used at the Project site comply with EPA 2007 on-road emissions standards for particulate matter of 10 micrometers or less (PM10) and nitrogen oxides (NO_X) (0.01 grams per brake horsepower-hour [g/bhp-hr] and 0.20 g/bhp-hr, respectively). • Notwithstanding the above requirements, all construction equipment, diesel trucks, and generators shall meet the California Air Resources Board's most recent certification standard for off-road heavy-duty diesel engines and shall employ Best Available Control Technology for emission reductions of NO_X and particulate matter (PM) if more stringent than the requirements above.				
CULTURAL RESOURCES				
SW-CR-1: Conduct Cultural Resource Investigations and Protect and Recover Significant Resources. The improvement Lead Agency shall conduct a cultural resource investigation of the areas of ground disturbance associated with the soundwall that includes a background records search (including a search of records from Sonoma State and historical societies, contact with Native American representatives identified by the Native American Heritage Commission [NAHC], and site pedestrian surveys) for the areas of ground disturbance from each roadway improvement. If significant known or suspected sites are discovered within the Project footprint and would be disturbed by the Project, then a cultural resource treatment plan shall be prepared, defining Project monitoring and resource recovery and curation requirements concerning any encountered cultural resources.	City to conduct a cultural resource investigation that includes a background records search during ground disturbance. If necessary, City to prepare and execute cultural resource treatment plan.	City Planning & Inspection Division	City Planning & Inspection Division	Prior to issuance of grading and building permits
SW-CR-2: Stop Work if Cultural Resources Are Encountered during Ground-Disturbing Activities. In the event that cultural resources are encountered during ground-disturbing activities, all work within proximity of the find shall temporarily halt so that the archaeological monitor can examine the find and document its provenience and nature (e.g., withdrawings, photographs, written descriptions). The archaeological monitor shall then direct that the work proceed if the find is deemed to be insignificant, continue elsewhere, or cease until adequate mitigation measures are adopted. If the find is determined to be potentially significant, the archaeologist, in consultation with the appropriate jurisdiction, shall develop a treatment plan, which could include site avoidance, capping, or data recovery. If data recovery is determined to be appropriate, excavation shall target recovery of an appropriate amount of information from archaeological deposits to determine the potential of the resource	Archaeological monitor (retained by the Project Developer), as necessary, and in consultation with the City, develop a Treatment Plan.	Project Developer/ Qualified Archaeologist	City Planning & Inspection Division	During construction if cultural resources are encountered

Mitigation and Avoidance Measures	Action	Implementing Party	Monitoring Party	Timing
measures may be identified by the Project Developer or its contractor, as appropriate, provided that they are as effective as the measures below. Alternative measures shall be submitted to the City for approval. • All exposed surfaces shall be watered at a frequency adequate to maintain minimum soil moisture of 12 percent. Moisture content can be verified by lab samples or moisture probe. If water infiltration into landfill refuse layers is a concern, non-toxic soil stabilizers may be used instead. • All excavation, grading, and/or demolition activities shall be suspended when average wind speeds exceed 20 mph for a period of 2 hours or more. • Windbreaks (e.g., fences) shall be installed on the windward side(s) of actively disturbed areas of construction. Windbreaks shall have at maximum 50 percent air porosity. • Exposed ground areas that are to be reworked more than 1 month after initial grading should be sown with fast-germinating native grass seed and watered appropriately until vegetation is established. If grass seeding is not feasible, then non-toxic soil stabilizers may be used. • All construction trucks and equipment, including tires, involved in ground disturbance or transit through loose soil areas shall be washed off prior to leaving the site. • Site accesses to a distance of 25 feet from the paved road shall be treated with a 6- to 12-inch compacted layer of wood chips, mulch, or gravel. Alternatively, a rumble plate may be used in place of chips, mulch, or gravel. • Sandbags or other erosion control measures shall be installed to prevent silt runoff to public roadways from sites with a slope greater than 1 percent.	mitigation measures to reduce construction-related dust emissions.			permits
SW-AQ-2: Implement Measures to Reduce Construction-Related Exhaust Emissions. The Project Developer shall require all construction contractors to implement the specific construction mitigation measures below to reduce equipment exhaust emissions. Emission reduction measures shall include, at a minimum, the measures below. Alternative measures may be identified by the Project Developer or its contractor, as appropriate, provided that they are as effective as the measures below. Alternative measures shall be submitted to the City for approval. • Idling time of diesel powered construction equipment shall be limited to 2 minutes. • The Project Developer shall ensure that all off-road diesel-powered equipment used during construction between 2017 and 2022 is equipped with U.S. Environmental Protection Agency (EPA) Tier 3 or cleaner engines, except for specialized construction equipment for which an EPA Tier 3 engine is not available. Consistent with advancements of the statewide fleet average, the Project Developer	Project Developer to provide to City applicant provisions of construction contracts specifying construction mitigation measures to reduce construction-relate exhaust emissions.	Project Developer/ Project Contractor	City Planning & Inspection Division	Prior to issuance of grading and building permits

Mitigation and Avoidance Measures	Action	Implementing Party	Monitoring Party	Timing
TRANSPORTATION				
SW-TRA-1: Prepare and Implement a Construction Traffic Control Plan. Prior to issuance of grading permits, the construction contractor will develop the traffic control plan in accordance with the City's policies and submit for approval. The plan will be implemented throughout the course of construction and may include, but will not be limited to, the following elements: • Limit truck access to the soundwall site during peak commute times (7:00 a.m. to 9:00 a.m. and 4:00 p.m. to 6:00 p.m.). • Require that written notification be provided to contractors regarding appropriate routes to and from the soundwall and the weight and speed limits on local roads that would be used to access the soundwall site. • Provide access for emergency vehicles at all times. • Provide adequate parking for construction workers, site visitors, and inspectors as feasible. • Maintain bicycle and pedestrian access and circulation during Project construction where safe to do so. If construction encroaches on a bike lane, warning signs will be posted that indicate that bicycles and vehicles are sharing the roadway. If construction encroaches on a sidewalk, a safe detour will be provided for pedestrians at the nearest crosswalk. • Require traffic controls in the vicinity of the soundwall, including flagpersons with bright orange or red vests and using a "Stop/Slow" paddle to control oncoming traffic. • Post standard construction warning signs in advance of the construction area and at any soundwall that provides access to the construction area. • Repair or restore the road right-of-way to its original condition or better upon completion of the work.	Project Developer to prepare and submit a Construction Traffic Control Plan for the purpose of managing traffic and reducing traffic congestion during construction. City to review and approve Plan.	Project Developer/ Project Contractor	Department of Public Works	Prior to grading and building permit issuance.
AIR QUALITY				
SW-AQ-1: Implement Measures to Reduce Construction-Related Dust Emissions. The Project Developer shall require all construction contractors to implement the specific construction mitigation measures below to reduce fugitive dust. Emission reduction measures shall include, at a minimum, the measures below. Alternative	Project Developer to City applicable provisions of construction contracts specifying construction	Project Developer/ Project Contractor	City Planning & Inspection Division	Prior to issuance of grading and building

Mitigation and Avoidance Measures	Action	Implementing Party	Monitoring Party	Timing
HAZARDS AND HAZARDOUS MATERIALS				
IM-HAZ-1: Prepare a Phase I Environmental Site Assessment. Prior to construction of any intersection improvement involving ground disturbance of acquired property, the Project Developer shall conduct a Phase I Environmental Site Assessment. Where the potential to encounter hazardous materials or waste is identified, the Project Developer shall prepare and implement a soil/groundwater handing plan that identifies measures to properly dispose of contaminated materials. Measures could include worker education and training, as appropriate, and site-specific controls to avoid risks to workers and adjacent residents or others.	Project Developer to submit Phase I Environmental Site Assessment to City for review and approval. Project Developer to implement soil/ groundwater handling plan to City for review and approval.	Project Developer	Department of Public Works	Prior to issuance of grading and building permits

Mitigation and Avoidance Measures	Action	Implementing Party	Monitoring Party	Timing
GEOLOGY AND SOILS				
IM-GEO-1: Prepare a Geotechnical Investigation. Prior to construction of any intersection improvement that requires retaining walls (or disturbance of existing retaining wall), disturbance or placement of fill, substantial excavation below grade, establishment of new slopes, and/or placement of new structures above or below grade, the Project Developer shall prepare a geotechnical investigation to evaluate the potential for geologic, seismic, and soil risks. The geotechnical investigation shall include recommendations to abate any potential risks. If risks are identified, the Project Developer shall implement the recommendations included in the geotechnical investigation.	Project Developer to provide to City geotechnical investigation for review and approval. City and Developer to submit such report to regulatory agencies and secure approval as required. Project Developer to incorporate resulting measures into project plans.	Project Developer/City	City Planning and Inspection Division	Prior to issuance of grading and building permits
HYDROLOGY AND WATER QUALITY				
IM-WQ-1: Prepare a Hydrology and Water Quality Technical Report. Prior to construction of any intersection improvement, the Project Developer shall prepare a hydrology and water quality technical report to evaluate the existing drainage and stormwater conditions at the subject intersections. The technical report shall include recommendations for drainage and stormwater controls to minimize impacts related to changes in drainage patterns that would result from the intersection improvements. The Project Developer shall be required to implement the report's recommendations.	Project Developer to provide to City a hydrology and water quality technical report to evaluate the existing drainage and stormwater conditions at the subject intersections for review and approval.	Project Developer	City Planning & Inspection Division	Prior to issuance of grading and building permits

Mitigation and Avoidance Measures	Action	Implementing Party	Monitoring Party	Timing
Surveys for nesting migratory birds shall occur within 3 days prior to the commencement of ground disturbance and vegetation removal. If an active nest is discovered, a no-disturbance buffer zone around the nest tree or shrub (or, for ground-nesting species, the nest itself) shall be established. The no-disturbance zone shall be marked with flagging or fencing that is easily identified by the construction crew and shall not affect the nesting bird or attract predators to the nest location. In general, the minimum buffer zone widths shall be as follows: 50 feet (radius) for non-raptor ground-nesting species, 50 feet (radius) for non-raptor shrub- and tree-nesting species, and 300 feet (radius) for raptor species. Buffer widths may be modified based on discussion with the California Department of Fish and Wildlife (CDFW). Buffers shall remain in place as long as the nest is active or young remain in the area and are dependent on the nest. If a burrowing owl nest is identified during preconstruction surveys, no-activity buffers will adhere to the recommendations in the 2012 California Department of Fish and Game Staff Report on Burrowing Owl Mitigation.	construction occurs in the nesting season, Project Developer to submit to City agreement with qualified wildlife biologist requiring surveys and protective measures.	biologist		construction contracts; prior to commencement of grading for biologist agreements; and prior to ground disturbance for surveys
IM-BIO-3: Site-Specific Surveys and Species/Habitat Avoidance, Minimization, and Compensation Measures. For intersections with the potential to have sensitive habitats, the Project Developer, in consultation with a qualified biologist, shall conduct site-specific surveys for special-status species, sensitive habitats, wetlands and waters of the United States, and nesting birds. If found, the Project Developer and its contractor shall implement avoidance and minimization measures, where feasible. Where avoidance is not possible, the Project Developer shall compensate for lost habitat at a minimum 1:1 basis. Compensation for lost habitat will be determined in consultation with CDFW/U.S. Fish and Wildlife Service (USFWS), as appropriate. The Project Developer shall obtain all required permits from the U.S. Army Corps of Engineers (USACE), the Regional Water Quality Control Board, and CDFW, and USFWS, as appropriate. The Project Developer shall provide buffer fencing and species relocation, as necessary, if permitted by CDFW/USFWS. Additionally, if special-status species or habitats are identified during the site-specific surveys, a Worker Environmental Awareness Training Program for construction personnel will be conducted by a qualified biologist retained by the Project Developer. The program will provide workers with information on their responsibilities with regard to the special-status species. The training will provide a physical description of the special-status species that have potential to occur and be affected by construction activities to each construction crew prior to the initiation of the crew's construction activities. The worker awareness training will also detail each species' habitat and legal protections, a photo of relevant species, and contact information for the primary biologist.	Project Developer to conduct site-specific surveys for special-status species, sensitive habitats, wetlands and waters of the United States, and nesting birds and provide to City for review and approval. If special status species are found, Project Developer to submit documentation to City detailing protective measures for review and approval.	Project Developer/ Qualified biologist	City Planning & Inspection Division	Prior to issuance of grading and building permits

Mitigation and Avoidance Measures	Action	Implementing Party	Monitoring Party	Timing
archaeological monitor shall then direct that the work proceed if the find is deemed to be insignificant, continue elsewhere, or cease until adequate mitigation measures are adopted. If the find is determined to be potentially significant, the archaeologist, in consultation with the appropriate jurisdiction, shall develop a treatment plan, which could include site avoidance, capping, or data recovery. If data recovery is determined to be appropriate, excavation shall target recovery of an appropriate amount of information from archaeological deposits to determine the potential of the resource to address specific research questions. If it occurs, data recovery shall emphasize the understanding of the archaeological deposit's structure, including features and stratification, horizontal and vertical extent, and content, including the nature and quantity of artifacts.	City, develop a Treatment Plan.			encountered
IM-CR-3: Stop Work if Human Remains Are Encountered during Ground-Disturbing Activities. If human remains are discovered (in either an archaeological or construction context), all work within proximity of the remains shall stop so that the archaeological monitor can examine the remains. The County Coroner shall be notified to make a determination as to whether the remains are of Native American origin. If the remains are determined to be Native American, the coroner shall notify the NAHC immediately. The NAHC shall notify those persons it believes are most likely descended from the deceased Native American. Once the 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 State CEQA Guidelines.	Project Developer to submit to City applicable provisions of construction contracts including applicable requirements.	Project Developer/ Project Contractor	County Coroner/ NAHC	Prior to issuance of grading and building permits.
BIOLOGICAL RESOURCES				
IM-BIO-1: Replace Removed Trees. The Project Developer shall replace all trees removed as part of the intersection improvements in accordance with the tree preservation policies or ordinances of the jurisdiction in which the improvements are constructed.	Project Developer to provide to City report documenting plans to replace all trees removed as part of the intersection improvements.	Project Developer	City Planning & Inspection Division	Prior to issuance of grading and building permits
IM-BIO-2: Preconstruction Surveys. For all intersections that have trees within the intersection footprint or that will remove trees, the Project Developer and its contractors shall avoid conducting vegetation removal during the migratory bird nesting season (February 1–August 31), if feasible. If construction activities must commence during the migratory bird nesting season, the Project Developer shall retain a qualified wildlife biologist to conduct a survey for nests of migratory birds.	Project Developer to provide to City provisions of construction contracts including pertinent requirements. If	Project Developer/ Project Contractor/ Qualified wildlife	City Planning & Inspection Division	Prior to issuance of grading and building permits for biologist and

Mitigation and Avoidance Measures	Action	Implementing Party	Monitoring Party	Timing
powered equipment used during construction between 2023 and 2030 is equipped with EPA Tier 4 engines. This requirement will ensure construction equipment remains cleaner than the fleet-wide average. • Ensure that all on-road heavy-duty diesel trucks with a gross vehicle weight rating (GVWR) of 19,500 pounds or greater used at the Project site comply with EPA 2007 on-road emissions standards for particulate matter of 10 micrometers or less (PM10) and nitrogen oxides (NO_X) (0.01 grams per brake horsepower-hour [g/bhp-hr] and 0.20 g/bhp-hr, respectively). • Notwithstanding the above requirements, all construction equipment, diesel trucks, and generators shall meet the California Air Resources Board's most recent certification standard for off-road heavy-duty diesel engines and shall employ Best Available Control Technology for reductions in NO_X and particulate matter (PM) emissions if more stringent than the requirements above.				
GREENHOUSE GAS EMISSIONS				
IM-GHG-1: Utilize Alternative Fuels during Construction. Require construction contractors to use alternative fuels in at least 30 percent of the construction equipment that uses diesel fuel. Alternative fuels may include electricity, compressed natural gas (CNG), biodiesel (B-20), or renewable diesel, such as diesel high-performance renewable (HPR).	Project Developer to provide to City applicable provisions of construction contracts requiring adequate use of alternative fuels.	Project Developer/ Project Contractor	City Planning & Inspection Division	Prior to issuance of grading and building permits
CULTURAL RESOURCES				
IM-CR-1: Conduct Cultural Resource Investigations and Protect and Recover Significant Resources. The Lead Agency shall conduct a cultural resource investigation that includes a background records search (including a search of records from Sonoma State and historical societies, contact with Native American representatives identified by the Native American Heritage Commission (NAHC), and site pedestrian surveys) for the areas of ground disturbance from each roadway improvement. If significant known or suspected sites are discovered within the Project footprint and would be disturbed by the Project, then a cultural resource treatment plan shall be prepared, defining Project monitoring and resource recovery and curation requirements concerning any encountered cultural resources.	Lead Agency to conduct a cultural resource investigation that includes a background records search during ground disturbance. If necessary, Lead Agency to prepare and execute cultural resource treatment plan.	City Planning & Inspection Division	City Planning & Inspection Division	Prior to issuance of grading and building permits
IM-CR-2: Stop Work if Cultural Resources Are Encountered during Ground-Disturbing Activities. In the event that cultural resources are encountered during ground-disturbing activities, all work within proximity of the find shall temporarily halt so that the archaeological monitor can examine the find and document its provenience and nature (e.g., with drawings, photographs, written descriptions). The	Archaeological monitor (retained by the Project Developer), as necessary, and in consultation with the	Project Developer/ Qualified Archaeologist	City Planning & Inspection Division	During construction if cultural resources are

Mitigation and Avoidance Measures	Action	Implementing Party	Monitoring Party	Timing
measures may be identified by the Project Developer or its contractor, as appropriate, provided that they are as effective as the measures below. Alternative measures shall be submitted to the City for approval. • All exposed surfaces shall be watered at a frequency adequate to maintain minimum soil moisture of 12 percent. Moisture content can be verified by lab samples or moisture probe. If water infiltration into landfill refuse layers is a concern, non-toxic soil stabilizers may be used instead. • All excavation, grading, and/or demolition activities shall be suspended when average wind speeds exceed 20 mph for a period of 2 hours or more. • Windbreaks (e.g., fences) shall be installed on the windward side(s) of actively disturbed areas of construction. Windbreaks shall have at maximum 50 percent air porosity. • Exposed ground areas that are to be reworked more than 1 month after initial grading should be sown with fast-germinating native grass seed and watered appropriately until vegetation is established. If grass seeding is not feasible, then non-toxic soil stabilizers may be used. • All construction trucks and equipment, including tires, involved in ground disturbance or transit through loose soil areas shall be washed off prior to leaving the site. • Site accesses to a distance of 25 feet from the paved road shall be treated with a 6- to 12-inch compacted layer of wood chips, mulch, or gravel. Alternatively, a rumble plate may be used in place of chips, mulch, or gravel. • Sandbags or other erosion control measures shall be installed to prevent silt runoff to public roadways from sites with a slope greater than 1 percent.	specifying construction mitigation measures to reduce construction-related dust emissions.			permits
IM-AQ-2: Implement Measures to Reduce Construction-Related Exhaust Emissions. The Project Developer shall require all construction contractors to implement the specific construction mitigation measures below to reduce equipment exhaust emissions. Emission reduction measures shall include, at a minimum, the measures below. Alternative measures may be identified by the Project Developer or its contractor, as appropriate, provided that they are as effective as the measures below. Alternative measures shall be submitted to the City for approval. • Idling time of diesel powered construction equipment shall be limited to 2 minutes. • Ensure that all off-road diesel-powered equipment used during construction between 2017 and 2022 is equipped with U.S. Environmental Protection Agency (EPA) Tier 3 or cleaner engines, except for specialized construction equipment for which an EPA Tier 3 engine is not available. Consistent with advancements of the statewide fleet average, the Project Developer shall ensure that all off-road diesel-	Project Developer to provide to City applicable provisions of construction contracts construction mitigation measures to reduce construction-related exhaust emissions.	Project Developer/ Project Contractor	City Planning & Inspection Division	Prior to issuance of grading and building permits

MITIGATION MONITORING & REPORTING PROGRAM
City Place Santa Clara Project – Secondary Impacts for Intersection Improvements
Planning/CEQA File # PLN2014-10554/CEQ2014-01180
State Clearinghouse # 2014072078

Mitigation and Avoidance Measures	Action	Implementing Party	Monitoring Party	Timing
TRANSPORTATION				
IM-TRA-1: Prepare and Implement a Construction Traffic Control Plan. Prior to issuance of grading permits, the construction contractor will develop the traffic control plan in accordance with the appropriate jurisdiction's policies and submit for approval. The plan will be implemented throughout the course of construction and may include, but will not be limited to, the following elements. • Limit truck access to the intersection during peak commute times (7:00 a.m. to 9:00 a.m. and 4:00 p.m. to 6:00 pm.). • Require that written notification be provided to contractors regarding appropriate routes to and from the intersection, and the weight and speed limits on local roads used to access the intersection. • Provide access for emergency vehicles at all times. • Provide adequate parking for construction employees, site visitors, and inspectors as feasible. • Maintain bicycle and pedestrian access and circulation during Project construction where safe to do so. If construction encroaches on a bike lane, warning signs will be posted that indicate bicycles and vehicles are sharing the roadway. If construction encroaches on a sidewalk, a safe detour will be provided for pedestrians at the nearest crosswalk. • Require traffic controls in the vicinity of the intersection, including flagpersons with bright orange or red vests and using a "Stop/Slow" paddle to control oncoming traffic. • Post standard construction warning signs in advance of the construction area and at any intersection that provides access to the construction area. • Repair or restore the road right-of-way to its original condition or better upon completion of the work.	Project Developer to prepare and submit a Construction Traffic Control Plan for the purpose of managing traffic and reducing traffic congestion during construction. City to review and approve Plan.	Project Developer/ Project Contractor	Department of Public Works	Prior to issuance of grading and building permits
AIR QUALITY				
IM-AQ-1: Implement Measures to Reduce Construction-Related Dust Emissions. The Project Developer shall require all construction contractors to implement the specific construction mitigation measures below to reduce fugitive dust. Emissions reduction measures shall include, at a minimum, the measures below. Alternative	Project Developer to provide to City applicable provisions of construction contracts	Project Developer/ Project Contractor	City Planning & Inspection Division	Prior to issuance of grading and building

Mitigation and Avoidance Measures	Action	Implementing Party	Monitoring Party	Timing [1]
Northside Sanitary Sewer Pump Stations concurrent with construction of Phase 2 of the Project; the pump station upgrades would be designed to address overcapacity due to projected cumulative development. If the Developer is required to fund pump station upgrade costs, with the exception of costs attributable to the Project's fair share contribution to the upgrade, the City would reimburse the Developer for the design and construction costs through first (a) refunding the Project's Sanitary Sewer Conveyance Fees already paid by Developer or crediting those fees when due and (b) providing to Developer Sanitary Sewer Conveyance Fees collected from developers of projects that would use the Rabello and Northside Sanitary Sewer Pump Stations.	Developer to contribute fair-share, and potentially front costs of full upgrade.			otherwise determined necessary by City; if Developer to fund full pump station upgrade costs, Developer and City enter funding and reimbursement agreement prior to upgrade

Mitigation and Avoidance Measures	Action	Implementing Party	Monitoring Party	Timing [1]
The landfill gas collection system shall be adjusted to reduce well extraction rates (if necessary) to ensure the monitoring thresholds for nitrogen/oxygen and temperature are not exceeded, while continuing to ensure the control of other excessive gas concentrations in the landfill (e.g., methane and trace gases) as specified in 27 CCR 20939. In the event that one or both of the monitoring thresholds are exceeded or other evidence of a potential subsurface fire is observed, then gas samples shall be collected from the extraction wells in the affected area and submitted to a certified laboratory for analysis of nitrogen, oxygen, and carbon monoxide. Analytical results for nitrogen and oxygen that exceed the monitoring thresholds shall be used as confirmation that an aerobic environment is present. Analytical results for carbon monoxide that exceed 1,000 parts per million shall be used as confirmation that a subsurface fire exists.				
HAZ-9.3: Subsurface Fire Suppression. If a subsurface fire condition has been confirmed (i.e., carbon monoxide level exceed 1,000 parts per million), the LEA, CalRecycle, and SCFD shall be notified immediately. The extraction wells surrounding the subsurface fire shall be shut down temporarily to reduce oxygen levels. The extraction wells shall then be returned to active use in stages in conjunction with monitoring to determine if the subsurface fire has been suppressed. If shutting down the extraction wells does not suppress the fire and/or results in the excess accumulation of methane and other trace gases beneath structures, then the LEA, CalRecycle, and SCFD shall consider injecting a Class A foam or wetting agent or liquid carbon dioxide (which also has the added benefit of rapidly cooling the refuse/fill) into the affected area. Large amounts of water shall not be used, because water can exacerbate the fire potential, generate contaminated runoff, increase leachate, and cause slope failure.	City to ensure that SCFD is aware of and trained on protocols. Project Developer and/or City to notify agencies if a subsurface fire condition is confirmed and to implement subsurface fire suppression measures.	Project Developer / City	City Planning & Inspection; SCFD	Prior to operation of Project over landfill areas for SCFD protocols. After confirmation of a subsurface fire condition as to agency notification
UTILITIES AND SERVICE SYSTEMS				
UT-3.1: Make a Fair-Share Contribution to Upgrading the Rabello and Northside Pump Station System's Capacity. The City will conduct detailed engineering study and analysis to determine the precise size and timing needed for the required pump station capacity upgrades to address overcapacity due to projected cumulative development. The City will implement the required capacity upgrades and the Developer will fund its fair share of such upgrades. The City shall determine the fair-share cost contribution for the Project based on the Project's percent of wastewater flow cumulative capacity needs above the current pump capacity (based on conceptual planning to date, that fair share is estimated as 27 percent of 2035 cumulative overcapacity amount). The City may require the Developer to fund the design and construction of the conveyance capacity upgrades to the Rabello and	Conduct a detailed engineering study and analysis to determine the precise size and timing needed for the required pump station capacity upgrades to address overcapacity due to projected cumulative development. Project	Department of Public Works	City Planning & Inspection	Conduct study prior to construction of Phase 2 of the Project, fund prior to issuance of first building permit for Phase 2 of the Project or later as

Mitigation and Avoidance Measures	Action	Implementing Party	Monitoring Party	Timing [1]
larger planning document, shall identify responsible parties and schedules for implementing the measures described in the plan. The Project Developer shall submit the plan to the LEA, CalRecycle, and the Santa Clara Fire Department (SCFD) for review and comment. Responses to comments shall be incorporated into a final Subsurface Fire Prevention, Detection, and Response Plan from the regulatory agencies. The plan shall also incorporate the prevention, detection, and response actions described under Mitigations HAZ-9.2 and HAZ-9.3, below, unless alternative actions are approved by LEA, CalRecycle, and SCFD. The final plan shall be implemented during Project construction and operation.	and Response Plan that has been reviewed and commented on by relevant agencies. The Plan shall be implemented consistent with the Landfill Operations and Maintenance Agreement.			construction permits for Parcels 1, 2, 3, and 4. Implementation during Project construction and operation
HAZ-9.2: Subsurface Fire Prevention and Detection Measures.[19] The following measures may be included in whole, or in part, in the Subsurface Fire Prevention, Detection, and Response Plan, as required by the LEA, CalRecycle, and SCFD. In addition, these agencies may require additional measures. The landfill gas collection system shall be monitored and maintained to minimize the intrusion of oxygen (i.e., air) into the landfill and prevent the overheating of waste due to aerobic decomposition. In accordance with BAAQMD monitoring requirements (Regulation 8-34), the gauge pressure, nitrogen or oxygen concentration, and temperature of landfill gas within each extraction wellhead shall be monitored once a month and evaluated to ensure the system is not overdrawing air into the landfill. The nitrogen and oxygen concentrations may be measured using a calibrated portable instrument. The landfill gas measured at each extraction well head must meet the following monitoring threshold requirements: • Nitrogen concentrations less than 20 percent or oxygen levels less than 5 percent; and • Maximum temperature of 140 degrees Fahrenheit. The nitrogen and oxygen thresholds shall be used to indicate if the gas collection system is overdrawing and causing excessive ambient air infiltration into the landfill through its surface and sides. An exceedance of the maximum temperature threshold shall indicate that a subsurface fire may exist. Other evidence of a potential subsurface fire shall include the following: • Observations of rapid settlement over a short period of time; • Smoke or smoldering odor emanating from the gas extraction system or landfill; or • Combustion residue in extraction wells and/or headers.	Project Developer to integrate these measures into the Subsurface Fire Prevention, Detection, and Response Plan as requested by relevant agencies.	Project Developer	Department of Public Works	Submittal of Plan: Prior to issuance of grading or construction permits for Parcels 1, 2, 3, and 4. Implementation during Project construction and operation

[19] To the extent the implementation of this mitigation measure at Parcel 3 is made necessary by, or altered by, the City's park development activities, the City shall be responsible for implementation.

Mitigation and Avoidance Measures	Action	Implementing Party	Monitoring Party	Timing [1]
concentrations are detected; and (7) periodic methane gas monitoring shall be conducted inside all buildings and underground utilities in accordance with Article 6, of Subchapter 4 of this chapter (section 20920 et seq.). At a minimum, quarterly monitoring is required, but more frequent monitoring may be required by LEA (Subchapter 4, section 20933(a)).				
HAZ-6.1: Finalize Draft Technical Memorandum: Leachate Collection and Removal System.[17] Prior to Project construction, a final Technical Memorandum: Leachate Collection and Removal System shall be prepared and implemented as part of the PCLUP. The technical memorandum shall be submitted to the LEA for review and approval and to CalRecycle and the Regional Water Board for review and comment. Specifically, the final technical memorandum shall contain, at a minimum, the following requirements: • During the construction phase of Parcel 3, the existing leachate collection and removal system (LCRS) risers LR-1 and LR-4 shall be protected and preserved during construction by flagging the well head locations, extending the risers, and installing a bollard around each riser. • If LR-1 or LR-4 are damaged during construction, repairs and modifications shall be completed promptly. • LR-1 and LR-4 shall be supported and anchored to prevent potential settlement over time and finished to grade at the end of excavation and/or completion of construction. • Ongoing operation and maintenance of the leachate recovery system shall continue during and after Project construction. The LCRS monitoring shall continue in accordance with the Regional Water Board's WDR Order No. R2-2002-0008 for the site, which shall be revised to consider the proposed development and modifications to the landfill systems.	Project Developer to submit to City for its review and approval a Leachate Collection and Removal System Technical Memorandum. City to submit to LEA for review and approval and to CalRecycle and the Regional Water Board for review and comment. As part of the PCLUPCity to operate and maintain the leachate recovery system in accordance with the allocation of responsibilities set forth in the Landfill O&M Agreement attached to the DDA.	Project Developer/City	Department of Public Works	Submittal of Memo: Prior to issuance of grading or construction permits for Parcels 1 and 3.
HAZ-9.1: Subsurface Fire Prevention, Detection, and Response Plan.[18] Prior to construction, a Subsurface Fire Prevention, Detection, and Response Plan shall be prepared that describes how subsurface heating conditions above the landfill will be monitored, prevented, and suppressed. The plan, which may be included as part of a	Project Developer to submit to City a Subsurface Fire Prevention, Detection,	Project Developer	Department of Public Works	Submittal of Plan prior to issuance of grading or

[17] To the extent the implementation of this mitigation measure at Parcel 3 is made necessary by, or altered by, the City's park development activities, the City shall be responsible for implementation.

[18] To the extent the implementation of this mitigation measure at Parcel 3 is made necessary by, or altered by, the City's park development activities, the City shall be responsible for implementation.

Mitigation and Avoidance Measures	Action	Implementing Party	Monitoring Party	Timing [1]
construction worker health and safety requirements, and contingency measures in case unknown contamination is encountered during construction. The SGMP shall incorporate the soil and groundwater analytical data from the Phase II Site Investigation to ensure that soil and groundwater are stored, managed, and disposed of in a manner protective of human health and the environment, and in accordance with applicable laws and regulations. The SGMP shall specifically include the following: • Procedures for evaluating, handling, storing, testing, and disposing of known soil and groundwater contamination identified during the Phase II Site Investigation during Project excavation and dewatering activities, respectively; • Procedures for identifying, testing, and managing soil and groundwater suspected of containing hazardous materials (if any) that have not previously been identified at the site; • Descriptions of required worker health and safety provisions for all workers potentially exposed to hazardous materials in accordance with State and federal worker safety regulations; and • Identification of personnel responsible for implementation of the SGMP.	tennis courts.			Parcel 4 beneath the existing tennis courts
HAZ-5.3: Implement Measures Included in CCR Title 27, Section 21190(g). Consistent with the Project Developer's voluntary commitment, in order to mitigate gas migration into structures located within 1,000 feet of landfill, the City (as owner and operator of the landfill) and the Project Developer shall implement the following measures identified in Title 27, Section 21190(g), with respect to development on Parcel 5 and the southwest portion of Parcel 4: (1) a geomembrane or equivalent system with low permeability to landfill gas shall be installed between the concrete floor slab of the building and subgrade; (2) a permeable layer of open graded material of clean aggregate with a minimum thickness of 12 inches shall be installed between the geomembrane and the subgrade or slab; (3) a geotextile filter shall be utilized to prevent the introduction of fines into the permeable layer; (4) perforated venting pipes shall be installed within the permeable layer, and shall be designed to operate without clogging; (5) the venting pipe shall be constructed with the ability to be connected to an induced draft exhaust system; (6) automatic methane gas sensors shall be installed within the permeable gas layer, and inside the building to trigger an audible alarm when methane gas	City to review and approve detailed construction plans including these measures for Parcel 5 and the areas of Parcel 4 beneath the existing tennis courts. Project Developer shall submit quarterly reports that report methane gas levels for review by City.	Project Developer	Department of Public Works	Prior to issuance of building permits for Parcel 5 and the areas of Parcel 4 beneath the existing tennis courts; quarterly monitoring

Mitigation and Avoidance Measures	Action	Implementing Party	Monitoring Party	Timing [1]
water is detected. In addition to the monitoring and control of excessive gas concentrations to protect public health and safety and the environment, as specified in 27 CCR 20939, the landfill gas monitoring and control program shall incorporate the monitoring and control requirements for preventing subsurface fires that are described under Mitigation Measure HAZ-9.1, below.				
HAZ-4.5: Building Restrictions. The Project shall prohibit the construction of enclosed basements located over refuse on Parcels 1, 2, 3, and 4 to minimize the risk of landfill gas accumulation. Over the landfill area, the Project shall also limit residential construction to only Parcel 4 areas located over open-air podium level garages or over at least one level of enclosed commercial space to mitigate vapor intrusion effects by increasing the free flow and exchange of air beneath the residences.	Project Developer to submit final detailed design plans for review and approval by City.	Project Developer	Department of Public Works	Concurrent with building permit application
HAZ-4.6: Landfill Hazards Disclosure. Information about the existing subsurface hazardous materials conditions and the ongoing mitigation and monitoring requirements described in the PCLUP shall be included in all ground leases and space leases for space located over the Landfill. The text to be inserted shall be subject to review and approval by City.	Project Developer and City to include language in ground and tenant leases for space located over the landfill.	Project Developer/City	Department of Public Works	Prior to execution of ground or tenant leases
HAZ-5.1: Phase II Site Investigation. Prior to Project construction, a Phase II Site Investigation shall be performed on Parcel 5 and the tennis courts located in the southwest portion of Parcel 4 to (1) delineate the extent of soil, soil gas, and potential groundwater contamination on the site and (2) assess potential health risks posed to construction workers and future site users. The Phase II Site Investigation shall be conducted and evaluated by a licensed professional prior to construction and earthwork activities. The findings of the Phase II Site Investigation shall be submitted to the appropriate regulatory agency to the extent required by applicable law. The Project Developer shall conduct any additional investigation and/or risk assessment and/or implement any remedial or risk mitigation measures required by the regulatory agency.	If additional remedial or risk mitigation measures are needed, Project Developer to submit plans to City for review and approval.	Project Developer	Department of Public Works	Prior to issuance of grading and building permits for Parcel 5 and the portion of Parcel 4 beneath the existing tennis courts.
HAZ-5.2: Soil and Groundwater Management Plan. Construction on Parcel 5 and the tennis courts located in the southwest portion of Parcel 4 shall be conducted under a site-specific Soil and Groundwater Management Plan (SGMP) to protect construction workers, the general public, and the environment from hazardous materials identified in the Phase II Site Investigation (see Mitigation Measure HAZ-5.1) and potential undocumented sources of such materials. The SGMP shall delineate specific soil and groundwater management and disposal procedures,	City to review and approve a Soil and Groundwater Management Plan pertaining to Parcel 5 and the portion of Parcel 4 beneath the existing	Project Developer	Department of Public Works	Prior to issuance of grading and building permits for Parcel 5 and the portion of

Mitigation and Avoidance Measures	Action	Implementing Party	Monitoring Party	Timing [1]
impacts on the public health or safety or the environment. Methods for monitoring on-site structures may include, but are not limited to: periodic monitoring, utilizing either permanently installed monitoring probes or gas surveys, and continuous monitoring systems. A methane monitoring system shall be installed inside all buildings on the Project site. If methane gas concentrations exceed a threshold of 1.25 percent by volume in air, as described under 27 CCR 20921, the methane monitoring system shall automatically alert the Santa Clara Fire Department, who shall assess the methane conditions and, if necessary, trigger an audible fire alarm to initiate a building evacuation. In the event of an evacuation, the building shall not be reoccupied until the Santa Clara Fire Department has confirmed and approved by that: (1) concentrations of methane meet the applicable compliance requirements and (2) the landfill gas monitoring and control system is operating in a manner that ensures adequate control of methane/vapor intrusion. The landfill gas control system shall be operated and maintained to control excessive gas concentrations as specified in 27 CCR 20939. This includes operating the landfill gas control system in such a manner as to satisfy the following requirements specified in 27 CCR 20921(a): • The concentration of methane gas must not exceed 1.25 percent by volume in air within any portion of any on-site structures; • The concentration of methane gas migrating from the disposal site must not exceed 5 percent by volume in air at the disposal site permitted facility boundary or an alternative boundary approved in accordance with Section 20925; and • Trace gases shall be controlled to prevent adverse acute and chronic exposure to toxic and/or carcinogenic compounds that could result in a health risk exceedance of the Regional Water Board's cumulative incremental cancer risk threshold of 1E-06 and HI (i.e., adverse non-cancer risk) of 1.0 established for the Project. In the event of an earthquake or other event that could cause a rupture or leak from overlying stormwater treatment measures (i.e., planters, vegetated areas), the landfill gas venting pipes shall be inspected at access ports within 24 hours of the event for leaks, ruptures, or any other conditions. Access ports shall be installed at select locations, to provide full coverage of the system based on system design and access constraints, within the venting layer to monitor for the presence of, and removal of, water that might flood the system in the event that water leaks from collection systems above the landfill gas mitigation system. This system would help prevent the water from further migrating into the underlying landfill gas mitigation system. The access ports will allow for use of portable moisture sensing devises to periodically monitor for moisture in the event that a leak is suspected. The access ports shall also be designed to allow for pumping of water from the interstitial space in the event that	LEA, and/or CalRecycle for their approval, as required by relevant regulations and approved plans. City and Project Developer/ Master Owners Association to implement the actions required by these Plans in accordance with the allocation of responsibilities set forth in the Landfill O&M Agreement attached to the DDA.			

Mitigation and Avoidance Measures	Action	Implementing Party	Monitoring Party	Timing [1]
pilot testing and pneumatic modeling), vacuum distribution control, oxygen management (for subsurface fire prevention), ease of maintenance, well location, effect of landfill settlement, mitigation of vapor intrusion risk, and the proposed development on the Project site. The system design shall incorporate temperature- and corrosion-resistant materials. The landfill gas collection and removal system shall be designed, operated, and maintained to control excessive gas concentrations as specified in 27 CCR 20939. The monitoring of landfill gases is described under Mitigation Measures HAZ-4.4, below.	regulations and approved plans. City to operate and maintain the system in accordance with the allocation of responsibilities set forth in the Landfill O&M Agreement attached to the DDA.			
HAZ-4.3: Landfill Gas Protection Systems.[15] During Project construction, landfill gas protection systems shall be constructed beneath the sub-slabs of structures located on Parcels 1, 2, 3, and 4 to remove landfill gases (e.g., methane, hydrogen sulfide, and volatile COPCs) that could otherwise accumulate and/or migrate through the sub-slab. The systems may include active gas collection or passive ventilation mechanisms and shall meet the minimum design requirements described in 27 CCR 21190. The landfill gas protection systems shall be designed, operated, and maintained to control excessive gas concentrations as specified in 27 CCR 20939. The monitoring of landfill gases is described under Mitigation Measures HAZ-4.4, below.	Project Developer to provide plans to City for review and approval and "as built" drawings to City once work is complete. System will be operated by Project Developer until a Master Owners Association is formed, after with system will be operated by Master Owners Association..	Project Developer/Master Owner Association	Department of Public Works	Prior to issuance of building permits for Parcels 1, 2, 3, and 4, with "as built" drawings submitted prior to any certificates of occupancy on such sites
HAZ-4.4: Landfill Gas Monitoring and Control System Maintenance.[16] During Project construction and operation on Parcels 1-4, a landfill gas monitoring and control program shall be implemented in accordance with 27 CCR 20921-20939. The gas monitoring network shall be designed by a registered civil engineer or a certified engineering geologist and shall ensure detection of the presence of landfill gas migrating beyond the disposal site permitted facility boundary and also into on-site structures. The monitoring network design shall include provisions for monitoring all structures on the Project site, including but not limited to, buildings, large subsurface vaults, or any other areas where potential landfill gas buildup may cause adverse	Project Developer to provide landfill gas monitoring network plans and Operations and Maintenance Plan to City for review and approval. City to submit these Plans to the Regional Water Board,	Project Developer/ Master Owners Association / City	Department of Public Works	Prior to issuance of grading and building permits for Parcels 1, 2, 3, and 4

[15] To the extent the implementation of this mitigation measure at Parcel 3 is made necessary by, or altered by, the City's park development activities, the City shall be responsible for implementation.

[16] To the extent the implementation of this mitigation measure at Parcel 3 is made necessary by, or altered by, the City's park development activities, the City shall be responsible for implementation.

Mitigation and Avoidance Measures	Action	Implementing Party	Monitoring Party	Timing [1]
21790–21840 and submitted to the LEA, CalRecycle, and Regional Water Board (as required) for review and approval. In addition, a PCLUP shall be prepared in accordance with the regulatory requirements described in 27 CCR 21190 and submitted to the LEA and Regional Water Board (as required) for review and approval. Collectively, these plans shall incorporate the requirements of Mitigation Measures HAZ-4.2 through 4.6, below. In addition, the Project Developer shall continue to work with the regulatory agencies (Regional Water Board, LEA, or CalRecycle) and ensure the implementation of all elements and measures necessary to mitigate Project-related health risks to residents and commercial workers to a level below the Regional Water Board's cumulative incremental cancer risk threshold of 1E-06 and hazard index (HI) (i.e., adverse non-cancer risk) of 1.0 established for the Project are implemented.	Post-Closure Maintenance Plan and Post Closure Land Use Plan that include evidence that health risks can be mitigated to identified levels and contain all elements of HAZ 4.2 through 4.6. City to submit these Plans to the Regional Water Board, LEA, and CalRecycle for their approval. City and Project Developer/Master Owner Association to implement the actions required by these Plans in accordance with the allocation of responsibilities set forth in the Landfill O&M Agreement attached to the DDA.			permits within the area of the Landfill (Parcels 1, 2, 3, and 4)
HAZ-4.2: Landfill Gas Collection and Removal System.[14] During Project construction, the existing landfill gas collection and removal system (i.e., wells and conveyance lines) shall be systematically abandoned and replaced in conjunction with the phased Project site development while complying with applicable regulatory requirements that govern the performance of these systems. The new system shall be designed to effectively draw landfill gases (e.g., methane, hydrogen sulfide, and volatile COPCs) away from building sub-slab areas. The system design shall be submitted to the City for review and approval, taking into account an evaluation of the following criteria: effective vacuum influence (based on	Project Developer to submit to City system design for review and approval . City to submit system design to the Regional Water Board, LEA, and/or CalRecycle for their approval, as required by the relevant	Project Developer/City	Department of Public Works	Prior to the issuance of grading or building permits within the area of the Landfill (Parcels 1, 2, 3, and 4)

[14] To the extent the implementation of this mitigation measure at Parcel 3 is made necessary by, or altered by, the City's park development activities, the City shall be responsible for implementation.

Mitigation and Avoidance Measures	Action	Implementing Party	Monitoring Party	Timing [1]
BAAQMD for review and approval. Specifically, the final Waste Management Plan shall contain, at a minimum, the following requirements, which are included in the draft Waste Management Plan: • Waste excavation shall be performed in accordance with a Health and Safety Plan (HASP) designed to minimize impacts from dust, odor, and other nuisances, and assure waste is handled in a safe and environmentally responsible manner. • During waste excavation and relocation, the worksite shall be monitored for dust, odor, or other nuisances in accordance with general landfill construction practices and the HASP. • At the end of the working day, any exposed waste shall be covered with soil or an alternative material, such as a geosynthetic blanket, (i.e., interim cover). • Odors, should they occur, shall be controlled by application of a deodorant, masking agent, neutralizing agent, or lime, and an interim landfill cover at the end of each working day. • A "Project Contact" shall be designated who will be responsible for responding to any local complaints about dust, odors, or other nuisances associated with the waste excavation and regrading operations. • During excavation activities, excavation areas shall be monitored using a hand-held instrument calibrated to measure combustible gases (including methane), hydrogen sulfide, oxygen, and VOCs. • No hot work (e.g., welding) shall be allowed in the vicinity of excavation activities unless methane concentrations are sufficiently below the lower explosive limit of 8 percent. If methane concentrations approach 5 percent, excavation activities shall be stopped until the landfill gas collection system can be modified to reduce the methane concentrations in the excavation area. If methane levels are persistent in areas where earthwork and/or hot work activities are necessary, inert gases (e.g., nitrogen) can be introduced into affected subsurface materials to lower oxygen and methane concentrations. By introducing an inert gas into the affected area, methane and oxygen can be displaced to create insufficient oxygen concentrations to support combustion.	Management Plan. City to verify that final Waste Management Plan includes all required components and all necessary approvals.			be submitted to City prior to issuance of demolition, grading, and building permits
HAZ-4.1: Landfill Closure, Monitoring, and Maintenance Plans.[13] Prior to issuance of building permits for structures within the area of the Landfill (Parcels 1, 2, 3, and 4), a revised Closure Plan and Post-Closure Maintenance Plan (PCMP) shall be prepared in accordance with the regulatory requirements described in 27 CCR	Project Developer to provide to City for its review and approval revised Closure Plan,	Project Developer/City	Department of Public Works	Prior to issuance of grading or building

[13] To the extent the implementation of this mitigation measure at Parcel 3 is made necessary by, or altered by, the City's park development activities, the City shall be responsible for implementation.

Mitigation and Avoidance Measures	Action	Implementing Party	Monitoring Party	Timing [1]
guidance.[11] The outfalls will be set at elevations high enough to ensure the location of outfalls are above sediment levels within the bottom of the creek.[12] The design shall be provided to the City of Santa Clara and the SCVWD for review and approval for the Project. Construction would be done in phases. For example, the new bridge over the San Tomas Creek would not be needed until Phase 2 and outfalls to the eastside drainage ditch would not be needed until later phases. The design review approval of outfalls shall occur prior to the issuance of the building permit for the development that triggers the need for the outfall or associated construction activity, and on a schedule similar to the phases of construction.	submit to City evidence of approval from SCVWD.			outfall or associated construction activity
WQ-3.2: Vegetation Removal from the Retention Basin Drainage Swale. In accordance with the Retention Basin Drainage Swale Vegetation Clearing Project, and prior to the placement of new impervious surfaces on Parcels 1 or 2, overgrown tule and cattails shall be removed from the entire length of the drainage swale to restore the swale's flood protection capacity and protect residents and businesses. Vegetation in the drainage swale shall be mowed by hand using rotary mowers, and tule and cattails shall be cut down to 3 to 4 inches above the ground surface. The clippings shall be loaded by hand and hauled from the drainage swale to the Retention Basin where the vegetation will dry out. Once dry, the vegetation shall be transported to the Newby Island Landfill. It is estimated that initial removal of overgrown vegetation will generate approximately 300 cubic yards of debris. Prior to performance of this work, all necessary permits shall be obtained from environmental regulatory agencies for this vegetation removal, including any required compensation for loss of wetland/riparian vegetation.	City and Project Developer to execute an agreement to reimburse City for the one-time costs of removing vegetation from the swale (including compliance with any permit conditions requiring onsite actions to do so) as needed to restore flood protection capacity suitable to support the Project. City to be responsible for obtaining any necessary permits and for any maintenance of the swale thereafter.	Project Developer	Department of Public Works	Agreement executed prior to issuance of grading and building permits on Parcels 1 or 2. Vegetation removal complete prior to issuance of a certificate of occupancy for the first building on Parcels 1 or 2.
HAZARDS AND HAZARDOUS MATERIALS				
HAZ-2.1: Finalize Waste Management Plan for Construction. Prior to Project construction, a final Waste Management Plan shall be prepared and implemented. This plan shall be submitted to the LEA, CalRecycle, Regional Water Board, and	Project Developer to provide to City final, approved Waste	Project Developer	Department of Public Works	Plan approved by pertinent agencies must

[11] Santa Clara Valley Water District. 2006. *User Manual: Guidelines & Standards for Land Use Near Streams.* A Manual of Tools, Standards, and Procedures to Protect Streams and Streamside Resources in Santa Clara County. Prepared by the Santa Clara Valley Water Resources Protection Collaborative. Originally adopted in August 2005. Revised: July 2006.

[12] Outfalls and work within the SCVWD right-of-way are subject to approval and issuance of permits by the SCVWD.

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Guadalupe River will not increase as part of the Project. The exact reduction in 100-year peak runoff volumes and flows that the stormwater management measures will need to accommodate will be determined during the design process for the stormwater management measures and will be provided in the detailed Project Stormwater Management Plan. Due to construction phasing, construction of interim treatment measures may be required once the 40-acre concrete pad has been constructed and before the surface of the pad is developed with new structures with their own associated post-construction stormwater treatment features. These interim measures will be reported to the San Francisco Bay Water Board. The stormwater management measures for each parcel shall be modeled during final design for buildings, parking garages, site landscaping, etc. Dynamic hydraulic modeling shall be used. Dynamic hydraulic modeling tracks the quantity and quality of runoff generated within each subcatchment as well as the flow rate, flow depth, and quality of water in each pipe and channel during a simulation period with multiple time steps. The results of the modeling shall be used to compare the proposed "permanent" stormwater peak flows and volumes for the Project with the existing peak flows and show compliance with the jurisdictional regulations. The dynamic hydraulic modeling shall consider the potential runoff volumes and rates coming from the top of the landfill. The resulting design of stormwater management measures shall be required to be sufficient to protect water quality and habitat resources along receiving waterways. A Stormwater Management Report, including detailed hydrologic and hydraulic calculations, analysis, and conclusions, shall be prepared to document the final design of the stormwater management and storm drain system and obtain the requisite approvals.				
WQ-3.1: Design New Bridge and Outfall Structures to Avoid Increase in 100-year Flow and Channel Erosion. In compliance with the Santa Clara Valley Water District's (SCVWD's) 100-year peak flood requirements, any new bridge and new outfalls in San Tomas Aquino Creek shall be designed to avoid increases in the 100-year flow and to avoid creek bed/channel erosion. The design shall also consider erosive action or redirection of flow during more frequent flood events in compliance with the City of Santa Clara's storm drainage design criteria[10] and consistent with SCVWD's	Project Developer to provide design for any new bridge or outfalls in San Tomas Aquino Creek or the eastside drainage channel for review and approval by City and	Project Developer	Department of Public Works	Prior to the issuance of the building permit for the development that triggers the need for the

[10] City of Santa Clara. 2015. Design Criteria for Improvements in Public Right-of-Ways and City Easements. Public Works Department. April. Available: http://santaclaraca.gov/home/showdocument?id=14345. Accessed: 12/29/15.

Mitigation and Avoidance Measures	Action	Implementing Party	Monitoring Party	Timing [1]
pollutants from stormwater using filtration, infiltration, and sedimentation. Because infiltration is not feasible due to the landfill, the treatment measures must be built into the structure of the development above the landfill itself. The stormwater treatment measures that provide infiltration shall be lined with an impermeable liner on the bottom and sides. Just above the liner there must be a layer of clean gravel and a network of perforated piping (underdrains). These underdrains must connect to solid drain piping at the exit of the treatment area and ultimately be connected to the storm drainage infrastructure. All of these components shall exist above the podium structure. The impermeable liner would prevent any leaks or ruptures into the landfill and structures. There shall also be perforated underdrain piping connected to solid piping at the exit of the treatment measure/planter solid piping that will connect to the storm drain infrastructure at manholes where leak monitoring can be performed. More information on the potential hazards of a leak or rupture of the stormwater treatment measures causing flooding of the landfill gas venting lines is provided in Section 3.11, *Hazards and Hazardous Materials*. The following stormwater treatment (or Low Impact Development [LID]) measures are examples that will be considered and carefully selected as part of the final design process for the different sections of the proposed development: • Bioretention Areas (impermeable liner with underdrain—no infiltration into landfill) • Flow-through Planters • Tree Well and Media Filters • Infiltration Trenches (impermeable liner with underdrain—no infiltration into landfill) • Rainwater Harvesting and Reuse • Green Roofs • Green Streets (with bioretention, impermeable liner, and underdrain) • Pervious Pavements (impermeable liner with underdrain—no infiltration into landfill) As noted above, a minimum of 4 percent of the site area shall be used for the stormwater treatment measures. As part of final design, these treatment measures for the Project site shall be incorporated into the aesthetics of the landscape. Some attenuation of the peak flows can be recognized, depending on the measures selected. The measures shall include an overflow to safely convey the more intense, less frequent rainfall events. The stormwater treatment measures shall capture sufficient flows so that 100-year peak flood elevations or existing design flows within San Tomas Aquino Creek and the				

Mitigation and Avoidance Measures	Action	Implementing Party	Monitoring Party	Timing [1]
Maintenance Plan. Quarterly reports detailing inspection and remedial activities shall be submitted to each agency that approved the Site Operation, Monitoring, and Maintenance Plan following each inspection for review and approval.				
GEO-2.6: Review and Approval by Relevant Regulatory Agencies. To the extent reports and plans required by Mitigation Measures GEO-2.1, -2.2, -2.3, -2.4 or -2.5 address the portion of the Project site overlying the Landfill, they shall be submitted jointly by the City (as owner and operator of the landfill) and the Project Developer for review and approval to the following: (i) the Local Enforcement Agency as principal landfill regulator; (ii) the Regional Water Board for approval of the issues related to the low permeability layer of the final landfill cover pursuant to 27 CCR 21990 (d) and pilings installed in or through the bottom liner of the landfill liner pursuant to 27 CCR 21990 (e)(6), and for review but not approval of other aspects of the plans and reports; (iii) to Cal Recycle for review, but not approval; and (iv) any other agency which is specifically required by applicable law to approve a particular report, plan or component thereof. To the extent reports and plans required by this mitigation measure relate to other portions of the site not overlying the Landfill, they shall be submitted by the Developer to the City, and to any agency which is specifically required by applicable law to approve a particular report, plan or component thereof, for review and approval.	Refer to GEO-2.1 through GEO-2.5	Refer to GEO-2.1 through GEO-2.5	Refer to GEO-2.1 through GEO-2.5	Refer to GEO-2.1 through GEO-2.5
HYDROLOGY AND WATER QUALITY				
WQ-1.1: Design and Implement Stormwater Control Measures. In compliance with Provision C.3 of the San Francisco Bay MS4 Permit and the Santa Clara Valley Water District's 100-year peak flood requirements, post-construction stormwater controls shall be implemented to reduce total runoff rates and associated pollutant discharges. According to the Santa Clara Valley Urban Runoff Pollution Prevention Program's C.3. Stormwater Handbook, the three methods for hydraulically sizing flow-based stormwater treatment control measures are (1) volume-based, (2) flow-based, or (3) a combination of volume-/flow-based hydraulic sizing criteria. The simplified method for sizing bioretention areas and flow-through planters, known as the "4 percent method," is based on a runoff inflow of 0.2 inch per hour, with an infiltration rate through biotreatment soil of 5 inches per hour. The 4 percent method requires the treatment measure to be 4 percent of the impervious area that drains to it. The design of the stormwater treatment measures is currently at the conceptual level and further details will be addressed as part of the planning, construction, and operation of the development. The treatment measures shall be designed to remove	Project Developer to provide to City Stormwater Management Report.	Project Developer	Department of Public Works	Prior to issuance of building permits

Mitigation and Avoidance Measures	Action	Implementing Party	Monitoring Party	Timing [1]
Project site structures shall be designed to accommodate predicted ground settlement, as determined in the design-level geotechnical investigation for the Project improvements (see Mitigation Measure GEO-1.1). For the portion of the Project overlying the Landfill, the Post-Closure Land Use Plan shall demonstrate that Project design will be protective of public health and safety and the environment, as required by 27 CCR 21190. Because of the potential for encountering buried obstructions, contingencies for relocating Auger Cast-in Place Piles and Drilled Displacement Columns during construction shall be included in the foundation design. The Project design plans shall be subject to review and approval by the City Building Department prior to initiation of field activities.	criteria of GEO-2.4 for review and approval by City. City and Developer to submit such Project design plans to regulatory agencies per GEO-2.6 with respect to areas underlain by landfill and secure approvals as required.			building permits
GEO-2.5: Site Operation, Monitoring, and Maintenance Plan. A Site Operation, Monitoring, and Maintenance Plan that covers both the Project site and off-site areas shall be prepared by the Project Developer and submitted for review and approval in accordance with Mitigation Measure GEO-2.6. The Site Operation, Monitoring, and Maintenance Plan shall establish procedures for inspecting structures and improvements as well as evaluating the effects of settlement. It will also establish a mechanism for funding and implementing the Plan's activities throughout the life of the Project. Inspections that focus on documenting settlement, particularly at locations where different support systems meet, shall take place at least quarterly during the first 2 years following the completion of each phase of Project construction. Documentation of each inspection shall be submitted to for review and approval in accordance with Mitigation Measure GEO-2.6 within 30 days of inspection completion. After 2 years, the frequency of inspections may be adjusted with written consent from each agency that approved the Site Operation, Monitoring, and Maintenance Plan Site Operation, Monitoring, and Maintenance Plan. The Site Operation, Monitoring, and Maintenance Plan shall detail the qualifications and responsibilities of monitoring personnel, including immediate notification of the City Building Department of any settlement that could affect the structural integrity of a building and/or structure or settlement that could create a hazard for the public (e.g., separations that create trip hazards for pedestrians). If the types of settlements are observed that could compromise structural integrity or cause hazards for the public, based on the judgment of the qualified inspector, remedial action shall be promptly completed. The Plan shall designate financial responsibility for remedial actions should the effects of settlement be identified and provide timetables for any required remedial action. All remedial action shall be overseen by the qualified geotechnical consultant designated by the Plan and approved by each agency that approved the Site Operation, Monitoring, and	Project Developer to provide Site Operation, Monitoring, and Maintenance Plan for review and approval by City. City and Developer to submit Site Operation, Monitoring, and Maintenance Plan to regulatory agencies per GEO-2.6 for areas underlain by landfill and secure approvals as required. Project Developer to submit inspections to City for review and approval, and to regulatory agencies as specified in GEO02.6 for areas underlain by landfill, within 30 days or inspections.	Project Developer/ City	City Planning & Inspection Division	Plan approval prior to issuance of grading and building permits. Inspections at least quarterly during the first 2 years following the completion of each phase of construction. Documentation of each inspection shall be submitted within 30 days of inspection.

Mitigation and Avoidance Measures	Action	Implementing Party	Monitoring Party	Timing [1]
seismic) is achieved for each slope. Measures to address expansive soils: • In those areas not supported by the structural slab foundation (which would effectively mitigate the hazard), other measures shall be developed to mitigate the hazard, such as removal of the problematic soils, treatment of the soils, or specification of appropriate foundation design. If any soils characterized as highly or moderately expansive (linear extensibility of 3.0 percent or more) are to remain at the surface or be used as fill in the upper 5.0 feet, these soils shall be treated (using calcium-based treatment or similar approach) such that the soils are reduced to a low expansion potential (linear extensibility of less than 3.0 percent). Measures to address corrosive soils: • A corrosion consultant shall be retained to provide specific recommendations regarding the long-term corrosion protection of pile elements and other subsurface materials. The recommendations of the corrosion consultant, which may include use of specific corrosion-resistant materials and/or treatment of corrosive soils, shall be implemented during construction.				
GEO-2.3: Construction Quality Assurance Plan. A Construction Quality Assurance (CQA) Plan that covers both the Project site and off-site areas shall be prepared by the Project Developer for review and approval by the Director of Public Works. The CQA Plan shall establish procedures for testing final cover materials, detail the responsibilities of construction monitoring personnel, and provide procedures for addressing unexpected geologic conditions during grading activities.	Project Developer to provide a CQA Plan that covers both the Project site and off-site areas for review and approval by City. City and Developer to submit CQA to regulatory agencies per GEO-2.6 with respect to areas underlain by landfill and secure approval as required. Project Developer to submit to City applicable provisions of construction contracts incorporating requirements of CQA.	Project Developer	Director of Public Works	Prior to the issuance of grading, and building construction permits
GEO-2.4: Final Project Design Review. Final Project design plans that cover both Project site and off-site areas shall be prepared by the Project Developer and submitted for review and approval in accordance with Mitigation Measure GEO-2.6.	Project Developer to provide final Project design plans meeting	Project Developer/ City	City Planning and Inspection Division	Prior to issuance of grading and

Mitigation and Avoidance Measures	Action	Implementing Party	Monitoring Party	Timing [1]
The design-level geotechnical investigation work plan shall be submitted for review and approval in accordance with Mitigation Measure GEO-2.6.				
GEO-2.2: Final Geotechnical Report Review. A final geotechnical report shall be prepared by a qualified professional based on the findings of the design-level geotechnical investigation (the qualified professional shall be retained by the Project Developer). The final report shall be submitted for review and approval in accordance with Mitigation Measure GEO-2.6. The final geotechnical report shall include: Measures to address anticipated settlement: • Specifications of methods to address differential settlement between improvements supported by a combination of structural slab foundations and those that are supported by other deep foundation systems or unsupported areas. • Exterior slabs and ramps attached to buildings shall be hinged to allow the end of the slab or ramp not attached to the building to move downward as settlement occurs. The design shall not allow building entrance slabs to exceed a 5 percent grade, in compliance with ADA access requirements, and vehicular entrances shall not be allowed to exceed an 11 percent grade to prevent vehicles from scraping during entry or exit. • Settlement vaults and flexible connections shall be required at locations where utilities transfer from a pile-supported building to a non-supported area for all phases of construction. • Roadway and other paving at the Project site not located above an area-wide structural slab shall be constructed with flexible materials, such as asphalt or interlocking pavers. The use of concrete and other non-flexible materials shall be minimized. Where non-flexible material is used, expansion and spacing joints that allow rigid materials to shift without breaking shall be used to allow for anticipated settlement. Measures to address liquefaction: • In those areas not supported by the structural slab foundation (which would effectively mitigate the liquefaction hazard), other measures shall be developed to mitigate the hazard, such as shallow footings constructed over ground improvement. Foundations for structures shall be designed to completely mitigate settlement hazards associated with liquefaction (i.e., no liquefaction-induced settlement damage shall be accepted for the final design). Measures to address slope instability: • Measures (e.g., reducing slope steepness, providing structural support, or ground improvement) to ensure that an appropriate factor of safety (both static and	Project Developer to provide final geotechnical report for review and approval by City. City and Developer to submit such report to regulatory agencies per GEO-2.6 and secure approval as required. Project Developer to incorporate resulting measures into project plans.	Project Developer/ City	City Planning and Inspection Division	Prior to the issuance of grading and building permits

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GEOLOGY AND SOILS				
GEO-1.1: Detailed Grading and Erosion Control Plan. A detailed grading and erosion control plan shall be prepared and submitted to the City Building Department. The plan shall cover all Project parcels (not just the landfill portions) and off-site areas and include all information required to demonstrate that earthwork activities will be in compliance with CCR 21190 et seq. and incorporate by reference the Project's Storm Water Pollution Prevention Plan, as required by the Construction General Permit.	Project Developer to provide detailed grading and erosion control plan for review and approval by City.	Project Developer	City Planning and Inspection Division	Prior to the issuance of demolition and grading, permits
GEO-2.1: Design-Level Geotechnical Investigation. Prior to the issuance of demolition, grading, or construction permits at the Project site, a design-level geotechnical investigation shall be conducted by a qualified professional (the qualified professional shall be retained by the Project Developer). The investigation shall include further field exploration (e.g., borings, cone penetration tests, test pits and/or geophysical surveys) to develop design-level recommendations to address erosion and other geotechnical concerns for the Project. The design-level geotechnical investigation shall include: • Evaluation of anticipated settlement. Additional soil borings shall be installed to determine the depth to the refuse layer for aid in preparing grading plans. Additional samples shall be analyzed to determine potential settlement and determine the likely final post-settlement surface elevation. The potential magnitude of differential settlements between improvements supported by a combination of structural slab and deep foundations and those that are supported by other foundation systems shall be fully analyzed and detailed in the design-level geotechnical report. • Evaluation of liquefaction potential. Additional borings shall be drilled at the Project site and off-site areas to fully characterize the liquefaction hazard associated with the Project. • Evaluation of slope instability. A detailed slope stability analysis for all existing slopes that would remain under the Project, including the perimeter landfill slopes, and all proposed new slopes shall be prepared. • Evaluation of expansive soils. Additional borings shall be drilled at the Project site and off-site areas to fully characterize the expansive soil hazard associated with the Project. • Evaluation of corrosive soils. Project site and off-site soils and, in those areas where foundation components would come into contact with landfill materials, refuse shall be evaluated for corrosion potential.	Project Developer to provide design-level geotechnical investigation for review and approval by City. City and Developer to submit such investigation to regulatory agencies per GEO-2.6 with respect to areas underlain by landfill and secure approval as required. Project Developer to incorporate resulting measures into project plans.	Project Developer/ City	City Planning and Inspection Division	Prior to the issuance of demolition, grading, and building permits

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habitat area data; • Adaptive management plan to be implemented if mitigation performance is found through annual monitoring not to be progressing towards success within the 5-year monitoring period; • Conservation plan to ensure in-perpetuity land use protection of the mitigation site; • Long-term (in-perpetuity) conservation management plan; and • Funding plan for mitigation implementation, 5-year mitigation performance monitoring and maintenance, and an endowment (non-wasting fund) for long-term conservation management. The final MMP shall be determined in consultation with DFW, USACE, and the Regional Water Board. The mitigation plan shall include measure to avoid and minimize the effects of construction on surrounding native habitats. The required performance standard is no net loss of wetland and waters habitat function and values. Monitoring shall occur for a minimum of 5 years, at which time, if the success criteria are met, wetland compensation shall be deemed complete.				
BIO-C.1: Make a Fair-Share Nitrogen Deposition Fee Contribution to the Santa Clara Habitat Agency's Voluntary Fee Payment Program. Consistent with its voluntary commitment to contribute a nitrogen deposition fee through the fee program of the Santa Clara Habitat Agency, the Project Developer shall make a pro-rated per-vehicle-trip nitrogen deposition fee contribution, which will be based on the amount charged by the Santa Clara Valley Habitat Agency under its Voluntary Fee Payments Policy (http://scv-habitatagency.org/DocumentCenter/View/345). Specifically, the per-vehicle trip fee shall be adjusted as set forth below to take into account the different dispersion characteristics of the Project vs. the average dispersion characteristics for development in the HCP/NCCP area. The Project is located farther from serpentine grassland habitat than average development within the Santa Clara Valley HCP/NCCP area. Thus, the required fair-share contribution shall be figured as 38 percent (based on the ICF analysis) of the established fee of the habitat agency for the year in which the building permits are issued for the Project. The fee may be paid up front or in installments in proportion to mitigated vehicle trip generation for the phase of the Project for which the building permits are issued. For fiscal year 2015–2016, the adopted HCP/NCCP nitrogen deposition fee was $4.20 per new vehicle trip. Using Scheme B's estimated trip generation (140,730 trips/day), taking into account the trip reduction effect of Mitigation Measure TRA-1.1 (reduction to 137,910 trips/day), and the 38 percent adjustment factor, if all fees were paid in 2015, the estimated total would be $220,104.	Project Developer to provide to City proof of payment.	Project Developer	City Planning and Inspection Division	Prior to issuance of building permits: to be paid up front or in installments in proportion to mitigated vehicle trip generation for the phase of Project for which the building permits are issued.

Mitigation and Avoidance Measures	Action	Implementing Party	Monitoring Party	Timing [1]
and construction period. • Prohibit grading, construction activity, traffic, equipment, or materials in fenced wetland areas.				
BIO-5.2: Compensate for Loss of Waters of the U.S. and State (including Wetlands). If impacts to jurisdictional waters of the U.S. or State cannot be avoided, the Project Developer shall obtain permits or approvals to develop from the USACE, the Regional Water Board, and DFW, as appropriate and required. Both the Guadalupe River and San Tomas Aquino Creek are subject to both State and federal jurisdiction because of their connection to the Bay. To ensure that the Project results in no net loss of wetland habitat functions and values, the Project Developer shall compensate for the loss of jurisdictional wetlands/waters through one of the following options. • Purchase of agency-approved mitigation credits from a suitably located mitigation bank prior to construction (ground disturbance that impacts wetlands/waters); • On-site wetland/waters restoration (re-establishment or rehabilitation) establishment (creation) prior to or concurrent with construction impacts; • Off-site wetland/waters restoration (re-establishment or rehabilitation)/establishment (creation) prior to or concurrent with construction; or • A combination of two or more of the above. The amount of agency approved mitigation credits required from a suitably located mitigation bank and/or size and location(s) of the area(s) to be restored (re-established)/established (created) shall be based on appropriate mitigation ratios, as derived in consultation with DFW, USACE, and the Regional Water Board. The Project Developer shall prepare and implement a mitigation and management plan (MMP) as part of the permitting process in conformance with the USEPA/USACE 2008 Mitigation Rule. The mitigation ratios shown in the initial draft MMP submitted to the permitting agencies during Project permitting shall be a minimum of 2:1, as determined through the CEQA process. The MMP, if other than sole purchase of mitigation bank credits, shall include the requirements listed below: • Mitigation implementation plan; • Performance (success) standards or criteria to be met in order to determine that the mitigation has successfully replaced the impacted wetlands/waters in terms of "no net loss" of the impacted functions and values; • 5-year monitoring plan for determining that performance criteria have been successfully met through the collection of wetlands/waters vegetation survival and cover field data; hydrology flooding, ponding, and/or soil saturation field data; and	Project Developer to provide to City wetland delineation, copies of permits obtained as and if required from USACE, the Regional Water Board and DFW, and the MMP, all satisfying the requirements of BIO-5.2 Project Developer to provide to City annual monitoring reports.	Project Developer/ Qualified Wetland Biologist	DFW, USACE, Regional Water Board, City Planning & Inspection Division	Prepare wetland delineation prior to first grading or building permit for the Project. Obtain requisite agency permits and prepare MMP prior to issuance of grading or building permits for construction activities that will impact jurisdictional wetlands. Monitor plan for a minimum of 5 years.

Mitigation and Avoidance Measures	Action	Implementing Party	Monitoring Party	Timing [1]
from the nest following hatching. The radius of the buffer zone and the duration of exclusion shall be determined in consultation with DFW. The buffer zones and fencing shall remain in place until the young have left the nest, as determined by the qualified biologist. If western pond turtles are found on the Project site, the Project Developer shall still retain a qualified biologist to monitor construction activities in the vicinity of suitable habitat and implement appropriate measures to protect the western pond turtle. Such measures may include removal and relocation of western pond turtles in proposed construction areas to suitable habitats outside the Project limits, consistent with DFW protocols and permits. Relocation sites shall be subject to DFW approval.	preconstruction surveys have been conducted and protective measures taken.			prior to site construction activities in or within 50 feet of aquatic habitats
BIO-4.1: Protect Central California Coast Steelhead, Critical Habitat, and Chinook Salmon. Construction, operations, and maintenance on the riverbank, as well as areas within 200 feet of the Guadalupe River, that could result in disturbed sediment depositing within the banks of the channel shall be limited to the summer low-precipitation period (June 1 to October 15), unless otherwise approved by appropriate resource agencies. Limiting riverbank disturbance during these months would reduce the likelihood of adverse effects on adult and juvenile salmonid migration.	Project Developer to provide to City applicable provisions of construction contract ensuring work on the riverbank as well as within 200 feet of the Guadalupe River that could result in disturbed sediment depositing within the banks of the channel is limited to summer low precipitation periods.	Project Developer/ Project Contractor	City Planning & Inspection Division	Prior to issuance of grading and building permits
BIO-5.1: Protect Retention Pond and Eastside Retention Drainage Swale, and San Tomas Aquino Creek and the Guadalupe River Aquatic Habitat during Construction. For construction activities within 50 feet of the aquatic habitat associated with the retention pond and drainage swale, San Tomas Aquino Creek, and Guadalupe River, protective measures shall be put in place to ensure that impacts on those aquatic features shall be avoided and minimized. The following measures shall be deployed during construction: • A qualified biologist shall determine the locations where orange construction barrier fencing shall be installed around aquatic resources (USACE and the Regional Water Board jurisdictional wetlands/waters and DFW jurisdictional lakes and streams) that are to be avoided prior to initiation of construction activities. • Designate the protected area an Environmentally Sensitive Area and clearly identify the area in the construction specifications. • Maintain jurisdictional wetlands/water protection fencing throughout the grading	Project Developer to provide to City applicable provisions of construction contract and agreement with qualified biologist that include the specified protective measures.	Project Developer/ Qualified Biologist	City Planning & Inspection Division	Prior to issuance of grading and building permits for construction activities within 50 feet of the pertinent aquatic habitat

Mitigation and Avoidance Measures	Action	Implementing Party	Monitoring Party	Timing [1]
BIO-2.1: Detection of Burrowing Owls. The Project Developer shall allow access to the Project site or off-site areas for biologists who participate in the annual burrowing owl nest survey coordinated by the Santa Clara Valley HCP/NCCP. Burrowing owl surveys are conducted between March and August of each year. As many as four surveys may be conducted each year, in accordance with the Staff Report on Burrowing Owl Mitigation[9] to determine whether burrowing owls are nesting and whether nests are successful. Access to the site for burrowing owl surveys shall be granted until the Project site or off-site area is completely built out. The Project Developer shall not, however, be required to postpone planned development activities to provide such access, except to the extent such postponement is necessary to meet regulatory requirements.	The ground lessee shall allow such access until certificate of completion for the phase.	Project Developer/City	City Planning & Inspection Division	Concurrent with execution of each phase ground lease
BIO-2.2: Mitigation for Loss of Burrowing Owl Habitat during Construction. Should burrowing owls begin nesting on developable portions of the Project site or off-site areas that remain undeveloped as phases of the Project are constructed, or suitable habitat within 600 meters of an active nest is removed from the Project site, then lost burrowing owl habitat shall be replaced at a ratio of at least 1:1 prior to ground-disturbing activities in the area of the Project site or off-site area with an active nest. Affected habitat shall be defined as suitable habitat (based on the habitat mapping completed for this EIR) within a 600 meter radius of an active burrowing owl nest. Suitable land cover types include annual grassland, ruderal, or barren areas. Mitigation sites shall have documented nesting occurrences from at least 1 year within the previous 3 years. If burrowing owls move onto undeveloped portions of the Project Site or off-site area, including the Retention Basin, once the site is fully constructed, there shall be no requirement to provide replacement habitat, unless that undeveloped habitat is developed in the future.	If required, Project Developer to submit certification to the City that habitat has been replaced at the specified ratio. City to review and approve certification.	Project Developer	City Planning & Inspection Division	Prior to ground-disturbing activities until the Project site or off-site areas are completely built-out in the event that wildlife biologist detects circumstance triggering BIO-2.2
BIO-3.1: Protect Western Pond Turtles. Prior to the start of construction activities in or within 50 feet of aquatic habitats, the Project Developer shall retain a qualified biologist to conduct preconstruction surveys for western pond turtles in all suitable habitats (aquatic and upland) in the vicinity of the work site. Surveys shall take place no more than 72 hours prior to the onset of site preparation and construction activities with the potential to disturb turtles or their habitat. If preconstruction surveys identify active nests on the Project site, the biologist shall establish no-disturbance buffer zones around each nest using temporary orange construction fencing. The demarcation shall be permeable to allow young turtles to move away	Project Developer to submit to City agreement with qualified biologist and applicable provisions of construction contracts, including requirement that biologist submit to City certification that	Project Developer/ Qualified Biologist	City Planning & Inspection Division	Prior to the issuance of grading or building permits for biologist and construction agreements; and 72 hours

[9] CDFW 2012. Staff Report on Burrowing Owl Mitigation. State of California Natural Resources Agency.

Mitigation and Avoidance Measures	Action	Implementing Party	Monitoring Party	Timing [1]
BIO-1.2: Implement Bird-Safe Design Standards into Project Buildings and Lighting Design. Each Development Area Plan (DAP) approved by the City shall include a set of specific standards for minimizing hazards to birds, to be implemented by the Project Developer. The development of the specific bird safety standards for each Development Area Plan shall be tailored to the specific potential hazards to birds in that development area, taking into account the specific locations, types and heights of buildings, lighting, and landscaping. In addition, the DAP shall require enhanced protective measures for buildings within 300 feet of the retention pond, the Guadalupe River, and San Tomas Aquino Creek, such as siting buildings in relation to existing landscape features to reduce conflicts with existing features that may serve as attractive bird habitat; minimizing the reflection of existing vegetation on building facades; or using soil berms, furniture, landscaping, or architectural features to prevent reflection of water in glazed building facades. The specific bird safety standards in each DAP shall be based on the following bird-friendly building principles, to the extent applicable to the particular development area: • Reduce mirrors and large areas of reflective glass. • Avoid transparent glass skyways, walkways, or entryways, free-standing glass walls, and minimize transparent building corners, or utilize glazing treatments to mitigate the hazard. • Minimize funneling of open space toward a building façade. • Strategically place landscaping to reduce reflection and views of foliage inside or through glass. • Reduce potential light and glare by implementing Mitigation Measures AES-2.1 (requiring low-profile, low-intensity lighting directed downward), AES-2.2 (requiring shielded fixtures for outdoor lighting), and AES-2.3 (requiring low-emissivity reflective coating on exterior glass surfaces). • To the extent consistent with the normal and expected operations of the uses planned for the particular development area, take appropriate measures to avoid use of unnecessary lighting at night, especially during bird migration season (February-May and August-November) through the installation of motion sensor lighting, automatic lighting shut-off mechanisms, or other effective measures to the extent feasible. The specific bird safety standards shall also provide for a monitoring program, and placing signs around the buildings with phone numbers for authorized bird conservation organizations.	City review and approve each Development Area Plan to ensure adequate measures are included.	Project Developer	City Planning & Inspection Division	Approval of each Development Area Plan

Mitigation and Avoidance Measures	Action	Implementing Party	Monitoring Party	Timing [1]
BIOLOGICAL RESOURCES				
BIO-1.1: Protect Nesting Birds. The Project Developer and its contractors shall avoid conducting vegetation removal during the migratory bird nesting season (February 1–August 31). If Project-related activities must commence during the migratory bird nesting season, the Project Developer shall retain a qualified wildlife biologist to conduct a survey for nests of migratory birds. Surveys for nesting migratory birds shall occur within 3 days prior to the commencement of ground disturbance and vegetation removal in areas that will be affected by Project construction activities. Multiple nest surveys shall be required if construction is phased or when construction work stops for more than 2 weeks at a portion of the site where suitable nesting habitat remains. If construction is ongoing for multiple years, these surveys shall be conducted each year prior to construction in areas that have not yet been disturbed and are scheduled to be disturbed during the nesting season. In addition to nesting-season surveys, surveys shall be conducted during the non-nesting season (September 1–January 31) for overwintering burrowing owls in areas scheduled for initial disturbance during the upcoming season. The surveys shall also be conducted as described above, with a goal of identifying overwintering owls so they can be appropriately avoided during construction. If an active nest is discovered, a no-disturbance buffer zone around the nest tree or shrub (or, for ground-nesting species, the nest itself) shall be established. The no-disturbance zone shall be marked with flagging or fencing that is easily identified by the construction crew and shall not affect the nesting bird or attract predators to the nest location. In general, the minimum buffer zone widths shall be as follows: 50 feet (radius) for non-raptor ground-nesting species, 50 feet (radius) for non-raptor shrub- and tree-nesting species, and 300 feet (radius) for raptor species. Buffer widths may be modified based on discussion with DFW. Buffers shall remain in place as long as the nest is active or young remain in the area and are dependent on the nest. If a burrowing owl nest is identified during pre-construction surveys, no-activity buffers will adhere to the recommendations in the 2012 California Department of Fish and Game Staff Report on Burrowing Owl Mitigation.[7] Most Project activities would result in a high level of disturbance, constituting a 1,640-foot (500-meter) required buffer around occupied nests during any time of year.[8]	Project Developer to provide to City applicable provisions of construction contracts including pertinent requirements. If construction will occurs in the nesting season, Project Developer to submit to City agreement with qualified wildlife biologist requiring surveys and protective measures under BIO-1.1 and requirement that wildlife biologist report to City if conditions triggering BIO-2.2 exist.	Project Developer/ Project Contractor/ Qualified wildlife biologist	City Planning & Inspection Division	Prior to the issuance of grading and building permits for construction contracts; prior to commencement of grading for biologist agreements; and prior to ground disturbance for surveys

[7] California Department of Fish and Game. 2012. Staff Report on Burrowing Owl Mitigation. State of California Natural Resources Agency. March 7. Available: http://www.dfg.ca.gov/wildlife/nongame/survey_monitor.html#Mammals.

[8] Scobie, D., and C. Faminow. 2000. Development of Standardized Guidelines for Petroleum Industry Activities that Affect COSEWIC Prairie and Northern Region Vertebrate Species at Risk. Environment Canada, Prairie and Northern Region, Edmonton, Alberta, Canada.

Mitigation and Avoidance Measures	Action	Implementing Party	Monitoring Party	Timing [1]
by landfill refuse or below other elevations confirmed in the field by the qualified paleontologist. The qualified paleontologist shall be present initially for 100 percent of the excavation activities within the Pleistocene deposits. After 50 percent of the excavation is completed within the rock unit and if no fossils of any kind have been discovered, then the level of monitoring can be reduced or suspended entirely at the Project paleontologist's discretion. If the paleontologist discovers potential paleontological resources, all ground disturbance within 50 feet of the find shall stop immediately until the qualified professional paleontologist can assess the nature and importance of the find and recommend appropriate salvage, treatment, and future monitoring and mitigation actions.	implementing PRMP, which shall include requirements of CR-2.3.	Professional Paleontologist		permits for excavation below an elevation of -30 feet at Parcel 5 And areas of Parcel 4 not underlain by landfill
CR-2.3: Paleontological Resource Reporting. If significant paleontological resources are identified, the Project qualified paleontologist shall prepare a report summarizing the field and laboratory methods, site geology and stratigraphy, faunal/floral list(s), and a brief statement of the significance and relationship of the fossils discovered to similar fossils found elsewhere. The final report should emphasize the discovery of any new or rare taxa, or paleoecological or taphonomic significance. A complete set of field notes, geologic maps, stratigraphic sections, and a list of identified specimens must be included in or accompany the final report. This report should be finalized only after all aspects of the PRMP are completed, including preparation, identification, cataloging, and curatorial inventory. Full copies of the final report shall be deposited with both the Lead Agency and the repository institution with the request that all locality data remain confidential and not made available to the general public.	Paleontologist to prepare final report for submission to City. See also CR-2.2.	Project Developer/ Qualified Professional Paleontologist	City Planning & Inspection Division	After a significant paleontological resource is identified during construction
CR-3.1: Stop work if human remains are encountered during ground-disturbing activities. When human remains are discovered (in either an archaeological or construction context), all work within proximity of the remains shall stop so that the archaeological monitor can examine the remains. The County Coroner shall be notified, who shall make a determination as to whether the remains are of Native American origin. If the remains are determined to be Native American, the Coroner shall notify the Native American Heritage Commission (NAHC) immediately. The NAHC shall notify those persons it believes are most likely descended from the deceased Native American. Once the 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 State CEQA Guidelines.	Project Developer to submit to City applicable provisions of construction contracts including applicable requirements.	Project Developer/ Project Contractor	County Coroner/ NAHC	Prior to issuance of grading and building permits

Mitigation and Avoidance Measures	Action	Implementing Party	Monitoring Party	Timing [1]
Developer shall provide a written protocol for the City's review and approval that stipulates the manner in which the Project Developer shall comply with the monitoring requirements. In the event that cultural resources are encountered, Mitigation Measure CR-1.3, described below, shall be followed.				site; monitoring shall occur during earthmoving activities
CR-1.3: Stop Work if Cultural Resources Are Encountered during Ground-Disturbing Activities. In the event that cultural resources are encountered during ground disturbing activities, all work within proximity of the find shall temporarily halt so that the archaeological monitor can examine the find and document its provenience and nature (drawings, photographs, written description). The archaeological monitor shall then direct the work to either proceed if the find is deemed to be insignificant, or instruct the work to continue elsewhere or cease until adequate mitigation measures are adopted. If the find is determined to be potentially significant, the archaeologist, in consultation with the Planning Division, shall develop a Treatment Plan that could include site avoidance, capping, or data recovery. If data recovery is determined to be appropriate, excavation shall target recovery of an appropriate amount of information from archaeological deposits to determine the potential of the resource to address specific research questions. If it occurs, data recovery shall emphasize the understanding of the archaeological deposit's structure, including features and stratification, horizontal and vertical extent, and content, including the nature and quantity of artifacts.	Archaeological monitor (retained by the Project Developer), as necessary, and in consultation with the City, develop a Treatment Plan. See also CR-1.2.	Project Developer/ Qualified Archaeologist	City Planning & Inspection Division	During construction if cultural resources are encountered
CR-2.1: Paleontological Resource Mitigation Plan. Prior to any deep excavations below an elevation of -30 feet (North American Vertical Datum of 1988 [NAVD] 88) at the Project site on areas not underlain by landfill refuse, the Planning Division shall be notified at least 48 hours prior to the excavation, and a qualified professional paleontologist shall prepare a Paleontological Resource Mitigation Plan (PRMP) in consultation with the Planning Division. The PRMP shall describe the tasks necessary to monitor, assess, and recover (if present) significant paleontological resources during Project excavation activities. The PRMP shall be implemented by the qualified paleontologist during the deep Project excavations below an elevation of -30 feet (NAVD 88).	Project Developer to submit to City PRMP prepared by paleontologist (retained by the Project Developer).	Project Developer/ Qualified Professional Paleontologist	City Planning & Inspection Division	Prior to issuance of grading permits for excavations below an elevation of -30 feet at Parcel 5 and areas of Parcel 4 not underlain by landfill.
CR-2.2: Paleontological Resource Monitoring. In accordance with the PRMP, a qualified paleontologist shall monitor for fossils in Pleistocene deposits during Project excavations below an elevation of -30 feet (NAVD 88) on areas not underlain	Project Developer to provide to City contract with paleontologist for	Project Developer/ Qualified	City Planning & Inspection Division	Prior to issuance of grading

Mitigation and Avoidance Measures	Action	Implementing Party	Monitoring Party	Timing [1]
• Installation of noise-reducing treatments in new buildings, including: o High-performance, sound-rated double-glazed windows, o Sound-rated doors, o Sound-rated exterior wall construction, o Special acoustical details for vents, o Acoustical caulking at all exterior façade penetrations, o Sound-rated roof and ceiling constructions, and o Adequate mechanical ventilation so that windows and doors may be kept closed at the discretion of the building occupants to control environmental noise intrusion.				
CULTURAL RESOURCES				
CR-1.1: Conduct Extended Phase I (XPI) Archaeological Investigations within the Project Site near Recorded Resources and within an Area of Archaeological Sensitivity. Prior to construction, if it is determined that Project-related ground-disturbing activities may extend into native soil within 100 feet of a previously recorded archaeological site, the Project Developer shall retain the services of a qualified archaeologist to conduct XPI investigations within the Project site. The XPI investigations shall consist of subsurface trench excavations to determine the presence or absence of buried features associated with the known archaeological site. If feasible, at least two trenches shall be placed in recorded location P-43-000025/CA-SCL-5, which is recorded as partially in the Project site, to ensure adequate investigations in this area. If the XPI investigations reveal resources, additional trenches or testing may be necessary. Mitigation Measure CR-1.3, described below, shall be followed.	Project Developer to submit XPI Archaeological Investigation(s) to City.	Project Developer/ Qualified Archaeologist	City Planning & Inspection Division	Prior to issuance of grading permits that would disturb native soils within 100 feet of a previously recorded archaeological site
CR-1.2: Provide Archaeological Monitoring of the Project Site When in Native Soil. Prior to construction, if it is determined that Project-related ground-disturbing activities may extend into native soil, within 100 feet of a previously recorded archaeological site, the Project Developer shall retain the services of a qualified archaeologist to monitor earthmoving activities within the Project site. Monitoring shall consist of coordinating subsurface work to allow for the careful examination of vertical and horizontal soil relationships for the purpose of seeking positive archaeological finds (prehistoric and/or historic). The monitor shall maintain a field log of their presence and observations, carefully noting soil conditions. The archaeological monitor shall be pre-approved by the Director of Planning and Inspection. After written approval, the Planning Division shall be notified at least 48 hours prior to any grading or other subsurface work on the site, and the Project	City to approve monitor, ensure monitor is in place, and approve monitoring protocol, which shall include requirements of CR-1.3.	Project Developer/ Qualified Archaeologist	City Planning & Inspection Division	Monitoring protocol prior to the issuance of grading and building permits that would disturb native soils within 100 feet of a previously recorded archaeological

Mitigation and Avoidance Measures	Action	Implementing Party	Monitoring Party	Timing [1]
operations commence.				
NOI-2.1: Restrict Pile Driving. Pile driving occurring 175 feet or less from new residential or commercial buildings shall be conducted prior to those buildings being occupied by future occupants.	City will not approve building permits that include pile driving within 175 feet of occupied residential.	Project Developer/ Project Contractor	City Planning & Inspection Division	Prior to issuance of building permits if driven pile foundations are planned and prior to occupancy of proximate residential or commercial buildings
NOI-5.1: Prepare and Implement a Noise Control Plan to Reduce Interior Noise at Sensitive Land Uses. The Project Developer shall conduct a design-level acoustic study that identifies exterior noise levels for residential and commercial uses on the Project site. This study shall take into account existing airport noise, Project, and reasonably foreseeable future noise sources (such as proposed increases in passenger rail service along the Lafayette Street corridor). Where this study finds that the exterior noise level would exceed the residential compatibility standard of 55 dBA Ldn or the commercial incompatibility standard of 65 dBA Ldn, the Project Developer shall prepare a design-level operational noise control plan to provide acceptable interior noise levels. This plan shall identify all Project features and treatments that will be implemented to ensure that the Project is in compliance with the interior noise standards listed in the City's General Plan and City Code as well as the standards specified for new construction within the CLUP for SJC. The study and plan shall be developed by an acoustical design professional. Design features and treatments will be identified to ensure that interior noise levels at new proposed uses are in compliance with the noise standards. The report shall be submitted to the City for review and approval prior to the issuance of building permits for the Project. Depending on the noise exposure for a particular site, such treatments may include, but are not limited to, those listed below, as recommended by the acoustical design professional. • Construction of enclosures around noise-generating mechanical equipment at commercial uses. • Use of setbacks from noise sources to maximum attenuation of noise over distance.	Project Developer to provide design-level acoustic study for City review and approval and to incorporate necessary measures into building design when exterior noise levels exceed residential and commercial incompatibility standards.	Project Developer/ Acoustical Design Professional	City Planning & Inspection Division	Prior to issuance of building permits for residential and commercial buildings

Mitigation and Avoidance Measures	Action	Implementing Party	Monitoring Party	Timing [1]
o Locating construction equipment as far as feasible from noise-sensitive uses. o Requiring that all construction equipment powered by gasoline or diesel engines have sound-control devices that are at least as effective as those originally provided by the manufacturer and that all equipment be operated and maintained to minimize noise generation. o Not idling inactive construction equipment for prolonged periods (i.e., more than 2 minutes). o Prohibiting gasoline or diesel engines from having unmuffled exhaust systems. o Using noise-reducing enclosures around noise-generating equipment that has the potential to disturb nearby off-site land uses, or where otherwise necessary, to comply with the City Code noise limits for receiving zones.				
NOI-1.2: Implement Off-Site Traffic Noise Reduction Measures. The Project Developer shall implement off-site traffic noise reduction measures along the east side of Lafayette Drive between Tasman Drive and Hogan Drive such that the Project-related increase in traffic noise for noise receptors is less than 3 dBA. The Project Developer shall construct a solid barrier between the roadway and adjacent residential uses along Lafayette Drive between Tasman Drive and Hogan Drive unless deemed infeasible for any reason including unavailability of sufficient right of way or inability to secure design review/architectural approval. The Project Developer shall implement off-site traffic noise reduction measures along the south side of Tasman Drive between Lafayette and Calle del Sol such that cumulative with project-related increase in traffic noise for noise receptors is less than 3 dBA or the project contribution to traffic noise is less than 1 dBA. The Project Developer shall construct a solid barrier between the roadway and adjacent residential uses along Tasman Drive between Lafayette and Calle del Sol unless deemed infeasible for any reason including unavailability of sufficient right of way or inability to secure design review/architectural approval. The barriers shall be designed to provide shielding between areas of frequent human use (i.e., residence backyards) and the roadway. This would result in approximately 1,000 feet of noise barriers along this the Lafayette segment (between Tasman Drive and Hogan Drive) and up to 800 feet along the Tasman segment (between Lafayette and Calle del Sol). One effective approach would be to replace the existing privacy fences at single family residences with a solid barrier that is at least 6 feet high. The Project Developer shall prepare an off-site noise control plan that identifies the location, design, and effectiveness of the specific treatments to be implemented. This plan shall be submitted to the City for review and approval prior to the issuance of building permits. The off-site noise improvements shall be completed before Project	Qualified professional to determine which Phase of the Project triggers the need for the reduction measures. Project Developer to provide noise control plan for City review, determination of feasibility and approval.	Project Developer	City Planning & Inspection Division	Qualified professional to determine which phase triggers noise barrier during Phase 1 of DAP approval. City to determine feasibility of noise barriers, and approve design if feasible, as part of DAP approval. If feasible, barriers to be constructed as part of construction for the Phase triggering the need for the barrier.

3. The Fair Market Value shall be calculated as if the Premises were not subject to the provisions of the Ground Lease or any other ground lease or sublease, including, without limitation, the economics of the Ground Lease. Without limiting the foregoing, the Fair Market Value shall be calculated to account for all provisions of the CC&Rs and the other Projects Documents that are in effect at the time of the preparation of each Appraisal and to the extent then-applicable to the Premises.

4. The Fair Market Value shall reflect each and every zoning, land use and other regulatory restriction applicable to the Premises at the time of preparation of each Appraisal, including any local, state or federal regulatory requirements and any other requirements imposed by any governmental, quasi-governmental or regulatory authority of any kind or nature whatsoever then in effect.

5. The Fair Market Value shall reflect the restrictions on the development, use and occupancy of the Premises in effect at the time of the preparation of each Appraisal, including, without limitation, (i) restrictions upon the uses and/or density (including dimensions, height and square footage) existing at such time and (ii) the Allowed Square Footage allocated to the Premises. Without limiting the foregoing, such restrictions shall include any third-party property rights or other rights appurtenant thereto, any regulations applicable to the Premises, and any negative or affirmative covenants of any kind or nature whatsoever that are then burdening the Premises with respect to the development, use and occupancy thereof, including, without limitation, any contractual third-party consent rights.

6. The Fair Market Value shall reflect any other factor reasonably relevant to the calculation thereof that is not inconsistent with the standards set forth in Items 1 through 5 above. Without limiting the generality of the foregoing, such other factors shall include, without limitation, any restriction, third-party right, or covenant of any kind or nature whatsoever that burdens or otherwise affects the Premises, whether imposed by contract, regulation, judgment, decree or otherwise.

V. Appraisal Procedures:

The following sets forth general procedures for the preparation of each Appraisal; provided, that the party contracting for such Appraisal (City or Tenant, as applicable, in such capacity, the "**Contracting Party**") may modify or waive these procedures in its sole discretion.

1. Pre-Work Conference: At the request of the Contracting Party, the appraiser shall attend a pre-work conference for discussion and understanding of these Instructions, including a timing update. The pre-work conference may be held in conjunction with an inspection of the Premises.

2. Draft Report: The appraiser shall submit to the Contracting Party a complete, self-contained initial draft of the appraisal report (the "**Draft Report**"), consisting of a manipulatable or editable copy of such report, within the period specified within the fully executed contract for appraisal services. The appraiser shall provide to the Contracting Party the Draft Report, as well as maps, drawings, photographs and any other relevant

background information or materials used in preparation of the Draft Report, by the most expeditious means then available and in the then-prevailing format.

3. Review and Comment Period: Following its receipt of the Draft Report, the Contracting Party shall review such Draft Report and, within ___ calendar days thereafter, provide any comments or feedback to the appraiser by the most expeditious means then available and in the then-prevailing format.

4. Final Appraisal: Following receipt of any comments, the appraiser shall, within a reasonable time (not to exceed 15 calendar days without the Contracting Party's written consent), revise the Draft Report to reflect any such comments or feedback and deliver to the Contracting Party a final Appraisal, consisting of three (3) signed copies thereof, by the most expeditious means then available and in the then-prevailing format.

VI. Confidentiality:

The Contracting Party and the appraiser acknowledge and agree that, in the course of preparing an Appraisal pursuant to these Instructions, the Contracting Party may disclose confidential information, which has been approved and authorized by Contracting Party for release, to the appraiser.

The appraiser agrees not to disclose such confidential information to any third party and to treat it with the same degree of care as it would its own confidential information. It is understood, however, that the appraiser may disclose such confidential information on a "need to know" basis to the appraiser's employees and subcontractors. As a condition precedent to any such disclosure, each and all of such employees and subcontractors shall have executed a written confidentiality agreement with the Contracting Party which obligates such employees and subcontractors to maintain the confidentiality of such confidential information.

Each Appraisal, the Fair Market Value calculation included therein, and the supporting documentation also constitute confidential information, and the appraiser shall strictly abide by the confidentiality and ethics provisions of the AI Standards.

The appraiser must obtain written authorization from the Contracting Party before disclosure of any confidential information. The passage of time in and of itself shall not extinguish either the appraiser's responsibility for confidentiality or the appraiser/client relationship. The appraiser/client relationship is extinguished only upon written release from the Contracting Party. Even though the appraiser/client relationship may terminate, the appraiser shall at all times remain subject to the confidentiality and ethics provisions of the AI Standards.

TABLE 1

Exhibit I

Examples of Calculations of Base Rent Escalations

(for illustrative purposes only)

Per DDA Sections 4.8(c) & (d), 6, Exhibit G-1 Article 3, and Exhibit G-2 Article 3

Key Illustrative Assumptions

	Take Down	Allowable Square Footage	Premium Allocation
Phase 1	2017	873,000	$0
Phase 2	2018	1,419,800	$175,000,000
Phase 2A	2021	0	NA
Phase 3	2022	1,419,800	$175,000,000
Phase 4	2025	1,419,800	$150,000,000
Phase 5	2028	1,440,000	$100,000,000
Phase 6	2030	1,296,000	$100,000,000
Phase 7	2032	1,296,000	$100,000,000
Total		9,164,400	$800,000,000

Project Lease Year	Illustrative Year	Aggregate Project Base Rent	Phase 1 [1] Periodic Escalations [2]	Phase 1 [1] Aggregate Base Rent	Phase 2 - 7 [3] Periodic Escalations [4]	Phase 2 - 7 [3] Aggregate Base Rent
1	2017	$750,000	3.1.2 Adj	$750,000	-	-
2	2018	$2,272,500	-	$772,500	-	$1,500,000
3	2019	$2,340,675	-	$795,675	-	$1,545,000
4	2020	$2,410,895	-	$819,545	-	$1,591,350
5	2021	$3,389,091	3.1.3 Adj	$1,000,000	-	$2,389,091
6	2022	$3,990,763	-	$1,030,000	-	$2,960,763
7	2023	$4,110,486	-	$1,060,900	-	$3,049,586
8	2024	$4,641,074	3.1.4 Adj	$1,500,000	-	$3,141,074
9	2025	$5,530,306	-	$1,545,000	-	$3,985,306
10	2026	$5,696,215	-	$1,591,350	-	$4,104,865
11	2027	$5,867,102	-	$1,639,091	-	$4,228,011
12	2028	$6,815,615	-	$1,688,263	-	$5,127,351
13	2029	$7,020,083	-	$1,738,911	-	$5,281,172
14	2030	$8,186,822	-	$1,791,078	-	$6,395,743
15	2031	$8,880,128	-	$1,844,811	10.0%	$7,035,318
16	2032	$10,160,897	-	$1,900,155	-	$8,260,742
17	2033	$10,465,724	-	$1,957,160	-	$8,508,564
18	2034	$10,779,696	-	$2,015,875	-	$8,763,821
19	2035	$11,103,086	-	$2,076,351	-	$9,026,736
20	2036	$12,297,538	3.3.2(a) Adj	$3,000,000	-	$9,297,538
21	2037	$12,666,464	-	$3,090,000	-	$9,576,464
22	2038	$13,046,458	-	$3,182,700	-	$9,863,758
23	2039	$13,437,852	-	$3,278,181	-	$10,159,671
24	2040	$13,840,987	-	$3,376,526	-	$10,464,461
25	2041	$15,225,086	10.0%	$3,714,179	10.0%	$11,510,907
26	2042	$15,681,838	-	$3,825,604	-	$11,856,234
27	2043	$16,152,293	-	$3,940,373	-	$12,211,921
28	2044	$16,636,862	-	$4,058,584	-	$12,578,279
29	2045	$17,135,968	-	$4,180,341	-	$12,955,627
30	2046	$17,650,047	-	$4,305,752	-	$13,344,296
31	2047	$18,179,549	-	$4,434,924	-	$13,744,625
32	2048	$18,724,935	-	$4,567,972	-	$14,156,963
33	2049	$19,286,683	-	$4,705,011	-	$14,581,672
34	2050	$19,865,284	-	$4,846,161	-	$15,019,122
35	2051	$21,851,812	10.0%	$5,330,777	10.0%	$16,521,035
36	2052	$22,507,366	-	$5,490,701	-	$17,016,666
37	2053	$23,182,587	-	$5,655,422	-	$17,527,166
38	2054	$23,878,065	-	$5,825,084	-	$18,052,981
39	2055	$24,594,407	-	$5,999,837	-	$18,594,570
40	2056	$25,332,239	-	$6,179,832	-	$19,152,407
41	2057	$26,092,206	-	$6,365,227	-	$19,726,979
42	2058	$26,874,972	-	$6,556,184	-	$20,318,789
43	2059	$27,681,222	-	$6,752,869	-	$20,928,352
44	2060	$28,511,658	-	$6,955,455	-	$21,556,203
45	2061	$57,429,672	3.3.2(b) Adj	$7,651,001	3.3.2(b) Adj	$49,778,671
46	2062	$58,865,414	-	$7,842,276	-	$51,023,138
47	2063	$60,337,049	-	$8,038,333	-	$52,298,716
48	2064	$61,845,475	-	$8,239,291	-	$53,606,184
49	2065	$63,391,612	-	$8,445,273	-	$54,946,339
50	2066	$64,976,402	-	$8,656,405	-	$56,319,997
51	2067	$66,600,812	-	$8,872,815	-	$57,727,997
52	2068	$68,265,833	-	$9,094,636	-	$59,171,197
53	2069	$75,092,416	10.0%	$10,004,099	10.0%	$65,088,317
54	2070	$76,969,726	-	$10,254,202	-	$66,715,524
55	2071	$78,893,969	-	$10,510,557	-	$68,383,413
56	2072	$80,866,319	-	$10,773,321	-	$70,092,998
57	2073	$82,887,977	-	$11,042,654	-	$71,845,323
58	2074	$84,960,176	-	$11,318,720	-	$73,641,456
59	2075	$87,084,180	-	$11,601,688	-	$75,482,492
60	2076	$89,261,285	-	$11,891,730	-	$77,369,555
61	2077	$98,187,413	10.0%	$13,080,903	10.0%	$85,106,510
62	2078	$100,642,099	-	$13,407,926	-	$87,234,173
63	2079	$103,158,151	-	$13,743,124	-	$89,415,027
64	2080	$105,737,105	-	$14,086,702	-	$91,650,403
65	2081	$108,380,533	-	$14,438,870	-	$93,941,663
66	2082	$111,090,046	-	$14,799,842	-	$96,290,204
67	2083	$113,867,297	-	$15,169,838	-	$98,697,460
68	2084	$116,713,980	-	$15,549,084	-	$101,164,896
69	2085	$119,631,829	-	$15,937,811	-	$103,694,018
70	2086	$132,306,660	3.3.2(c) Adj	$17,531,592	3.3.2(c) Adj	$114,775,068
71	2087	$135,614,326	-	$17,969,881	-	$117,644,445
72	2088	$139,004,684	-	$18,419,129	-	$120,585,556
73	2089	$142,479,802	-	$18,879,607	-	$123,600,195
74	2090	$146,041,797	-	$19,351,597	-	$126,690,200
75	2091	$149,692,841	-	$19,835,387	-	$129,857,455
76	2092	$153,435,162	-	$20,331,272	-	$133,103,891
77	2093	$157,271,042	-	$20,839,553	-	$136,431,488
78	2094	$161,202,818	-	$21,360,542	-	$139,842,275
79	2095	$165,232,888	-	$21,894,556	-	$143,338,332
80	2096	$181,756,177	10.0%	$24,084,011	10.0%	$157,672,166
81	2097	$186,300,081	-	$24,686,112	-	$161,613,970
82	2098	$190,957,583	-	$25,303,264	-	$165,654,319
83	2099	$195,731,523	-	$25,935,846	-	$169,795,677
84	2100	$200,624,811	-	$26,584,242	-	$174,040,569
85	2101	$205,640,431	-	$27,248,848	-	$178,391,583
86	2102	$210,781,442	-	$27,930,069	-	$182,851,373
87	2103	$216,050,978	-	$28,628,321	-	$187,422,657
88	2104	$221,452,253	-	$29,344,029	-	$192,108,223
89	2105	$226,988,559	-	$30,077,630	-	$196,910,929
90	2106	$249,687,415	10.0%	$33,085,393	10.0%	$216,602,022
91	2107	$255,929,600	-	$33,912,528	-	$222,017,072
92	2108	$262,327,840	-	$34,760,341	-	$227,567,499
93	2109	$268,886,036	-	$35,629,349	-	$233,256,687
94	2110	$275,608,187	-	$36,520,083	-	$239,088,104
95	2111	$282,498,392	-	$37,433,085	-	$245,065,306
96	2112	$289,560,851	-	$38,368,912	-	$251,191,939
97	2113	$296,799,873	-	$39,328,135	-	$257,471,738
98	2114	$304,219,870	-	$40,311,338	-	$263,908,531
99	2115	$311,825,366	-	$41,319,122	-	$270,506,244

Notes

All numbers are illustrative, representing a specific scenario. Actual numbers may vary

[1] See Table 2A for detailed Phase 1 Ground Lease calculations

[2] Section References are from DDA Exhibit G-1

[3] See Table 3A for detailed Phase 2-7 Ground Lease calculations

[4] Section References are from DDA Exhibit G-2

TABLE 2A

Exhibit I

Examples of Calculations of Base Rent Escalations

(for illustrative purposes only)

Ground Lease Base Rent Payments Phase 1

Per DDA Section 6, and Exhibit G-1 Article 3

Phase 1 Illustrative Schedule of Performance Per DDA Exhibit F, Exhibit G-1 Section 3.1.4		
Land Take Down	2017	
Commencement of Construction of Infrastructure	2019	
Construction Period	2	Years
Opening	2021	
4th Anniversary of the Opening Date	2024	

Project Lease Year	Illustrative Year	Base Rent Escalations Initial DDA G-1 3.1	Regular DDA G-1 3.2	Periodic[1] DDA G-2 3.3	Aggregate Base Rent Phase 1
1	2017	3.1.2 Adj	3%	-	$750,000
2	2018	-	3%	-	$772,500
3	2019	-	3%	-	$795,675
4	2020	-	3%	-	$819,545
5	2021	3.1.3 Adj	3%	-	$1,000,000
6	2022	-	3%	-	$1,030,000
7	2023	-	3%	-	$1,060,900
8	2024	3.1.4 Adj	3%	-	$1,500,000
9	2025	-	3%	-	$1,545,000
10	2026	-	3%	-	$1,591,350
11	2027	-	3%	-	$1,639,091
12	2028	-	3%	-	$1,688,263
13	2029	-	3%	-	$1,738,911
14	2030	-	3%	-	$1,791,078
15	2031	-	3%	-	$1,844,811
16	2032	-	3%	-	$1,900,155
17	2033	-	3%	-	$1,957,160
18	2034	-	3%	-	$2,015,875
19	2035	-	3%	-	$2,076,351
20	**2036**	-	-	**3.3.2(a) Adj**	**$3,000,000**
21	2037	-	3%	-	$3,090,000
22	2038	-	3%	-	$3,182,700
23	2039	-	3%	-	$3,278,181
24	2040	-	3%	-	$3,376,526
25	2041	-	-	10%	$3,714,179
26	2042	-	3%	-	$3,825,604
27	2043	-	3%	-	$3,940,373
28	2044	-	3%	-	$4,058,584
29	2045	-	3%	-	$4,180,341
30	2046	-	3%	-	$4,305,752
31	2047	-	3%	-	$4,434,924
32	2048	-	3%	-	$4,567,972
33	2049	-	3%	-	$4,705,011
34	2050	-	3%	-	$4,846,161
35	2051	-	-	10%	$5,330,777
36	2052	-	3%	-	$5,490,701
37	2053	-	3%	-	$5,655,422
38	2054	-	3%	-	$5,825,084
39	2055	-	3%	-	$5,999,837
40	2056	-	3%	-	$6,179,832
41	2057	-	3%	-	$6,365,227
42	2058	-	3%	-	$6,556,184
43	2059	-	3%	-	$6,752,869
44	2060	-	3%	-	$6,955,455
45	**2061**	-	-	**3.3.2(b) Adj**	**$7,651,001**
46	2062	-	CPI w/ Cap	-	$7,842,276
47	2063	-	CPI w/ Cap	-	$8,038,333
48	2064	-	CPI w/ Cap	-	$8,239,291
49	2065	-	CPI w/ Cap	-	$8,445,273
50	2066	-	CPI w/ Cap	-	$8,656,405
51	2067	-	CPI w/ Cap	-	$8,872,815
52	2068	-	CPI w/ Cap	-	$9,094,636
53	2069	-	-	10%	$10,004,099
54	2070	-	CPI w/ Cap	-	$10,254,202
55	2071	-	CPI w/ Cap	-	$10,510,557
56	2072	-	CPI w/ Cap	-	$10,773,321
57	2073	-	CPI w/ Cap	-	$11,042,654
58	2074	-	CPI w/ Cap	-	$11,318,720
59	2075	-	CPI w/ Cap	-	$11,601,688
60	2076	-	CPI w/ Cap	-	$11,891,730
61	2077	-	-	10%	$13,080,903
62	2078	-	CPI w/ Cap	-	$13,407,926
63	2079	-	CPI w/ Cap	-	$13,743,124
64	2080	-	CPI w/ Cap	-	$14,086,702
65	2081	-	CPI w/ Cap	-	$14,438,870
66	2082	-	CPI w/ Cap	-	$14,799,842
67	2083	-	CPI w/ Cap	-	$15,169,838
68	2084	-	CPI w/ Cap	-	$15,549,084
69	2085	-	CPI w/ Cap	-	$15,937,811
70	**2086**	-	-	**3.3.2(c) Adj**	**$17,531,592**
71	2087	-	CPI w/ Cap	-	$17,969,881
72	2088	-	CPI w/ Cap	-	$18,419,129
73	2089	-	CPI w/ Cap	-	$18,879,607
74	2090	-	CPI w/ Cap	-	$19,351,597
75	2091	-	CPI w/ Cap	-	$19,835,387
76	2092	-	CPI w/ Cap	-	$20,331,272
77	2093	-	CPI w/ Cap	-	$20,839,553
78	2094	-	CPI w/ Cap	-	$21,360,542
79	2095	-	CPI w/ Cap	-	$21,894,556
80	2096	-	-	10%	$24,084,011
81	2097	-	CPI w/ Cap	-	$24,686,112
82	2098	-	CPI w/ Cap	-	$25,303,264
83	2099	-	CPI w/ Cap	-	$25,935,846
84	2100	-	CPI w/ Cap	-	$26,584,242
85	2101	-	CPI w/ Cap	-	$27,248,848
86	2102	-	CPI w/ Cap	-	$27,930,069
87	2103	-	CPI w/ Cap	-	$28,628,321
88	2104	-	CPI w/ Cap	-	$29,344,029
89	2105	-	CPI w/ Cap	-	$30,077,630
90	2106	-	-	10%	$33,085,393
91	2107	-	CPI w/ Cap	-	$33,912,528
92	2108	-	CPI w/ Cap	-	$34,760,341
93	2109	-	CPI w/ Cap	-	$35,629,349
94	2110	-	CPI w/ Cap	-	$36,520,083
95	2111	-	CPI w/ Cap	-	$37,433,085
96	2112	-	CPI w/ Cap	-	$38,368,912
97	2113	-	CPI w/ Cap	-	$39,328,135
98	2114	-	CPI w/ Cap	-	$40,311,338
99	2115	-	CPI w/ Cap	-	$41,319,122

Notes

All numbers are illustrative, representing a specific scenario.
Actual numbers may vary

[1] See Table 2B for more detailed calculations of Base Rent Adjustments in the 20th, 45th and 70th Project Lease Years

TABLE 2B

Exhibit I

Examples of Calculations of Base Rent Escalations

(for illustrative purposes only)

Base Rent Adjustments in the 20th, 45th and 70th Project Lease Years Phase 1

DDA Exhibit G-1 Section 3.3.2

LINE	Reference Per DDA Exhibit G-1			Phase 1 Rent Adjustments
Base Rent Adjustment in the 20th Lease Year		**DDA Exhibit G-1 Section 3.3.2(a)**		
1		Land Acres		8.0
2		Tasman Parcels Fee Fair Market Value in Year 20	*Illustrative*	$40,000,000
3		Per Acre		*$5,000,000*
4		Per Land Square Foot		*$114.78*
5		Multiply Line 2 By 6.5%		$2,600,000
6		The Greater of Line 5 and $3,000,000		$3,000,000
7		The Lesser of Line 6 and $3,500,000		$3,000,000
8		**Base Rent Adjustment in the 20th Lease Year - Line 7**		**$3,000,000**
Base Rent Adjustment in the 45th Lease Year		**DDA Exhibit G-1 Section 3.3.2(b)**		
9		Land Acres		8.0
10	3.3.2(b)(i)	Tasman Parcels Fee Fair Market Value in Year 45	*Illustrative*	$64,000,000
11		Per Acre		*$8,000,000*
12		Per Land Square Foot		*$183.65*
13		Multiply Line 10 By 6.5%		$4,160,000
14	3.3.2(b)(ii)	Base Rent For Year 44		$6,955,455
15		Multiple Line 14 by 110%		$7,651,001
16		The Greater of Lines 13, and 15		$7,651,001
17		**Base Rent Adjustment in the 45th Lease Year - Line 16**		**$7,651,001**
Base Rent Adjustment in the 70th Lease Year		**DDA Exhibit G-1 Section 3.3.2(b)**		
18		Land Acres		8.0
19	3.3.2(b)(i)	Tasman Parcels Fee Fair Market Value in Year 70	*Illustrative*	$96,000,000
20		Per Acre		*$12,000,000*
21		Per Land Square Foot		*$275.48*
22		Multiply Line 19 By 6.5%		$6,240,000
23	3.3.2(b)(ii)	Base Rent For Year 69		$15,937,811
24		Multiple Line 23 by 110%		$17,531,592
25		The Greater of Lines 22, and 24		$17,531,592
26		**Base Rent Adjustment in the 70th Lease Year - Line 25**		**$17,531,592**

Notes

All numbers are illustrative, representing a specific scenario. Actual numbers may vary

TABLE 3A

Exhibit I

Examples of Calculations of Base Rent Escalations

(for illustrative purposes only)

Ground Lease Base Rent Payments Phase 2 - 7

Per DDA Sections 4.8(c) & (d), 6, and Exhibit G-2 Article 3

	TOTAL Phase 2 - 7	Phase 2	Phase 2A	Phase 3	Phase 4	Phase 5	Phase 6	Phase 7
Phasing								
Illustrative Take Down		2018	2021	2022	2025	2028	2030	2032
Allowable Square Footage								
Original Allowable Square Footage Per MCP	8,291,400	1,419,800	NA	1,419,800	1,419,800	1,440,000	1,296,000	1,296,000
Illustrative Actual Allowable Square Footage	8,291,400	1,419,800	NA	1,419,800	1,419,800	1,440,000	1,296,000	1,296,000
	100%	*100%*	*NA*	*100%*	*100%*	*100%*	*100%*	*100%*
Initial Annual Base Rent								
Base Rent Per DDA Section 6.1.8		$1,500,000	$750,000	$500,000	$750,000	$750,000	$875,000	$875,000
Base Rent After Adjusted Per DDA 6.1.9(a)		$1,500,000	$750,000	$500,000	$750,000	$750,000	$875,000	$875,000
Base Rent After Increase Per DDA 6.1.9(d)		$1,500,000	$750,000	$500,000	$750,000	$772,500	$956,136	$1,014,365
Phase 2A Rent Re-Allocation								
Illsutrative After 2 Years Per DDA 4.8(c) & (d)		75%	NA	25%	-	-	-	-
Illustrative Base Rent After Re-Allocation		$2,335,667	$0	$713,919	-	-	-	-

Project Lease Year	Illustrative Year	Base Rent Escalations Regular DDA G-2 3.2	Periodic[1,2] DDA G-2 3.3	Phase 2 - 7 Aggregate Rent Phase 2 - 7	Annual Rent Payments Per DDA Section 4.8(d), Section 6, and Exhibit G-2 Article 3 *(Illustrative Example)* Phase 2	Phase 2A	Phase 3	Phase 4	Phase 5	Phase 6	Phase 7
1	2017	-	-	-	-	-	-	-	-	-	-
2	2018	3%	-	$1,500,000	$1,500,000	-	-	-	-	-	-
3	2019	3%	-	$1,545,000	$1,545,000	-	-	-	-	-	-
4	2020	3%	-	$1,591,350	$1,591,350	-	-	-	-	-	-
5	2021	3%	-	$2,389,091	$1,639,091	$750,000	-	-	-	-	-
6	2022	3%	-	$2,960,763	$1,688,263	$772,500	$500,000	-	-	-	-
7	2023	3%	-	$3,049,586	$2,335,667	$0	$713,919	-	-	-	-
8	2024	3%	-	$3,141,074	$2,405,737	$0	$735,336	-	-	-	-
9	2025	3%	-	$3,985,306	$2,477,910	$0	$757,396	$750,000	-	-	-
10	2026	3%	-	$4,104,865	$2,552,247	$0	$780,118	$772,500	-	-	-
11	2027	3%	-	$4,228,011	$2,628,814	$0	$803,522	$795,675	-	-	-
12	2028	3%	-	$5,127,351	$2,707,679	$0	$827,627	$819,545	$772,500	-	-
13	2029	3%	-	$5,281,172	$2,788,909	$0	$852,456	$844,132	$795,675	-	-
14	2030	3%	-	$6,395,743	$2,872,576	$0	$878,030	$869,456	$819,545	$956,136	-
15	2031	-	10%	$7,035,318	$3,159,834	$0	$965,833	$956,401	$901,500	$1,051,750	-
16	2032	3%	-	$8,260,742	$3,254,629	$0	$994,808	$985,093	$928,545	$1,083,302	$1,014,365
17	2033	3%	-	$8,508,564	$3,352,268	$0	$1,024,652	$1,014,646	$956,401	$1,115,801	$1,044,796
18	2034	3%	-	$8,763,821	$3,452,836	$0	$1,055,392	$1,045,085	$985,093	$1,149,275	$1,076,140
19	2035	3%	-	$9,026,736	$3,556,421	$0	$1,087,054	$1,076,438	$1,014,646	$1,183,754	$1,108,424
20	2036	3%	-	$9,297,538	$3,663,113	$0	$1,119,665	$1,108,731	$1,045,085	$1,219,266	$1,141,677
21	2037	3%	-	$9,576,464	$3,773,007	$0	$1,153,255	$1,141,993	$1,076,438	$1,255,844	$1,175,927
22	2038	3%	-	$9,863,758	$3,886,197	$0	$1,187,853	$1,176,253	$1,108,731	$1,293,520	$1,211,205
23	2039	3%	-	$10,159,671	$4,002,783	$0	$1,223,488	$1,211,540	$1,141,993	$1,332,325	$1,247,541
24	2040	3%	-	$10,464,461	$4,122,866	$0	$1,260,193	$1,247,887	$1,176,253	$1,372,295	$1,284,967
25	2041	-	10%	$11,510,907	$4,535,153	$0	$1,386,212	$1,372,675	$1,293,878	$1,509,524	$1,413,464
26	2042	3%	-	$11,856,234	$4,671,208	$0	$1,427,799	$1,413,855	$1,332,694	$1,554,810	$1,455,868
27	2043	3%	-	$12,211,921	$4,811,344	$0	$1,470,633	$1,456,271	$1,372,675	$1,601,454	$1,499,544
28	2044	3%	-	$12,578,279	$4,955,684	$0	$1,514,752	$1,499,959	$1,413,855	$1,649,498	$1,544,530
29	2045	3%	-	$12,955,627	$5,104,355	$0	$1,560,194	$1,544,958	$1,456,271	$1,698,983	$1,590,866
30	2046	3%	-	$13,344,296	$5,257,485	$0	$1,607,000	$1,591,307	$1,499,959	$1,749,952	$1,638,592
31	2047	3%	-	$13,744,625	$5,415,210	$0	$1,655,210	$1,639,046	$1,544,958	$1,802,451	$1,687,750
32	2048	3%	-	$14,156,963	$5,577,666	$0	$1,704,866	$1,688,217	$1,591,307	$1,856,525	$1,738,382
33	2049	3%	-	$14,581,672	$5,744,996	$0	$1,756,012	$1,738,864	$1,639,046	$1,912,220	$1,790,534
34	2050	3%	-	$15,019,122	$5,917,346	$0	$1,808,693	$1,791,030	$1,688,217	$1,969,587	$1,844,250
35	2051	-	10%	$16,521,035	$6,509,081	$0	$1,989,562	$1,970,133	$1,857,039	$2,166,546	$2,028,674
36	2052	3%	-	$17,016,666	$6,704,353	$0	$2,049,249	$2,029,237	$1,912,750	$2,231,542	$2,089,535
37	2053	3%	-	$17,527,166	$6,905,484	$0	$2,110,726	$2,090,114	$1,970,133	$2,298,488	$2,152,221
38	2054	3%	-	$18,052,981	$7,112,648	$0	$2,174,048	$2,152,817	$2,029,237	$2,367,443	$2,216,787
39	2055	3%	-	$18,594,570	$7,326,028	$0	$2,239,269	$2,217,402	$2,090,114	$2,438,466	$2,283,291
40	2056	3%	-	$19,152,407	$7,545,809	$0	$2,306,448	$2,283,924	$2,152,817	$2,511,620	$2,351,790
41	2057	3%	-	$19,726,979	$7,772,183	$0	$2,375,641	$2,352,442	$2,217,402	$2,586,969	$2,422,343
42	2058	3%	-	$20,318,789	$8,005,348	$0	$2,446,910	$2,423,015	$2,283,924	$2,664,578	$2,495,014
43	2059	3%	-	$20,928,352	$8,245,509	$0	$2,520,318	$2,495,705	$2,352,442	$2,744,515	$2,569,864
44	2060	3%	-	$21,556,203	$8,492,874	$0	$2,595,927	$2,570,576	$2,423,015	$2,826,851	$2,646,960
45	2061	-	3.3.2(b) Adj	$49,778,671	$8,492,874	$0	$5,137,130	$5,260,667	$12,220,000	$9,334,000	$9,334,000

TABLE 3A

Exhibit I

Examples of Calculations of Base Rent Escalations

(for illustrative purposes only)

Ground Lease Base Rent Payments Phase 2 - 7

Per DDA Sections 4.8(c) & (d), 6, and Exhibit G-2 Article 3

Project		Base Rent Escalations		Phase 2 - 7 Annual Rent Payments Per DDA Section 4.8(d), Section 6, and Exhibit G-2 Article 3 *(Illustrative Example)*							
Lease Year	Illustrative Year	Regular DDA G-2 3.2	Periodic [1,2] DDA G-2 3.3	Aggregate Rent Phase 2 - 7	Phase 2	Phase 2A	Phase 3	Phase 4	Phase 5	Phase 6	Phase 7
45	2061	-	3.3.2(b) Adj	$49,778,671	$8,492,874	$0	$5,137,130	$5,260,667	$12,220,000	$9,334,000	$9,334,000
46	2062	CPI w/ Cap	-	$51,023,138	$8,705,196	$0	$5,265,558	$5,392,183	$12,525,500	$9,567,350	$9,567,350
47	2063	CPI w/ Cap	-	$52,298,716	$8,922,826	$0	$5,397,197	$5,526,988	$12,838,638	$9,806,534	$9,806,534
48	2064	CPI w/ Cap	-	$53,606,184	$9,145,897	$0	$5,532,127	$5,665,163	$13,159,603	$10,051,697	$10,051,697
49	2065	CPI w/ Cap	-	$54,946,339	$9,374,544	$0	$5,670,430	$5,806,792	$13,488,594	$10,302,990	$10,302,990
50	2066	CPI w/ Cap	-	$56,319,997	$9,608,908	$0	$5,812,191	$5,951,961	$13,825,808	$10,560,564	$10,560,564
51	2067	CPI w/ Cap	-	$57,727,997	$9,849,130	$0	$5,957,496	$6,100,761	$14,171,454	$10,824,578	$10,824,578
52	2068	CPI w/ Cap	-	$59,171,197	$10,095,358	$0	$6,106,433	$6,253,280	$14,525,740	$11,095,193	$11,095,193
53	2069	-	10%	$65,088,317	$11,104,894	$0	$6,717,077	$6,878,607	$15,978,314	$12,204,712	$12,204,712
54	2070	CPI w/ Cap	-	$66,715,524	$11,382,517	$0	$6,885,004	$7,050,573	$16,377,772	$12,509,830	$12,509,830
55	2071	CPI w/ Cap	-	$68,383,413	$11,667,080	$0	$7,057,129	$7,226,837	$16,787,216	$12,822,576	$12,822,576
56	2072	CPI w/ Cap	-	$70,092,998	$11,958,757	$0	$7,233,557	$7,407,508	$17,206,896	$13,143,140	$13,143,140
57	2073	CPI w/ Cap	-	$71,845,323	$12,257,726	$0	$7,414,396	$7,592,696	$17,637,069	$13,471,719	$13,471,719
58	2074	CPI w/ Cap	-	$73,641,456	$12,564,169	$0	$7,599,756	$7,782,513	$18,077,996	$13,808,512	$13,808,512
59	2075	CPI w/ Cap	-	$75,482,492	$12,878,273	$0	$7,789,750	$7,977,076	$18,529,945	$14,153,724	$14,153,724
60	2076	CPI w/ Cap	-	$77,369,555	$13,200,230	$0	$7,984,493	$8,176,503	$18,993,194	$14,507,567	$14,507,567
61	2077	-	10%	$85,106,510	$14,520,253	$0	$8,782,943	$8,994,153	$20,892,514	$15,958,324	$15,958,324
62	2078	CPI w/ Cap	-	$87,234,173	$14,883,259	$0	$9,002,516	$9,219,007	$21,414,826	$16,357,282	$16,357,282
63	2079	CPI w/ Cap	-	$89,415,027	$15,255,340	$0	$9,227,579	$9,449,482	$21,950,197	$16,766,214	$16,766,214
64	2080	CPI w/ Cap	-	$91,650,403	$15,636,724	$0	$9,458,269	$9,685,719	$22,498,952	$17,185,370	$17,185,370
65	2081	CPI w/ Cap	-	$93,941,663	$16,027,642	$0	$9,694,725	$9,927,862	$23,061,426	$17,615,004	$17,615,004
66	2082	CPI w/ Cap	-	$96,290,204	$16,428,333	$0	$9,937,093	$10,176,059	$23,637,961	$18,055,379	$18,055,379
67	2083	CPI w/ Cap	-	$98,697,460	$16,839,041	$0	$10,185,521	$10,430,460	$24,228,910	$18,506,763	$18,506,763
68	2084	CPI w/ Cap	-	$101,164,896	$17,260,017	$0	$10,440,159	$10,691,222	$24,834,633	$18,969,433	$18,969,433
69	2085	CPI w/ Cap	-	$103,694,018	$17,691,518	$0	$10,701,163	$10,958,502	$25,455,499	$19,443,668	$19,443,668
70	2086	-	3.3.2(c) Adj	$114,775,068	$19,460,670	$0	$11,771,279	$12,766,000	$28,001,049	$21,388,035	$21,388,035
71	2087	CPI w/ Cap	-	$117,644,445	$19,947,186	$0	$12,065,561	$13,085,150	$28,701,075	$21,922,736	$21,922,736
72	2088	CPI w/ Cap	-	$120,585,556	$20,445,866	$0	$12,367,200	$13,412,279	$29,418,602	$22,470,805	$22,470,805
73	2089	CPI w/ Cap	-	$123,600,195	$20,957,013	$0	$12,676,380	$13,747,586	$30,154,067	$23,032,575	$23,032,575
74	2090	CPI w/ Cap	-	$126,690,200	$21,480,938	$0	$12,993,290	$14,091,275	$30,907,919	$23,608,389	$23,608,389
75	2091	CPI w/ Cap	-	$129,857,455	$22,017,962	$0	$13,318,122	$14,443,557	$31,680,617	$24,198,599	$24,198,599
76	2092	CPI w/ Cap	-	$133,103,891	$22,568,411	$0	$13,651,075	$14,804,646	$32,472,632	$24,803,564	$24,803,564
77	2093	CPI w/ Cap	-	$136,431,488	$23,132,621	$0	$13,992,352	$15,174,762	$33,284,448	$25,423,653	$25,423,653
78	2094	CPI w/ Cap	-	$139,842,275	$23,710,936	$0	$14,342,160	$15,554,131	$34,116,559	$26,059,244	$26,059,244
79	2095	CPI w/ Cap	-	$143,338,332	$24,303,710	$0	$14,700,714	$15,942,985	$34,969,473	$26,710,725	$26,710,725
80	2096	-	10%	$157,672,166	$26,734,081	$0	$16,170,786	$17,537,283	$38,466,420	$29,381,798	$29,381,798
81	2097	CPI w/ Cap	-	$161,613,970	$27,402,433	$0	$16,575,056	$17,975,715	$39,428,081	$30,116,343	$30,116,343
82	2098	CPI w/ Cap	-	$165,654,319	$28,087,494	$0	$16,989,432	$18,425,108	$40,413,783	$30,869,251	$30,869,251
83	2099	CPI w/ Cap	-	$169,795,677	$28,789,681	$0	$17,414,168	$18,885,736	$41,424,128	$31,640,982	$31,640,982
84	2100	CPI w/ Cap	-	$174,040,569	$29,509,423	$0	$17,849,522	$19,357,879	$42,459,731	$32,432,007	$32,432,007
85	2101	CPI w/ Cap	-	$178,391,583	$30,247,159	$0	$18,295,760	$19,841,826	$43,521,224	$33,242,807	$33,242,807
86	2102	CPI w/ Cap	-	$182,851,373	$31,003,337	$0	$18,753,154	$20,337,872	$44,609,255	$34,073,877	$34,073,877
87	2103	CPI w/ Cap	-	$187,422,657	$31,778,421	$0	$19,221,983	$20,846,319	$45,724,486	$34,925,724	$34,925,724
88	2104	CPI w/ Cap	-	$192,108,223	$32,572,881	$0	$19,702,532	$21,367,477	$46,867,598	$35,798,867	$35,798,867
89	2105	CPI w/ Cap	-	$196,910,929	$33,387,203	$0	$20,195,096	$21,901,664	$48,039,288	$36,693,839	$36,693,839
90	2106	-	10%	$216,602,022	$36,725,924	$0	$22,214,605	$24,091,830	$52,843,217	$40,363,223	$40,363,223
91	2107	CPI w/ Cap	-	$222,017,072	$37,644,072	$0	$22,769,970	$24,694,126	$54,164,297	$41,372,304	$41,372,304
92	2108	CPI w/ Cap	-	$227,567,499	$38,585,174	$0	$23,339,220	$25,311,479	$55,518,405	$42,406,611	$42,406,611
93	2109	CPI w/ Cap	-	$233,256,687	$39,549,803	$0	$23,922,700	$25,944,266	$56,906,365	$43,466,777	$43,466,777
94	2110	CPI w/ Cap	-	$239,088,104	$40,538,548	$0	$24,520,768	$26,592,872	$58,329,024	$44,553,446	$44,553,446
95	2111	CPI w/ Cap	-	$245,065,306	$41,552,012	$0	$25,133,787	$27,257,694	$59,787,250	$45,667,282	$45,667,282
96	2112	CPI w/ Cap	-	$251,191,939	$42,590,812	$0	$25,762,132	$27,939,137	$61,281,931	$46,808,964	$46,808,964
97	2113	CPI w/ Cap	-	$257,471,738	$43,655,582	$0	$26,406,185	$28,637,615	$62,813,979	$47,979,188	$47,979,188
98	2114	CPI w/ Cap	-	$263,908,531	$44,746,972	$0	$27,066,339	$29,353,555	$64,384,328	$49,178,668	$49,178,668
99	2115	CPI w/ Cap	-	$270,506,244	$45,865,646	$0	$27,742,998	$30,087,394	$65,993,937	$50,408,135	$50,408,135

Notes

All numbers are illustrative, representing a specific scenario. Actual numbers may vary

[1] See Table 3B for more detailed calculations of Base Rent Adjustment in the 45th Project Lease Year

[2] See Table 3C for more detailed calculations of Base Rent Adjustment in the 70th Project Lease Year

TABLE 3B

Exhibit I

Examples of Calculations of Base Rent Escalations

(for illustrative purposes only)

Base Rent Adjustment in the 45th Project Lease Year Phase 2-7

DDA Exhibit G-2 Section 3.3.2

LINE	Reference Per DDA Exhibit G-2		Aggregate Total Phase 2-7	Phase 2	Phase 2A	Phase 3	Phase 4	Phase 5	Phase 6	Phase 7
Premises Overview - *Illustrative*										
1	3.3.2(a)(ii)	Allowed Square Footage	8,291,400	1,419,800	NA	1,419,800	1,419,800	1,440,000	1,296,000	1,296,000
2	3.3.2(a)(i)	Premium Costs	$800,000,000	$175,000,000	NA	$175,000,000	$150,000,000	$100,000,000	$100,000,000	$100,000,000
3		*Premium Costs Per Allowed Square Footage*	*$96.49*	*$123.26*	*NA*	*$123.26*	*$105.65*	*$69.44*	*$77.16*	*$77.16*
4	Exhibit H	Airspace Parcel Fee Fair Market Value in Year 45	$1,576,800,000	$230,933,333	NA	$230,933,333	$230,933,333	$396,800,000	$243,600,000	$243,600,000
5		*Land Acres*	*197.1*	*28.9*	*NA*	*28.9*	*28.9*	*49.6*	*30.5*	*30.5*
6		*Per Acre*	*$8,000,000*	*$8,000,000*	*NA*	*$8,000,000*	*$8,000,000*	*$8,000,000*	*$8,000,000*	*$8,000,000*
7		*Per Land Square Foot*	*$183.65*	*$183.65*	*NA*	*$183.65*	*$183.65*	*$183.65*	*$183.65*	*$183.65*
Base Rent Adjustment in the 45th Project Lease Year DDA Exhibit G-2 Section 3.3.2(b) - The Greatest of Lines 13, 18, and 20										
8	3.3.2(b)(i)	Line 4 Divided by Line 1		$162.65	NA	$162.65	$162.65	$275.56	$187.96	$187.96
9		Cap Allowed Fair Market Value of $200		$200.00	NA	$200.00	$200.00	$200.00	$200.00	$200.00
10		The Lesser of Line 8 and Line 9		$162.65	NA	$162.65	$162.65	$200.00	$187.96	$187.96
11		Line 3 Premium Costs Per Allowable Square Footage		$123.26	NA	$123.26	$105.65	$69.44	$77.16	$77.16
12		Line 10 Less Line 11		$39.40	NA	$39.40	$57.00	$130.56	$110.80	$110.80
13		Multiple Line 12 by 6.5%		$2.56	NA	$2.56	$3.71	$8.49	$7.20	$7.20
14	3.3.2(b)(ii)	Line 1 Allowed Square Footage allocated to Premises		1,419,800	NA	1,419,800	1,419,800	1,440,000	1,296,000	1,296,000
15		Aggregate Project Allowed Square Footage		8,291,400	NA	8,291,400	8,291,400	8,291,400	8,291,400	8,291,400
16		Line 14 Divided by Line 15		0.1712	NA	0.1712	0.1712	0.1737	0.1563	0.1563
17		$30,000,000 multiplied by Line 16 (1)		$5,137,130	NA	$5,137,130	$5,137,130	$5,210,218	$4,689,196	$4,689,196
18		Line 17 Divided by Line 1		$3.62	NA	$3.62	$3.62	$3.62	$3.62	$3.62
19	3.3.2(b)(iii)	Base Rent For Year 44		$8,492,874	NA	$2,595,927	$2,570,576	$2,423,015	$2,826,851	$2,646,960
20		Line 19 Divided by Line 1		$5.98	NA	$1.83	$1.81	$1.68	$2.18	$2.04
21		**The Greatest of Lines 13, 18, and 20**		**$5.98**	**NA**	**$3.62**	**$3.71**	**$8.49**	**$7.20**	**$7.20**
22		**Base Rent Year 45 - Line 1 Multiplied by Line 21**	**$49,778,671**	**$8,492,874**	**$0**	**$5,137,130**	**$5,260,667**	**$12,220,000**	**$9,334,000**	**$9,334,000**

Notes

All numbers are illustrative, representing a specific scenario. Actual numbers may vary

[1] $30,000,000 referenced in Line 17 may change per DDA Exhibit G-2 Section 3.3.3

TABLE 3C

Exhibit I

Examples of Calculations of Base Rent Escalations

(for illustrative purposes only)

Base Rent Adjustment in the 70th Project Lease Year Phase 2-7

DDA Exhibit G-2 Section 3.3.2

LINE	Reference Per DDA Exhibit G-2		Aggregate Total Phase 2-7	Phase 2	Phase 2A	Phase 3	Phase 4	Phase 5	Phase 6	Phase 7
Premises Overview - *Illustrative*										
1	3.3.2(a)(ii)	Allowed Square Footage	8,291,400	1,419,800	NA	1,419,800	1,419,800	1,440,000	1,296,000	1,296,000
2	3.3.2(a)(i)	Premium Costs	$800,000,000	$175,000,000	NA	$175,000,000	$150,000,000	$100,000,000	$100,000,000	$100,000,000
3		*Premium Costs Per Allowed Square Footage*	*$96.49*	*$123.26*	*NA*	*$123.26*	*$105.65*	*$69.44*	*$77.16*	*$77.16*
4	Exhibit H	Airspace Parcel Fee Fair Market Value in Year 70	$2,365,200,000	$346,400,000	NA	$346,400,000	$346,400,000	$595,200,000	$365,400,000	$365,400,000
5		*Land Acres*	*197.1*	*28.9*	*NA*	*28.9*	*28.9*	*49.6*	*30.5*	*30.5*
6		*Per Acre*	*$12,000,000*	*$12,000,000*	*NA*	*$12,000,000*	*$12,000,000*	*$12,000,000*	*$12,000,000*	*$12,000,000*
7		*Per Land Square Foot*	*$275.48*	*$275.48*	*NA*	*$275.48*	*$275.48*	*$275.48*	*$275.48*	*$275.48*
Base Rent Adjustment in the 45th Project Lease Year DDA Exhibit G-2 Section 3.3.2(b) - The Greater of Lines 13, and 16										
8	3.3.2(c)(i)	Line 4 Divided by Line 1		$243.98	NA	$243.98	$243.98	$413.33	$281.94	$281.94
9		Cap Allowed Fair Market Value of $350		$350.00	NA	$350.00	$350.00	$350.00	$350.00	$350.00
10		The Lesser of Line 8 and Line 9		$243.98	NA	$243.98	$243.98	$350.00	$281.94	$281.94
11		Line 3 Premium Costs Per Allowable Square Footage		$123.26	NA	$123.26	$105.65	$69.44	$77.16	$77.16
12		Line 10 Less Line 11		$120.72	NA	$120.72	$138.33	$280.56	$204.78	$204.78
13		Multiple Line 12 by 6.5%		$7.85	NA	$7.85	$8.99	$18.24	$13.31	$13.31
14	3.3.2(b)(ii)	Base Rent For Year 69		$17,691,518	NA	$10,701,163	$10,958,502	$25,455,499	$19,443,668	$19,443,668
15		Line 14 Divided by Line 1		$12.46	NA	$7.54	$7.72	$17.68	$15.00	$15.00
16		Multiple Line 15 by 110%		$13.71	NA	$8.29	$8.49	$19.45	$16.50	$16.50
17		**The Greater of Lines 13, and 16**		**$13.71**	**NA**	**$8.29**	**$8.99**	**$19.45**	**$16.50**	**$16.50**
18		**Base Rent Year 45 - Line 1 Multiplied by Line 17**	**$114,775,068**	**$19,460,670**	**$0**	**$11,771,279**	**$12,766,000**	**$28,001,049**	**$21,388,035**	**$21,388,035**

Notes

All numbers are illustrative, representing a specific scenario. Actual numbers may vary

EXHIBIT J

Insurance Requirements

Developer, and its subcontractor(s), if any, shall purchase and maintain the insurance policies set forth below on all of its operations under this Agreement at its/their sole cost and expense. Such policies shall be maintained for the full term of this Agreement and the related warranty period (if applicable). For purposes of the insurance policies required under this Agreement, the term "City" shall include the duly elected or appointed council members, commissioners, officers, agents, employees, and volunteers of the City of Santa Clara, California, individually or collectively.

1. **MINIMUM SCOPE AND LIMITS OF REQUIRED INSURANCE POLICIES.**

   The following policies shall be maintained with insurers authorized to do business in the State of California and shall be issued under forms of policies satisfactory to the City:

   a. **COMMERCIAL GENERAL LIABILITY INSURANCE POLICY ("CGL").**

      Policy shall include coverage at least as broad as set forth in Insurance Services Office (herein "ISO") Commercial General Liability coverage (Occurrence Form CG 0001) with policy limits not less than the following:

      $5,000,000 each occurrence;
      $5,000,000 for personal injury liability;
      $5,000,000 aggregate for products-completed operations; and,
      $5,000,000 general aggregate.

   b. **BUSINESS AUTOMOBILE LIABILITY POLICY ("BAL").**

      Policy shall include coverage at least as broad as set forth in Insurance Services Office Business Automobile Liability coverage, Symbol 1 "Any Auto" (Form CA 0001). This policy shall include a minimum combined single limit of not less than two million ($2,000,000) dollars for each accident, for bodily injury and/or property damage.

   c. **WORKERS' COMPENSATION AND EMPLOYERS' LIABILITY INSURANCE POLICY ("WC/EL").** (A Workers' Compensation Policy or adequate levels of self-insurance are required only if Developer has employees or volunteers.)

      These policies shall include at least the following coverages and policy limits:

EXHIBIT J

Insurance Requirements

1. Workers' Compensation insurance as required by the laws of the State of California; and

2. Employer's Liability insurance with coverage amounts not less than one million ($1,000,000) dollars each accident/Bodily Injury (herein "BI"); one million ($1,000,000) dollars policy limit BI by disease; and, one million ($1,000,000) dollars each employee BI by disease.

2. **DEDUCTIBLES AND SELF-INSURANCE RETENTIONS.**

Any deductibles and/or self-insured retentions which apply to any of the insurance policies referred to above shall be declared in writing by Developer and approved by the City before work is begun pursuant to this Agreement. At the option of the City, Developer shall provide a financial guarantee satisfactory to the City guaranteeing payment of losses and related investigations, claim administration, and/or defense expenses.

3. **ENDORSEMENTS.**

All of the following clauses and endorsements, or similar provisions, are required to be made a part of the required insurance policies indicated in parentheses below:

a. Additional Insureds The City of Santa Clara, its City Council, commissions, officers and employees are hereby added as additional insureds in respect to liability arising out of the Owner/Developer's work for the City, providing coverage at least as broad as Insurance Services Office (ISO) Endorsement CG 2010, or insurer's equivalent (CGL);

b. General Aggregate The general aggregate limits shall provide coverage at least as broad as Insurance Services Office (ISO) Endorsement CG 2503, or insurer's equivalent (CGL);

c. Primary Insurance This policy shall be considered primary insurance with respect to any other valid and collectible insurance City may possess, including any self-insured retention City may have, and any other insurance City does possess shall be considered excess insurance only and shall not be called upon to contribute with this insurance (CGL & BAL); and

d. Notice of Cancellation No cancellation shall be effective until written notice has been given at least thirty (30) days prior to the effective date of such cancellation to City at the address set forth below, except the insurer may give ten (10) days' notice for non-payment of premium (CGL, BAL, WC/EL & PL).

EXHIBIT J

Insurance Requirements

4. **ABSENCE OF INSURANCE COVERAGE.**

City may direct Developer to immediately cease all activities with respect to this Agreement if the City determines that Developer fails to carry, in full force and effect, all insurance policies or self-insurance with coverages at or above the limits specified in this Agreement. Any delays or expense caused due to stopping of work and change of insurance shall be considered Developer's delay and expense. At the City's discretion, under conditions of lapse, City may purchase appropriate insurance and charge all costs related to such policy to Developer.

5. **PROOF OF INSURANCE COVERAGE AND COVERAGE VERIFICATION.**

A Certificate of Insurance, on an Accord form, and implementing endorsements shall be provided to City by each of Developer's insurance companies as evidence of the stipulated coverages prior to commencement of work under this Agreement, and annually thereafter at least ten (10) days prior to termination of existing coverage for the term of this Agreement. City reserves the right to require complete, certified copies of all required insurance policies, including endorsements affecting the coverage required by this Agreement at any time. All of the insurance companies providing insurance for Developer shall have, and provide evidence of, a Best Rating Service rate of "A VI" or above.

The Certificate of Insurance and coverage verification and all other notices related to cancellation shall be mailed to:

Office of the City Clerk
Attention: Director of Planning & Inspection
1500 Warburton Avenue
Santa Clara, California 95050

EXHIBIT K
FORM OF RECOGNITION AGREEMENT

RECOGNITION, NON-DISTURBANCE AND ATTORNMENT AGREEMENT

THIS AGREEMENT (this "Agreement"), dated as of _____, ____between CITY OF SANTA CLARA, CALIFORNIA, a chartered municipal corporation (the "Ground Lessor"), and _____, a _____ (the "Tenant").

WITNESSETH:

WHEREAS, Ground Lessor is the owner in fee of the property (the "Premises") more particularly described on Exhibit A attached hereto, and has leased the same to [*Related SPE*] (the "Landlord"), as tenant, pursuant to that certain Ground Lease (City Place Santa Clara – Phase [_]) dated as of _____, 20__ (said ground lease, as heretofore or hereafter amended or supplemented, the "Ground Lease"), a memorandum of which, dated _____, 20__, was recorded on _____, 20__ as Instrument No. _____ in the Official Records of Santa Clara County, California. Capitalized terms used herein but not defined herein shall have the meanings set forth in the Ground Lease;

WHEREAS, Tenant has entered into a lease dated _____, 20_, between Landlord, as sublandlord, and Tenant, as subtenant (said lease, as heretofore or hereafter amended, supplemented, extended, or otherwise modified, the "Lease"), with respect to a portion of the Premises (as more particularly described in the Lease as the "Premises", the "Demised Premises"); and

WHEREAS, Tenant and Ground Lessor desire to enter into this Agreement pursuant to which Ground Lessor agrees not to disturb Tenant's possession of the Demised Premises, and to recognize Tenant as a direct tenant of Ground Lessor, and Tenant agrees to attorn to Ground Lessor, under the terms of the Lease and this Agreement, in the event that Ground Lessor terminates the Ground Lease and succeeds to the interests of Landlord under the Lease.

NOW, THEREFORE, in consideration of the premises and the agreements of the parties contained herein, the parties hereto hereby covenant and agree as follows:

Section 1. Tenant acknowledges and agrees that the Lease is and shall be subject and subordinate to the Ground Lease and all renewals, amendments, modifications, consolidations, replacements and extensions thereof. Such subordination shall be effective and self-operative without the execution of any further instruments; however, Tenant shall confirm the provisions of this paragraph in writing from time to time upon written request from Ground Lessor.

Section 2. Ground Lessor hereby acknowledges and confirms that Tenant is a Qualifying Subtenant (as such term is defined in the Ground Lease) and designates the Lease as a Qualifying Sublease (as such term is defined in the Ground Lease).

Section 3. Ground Lessor and Tenant hereby agree that in the event Ground Lessor acquires or succeeds to the interest of Landlord under the Lease (the date upon which event occurs hereinafter being referred to as the "Succession Date"), then, provided that on the Succession Date no event of default exists and is continuing under the Lease which would permit

Landlord to terminate the Lease or exercise any dispossess remedy provided for in the Lease, the Lease shall continue as a direct lease between Ground Lessor and Tenant upon all of the terms, covenants, conditions and agreements set forth in the Lease and remaining to be performed, with the same force and effect as if Ground Lessor, as landlord, and Tenant, as tenant, entered into a lease (on such terms, covenants and conditions, including any renewals thereof) as of the date of the termination of the Ground Lease, for a term equal to the unexpired term of the Lease. At the request of either party, Ground Lessor and Tenant shall execute and exchange an instrument confirming such direct lease relationship, but the failure of either party to execute such instrument shall not affect their rights and obligations with respect to said direct lease relationship. As of the Succession Date, Tenant agrees to be bound by said direct lease relationship and to fully and completely attorn to Ground Lessor and recognize Ground Lessor as its landlord and shall pay its rent, additional rent and all other sums due under the Lease at the address designated by Ground Lessor by written notice to Tenant from time to time. Notwithstanding the foregoing or anything else contained in this Agreement:

(a) Ground Lessor shall not be subject to any offsets or defenses that Tenant might have as to Landlord and shall not in any way or to any extent be liable to Tenant for any past act, breach or default on the part of Landlord under the Lease, and Tenant shall have no right to assert the same or any claims for damages arising therefrom against Landlord as its landlord, nor shall Ground Lessor be obligated to fund to, or for the benefit of, Tenant, any then undisbursed (as of the effective date of such recognition) tenant improvement or refurbishment allowance or other allowances or monetary concessions; and

(b) Ground Lessor shall not be required or obligated to credit Tenant with any rent, additional rent, security deposits, security or other amounts delivered or paid by Tenant to Landlord.

(c) Ground Lessor shall not be bound by any amendment, modification or supplement to the Lease which has not been consented to in writing by Ground Lessor, which consent Ground Lessor agrees not to unreasonably withhold.

Section 4. Whenever it is provided in this Agreement that a notice, demand, request, consent, approval or other communication (each, a "Notice") shall or may be given to or served upon either of the parties by the other, and whenever either of the parties shall desire to give or serve upon the other any Notice with respect hereto or the Premises, each such Notice shall be in writing and, any law or statute to the contrary notwithstanding, shall not be effective for any purpose unless given or served as follows: (a) by personal delivery (including by same day commercial courier service), with receipt acknowledged, (b) delivered by reputable, national overnight delivery service (with its confirmatory receipt therefor), next Business Day delivery specified, (c) sent by registered or certified United States mail, postage prepaid. or (d) sent by a telephonic facsimile transmitting machine (with the receipt of such transmittal acknowledged in writing or by telephone), with a confirmatory copy to be delivered thereafter by duplicate notice in accordance with any of clauses (a). (b) or (c) of this Section 4, in each case to the parties as follows:

Notices under this Agreement shall be addressed to the parties as follows:

EXHIBIT K
FORM OF RECOGNITION AGREEMENT

(a) If to Tenant:

_____
_____
_____
Attention: _____

With a copy to:

_____
_____
_____
Attention: _____

(b) If to Ground Lessor:

City of Santa Clara, California
_____
_____
_____
Attention: _____

With a copy to:

_____
_____
_____
Attention: _____

Either party may change the address(es) to which any such Notice is to be delivered by furnishing ten (10) days written notice of such change(s) to the other party in accordance with the provisions of this Section 4. The attorney for any party may send Notices on that party's behalf.

Every Notice shall be deemed to have been given or served (a) if given by hand or overnight delivery service, upon delivery thereof, (b) if given by telephonic facsimile transmitting machine, upon delivery by such means to the addressee, regardless of the timing of receipt of any confirmatory copy, and (c) if given by certified or registered mail, on the third (3rd) Business Day after the posting of the same, postage prepaid; in each case with failure to accept delivery to constitute delivery for such purpose.

Section 5. Tenant represents and warrants to Ground Lessor that Tenant has provided Ground Lessor with a true, correct and complete copy of the Lease, including all amendments, modifications, extensions and supplements thereto. Ground Lessor represents and warrants that the Ground Lessor has not delivered to Landlord any written notice of default under the Ground Lease that has not been cured as of the date hereof. Each party to this Agreement represents and warrants to each other party that it has full power and authority to

enter into and perform this Agreement and that the undersigned signatory is a duly authorized officer, signatory, member or partner (as applicable) of such party.

Section 6. Upon the request of either Tenant or Ground Lessor, Tenant or Ground Lessor, as the case may be, shall promptly execute and deliver to the other any further agreement or other instrument in recordable form reasonably acceptable to Tenant or Ground Lessor, as applicable, which may be necessary or appropriate to evidence such attornment or direct lease relationship, but the failure to do so shall not affect the rights and obligations of Tenant and Ground Lessor under this Agreement.

Section 7. This Agreement binds and benefits the parties and their respective successors and assigns.

Section 8. This Agreement may not be modified, amended or terminated unless in writing and duly executed by the party against whom the same is sought to be asserted and constitutes the entire agreement between the parties with respect to the subject matter hereof.

Section 9. As between Ground Lessor and Tenant only, in the event of inconsistencies between the terms and conditions of the Lease and the terms and conditions of this Agreement, the terms and conditions of this Agreement shall govern.

Section 10. This Agreement may be executed in any number of counterparts and by different parties hereto in separate counterparts, each of which when so executed shall be deemed to be an original and all of which taken together shall constitute but one and the same agreement.

Section 11. This Agreement shall be governed by the laws of the State of California.

Section 12. 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, the remainder of this Agreement, or the application of such term or provision 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.

[SIGNATURES ON NEXT PAGE]

EXHIBIT K
FORM OF RECOGNITION AGREEMENT

IN WITNESS WHEREOF, the parties hereto have duly executed this Agreement as of the day and year first above written.

GROUND LESSOR:

CITY OF SANTA CLARA, CALIFORNIA

By: _____
Name:
Title:

ACKNOWLEDGEMENT

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

STATE OF CALIFORNIA)
) ss.
COUNTY OF SANTA CLARA)

On _____ before me, _____, Notary Public, personally appeared _____, who proved to me on the basis of satisfactory evidence-to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

_____ (Seal)
Notary Public

EXHIBIT K
FORM OF RECOGNITION AGREEMENT

TENANT:

_____

By: _____
Name: _____
Title: _____

ACKNOWLEDGEMENT

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

STATE OF CALIFORNIA)
) ss.
COUNTY OF _____)

On _____ before me, _____, Notary Public, personally appeared _____, who proved to me on the basis of satisfactory evidence-to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

_____ (Seal)
Notary Public

EXHIBIT K
FORM OF RECOGNITION AGREEMENT

Exhibit A

Premises

[_____]

EXHIBIT L
NOTICE PARTIES

If to City:

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

With a copy to:

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

If to Tenant:

[_____]
[_____]
[_____]
[_____]
Attn: [_____]

With a copy to:

[_____]
[_____]
[_____]
[_____]
Attn: [_____]

EXHIBIT M

PRE-APPROVED ARBITRATORS LIST

Bruce Belding: http://www.thecca.net/profile/bruce-belding

Brad Bening, Esq. - http://wsblaw.net/Brad%20Bening%20Mediationpage%20FINAL.pdfHon.

Joseph Biafore, Jr. (ret.) - http://www.jamsadr.com/biafore/

Zela Claiborne, Esq.: http://www.jamsadr.com/claiborne/

Bruce A. Edwards, Esq. - http://www.jamsadr.com/Edwards/Construction/

Hon. Jamie Jacobs-May (ret.) - http://www.jamsadr.com/jacobs-may/

Hon. William Martin (ret.) - http://www.jamsadr.com/william-martin/

EXHIBIT N
FORM OF MEMORANDUM OF GROUND LEASE

RECORDING REQUESTED BY AND WHEN RECORDED MAIL TO:	
	(Space above this line for Recorder's use only)

MEMORANDUM OF GROUND LEASE
(CITY PLACE SANTA CLARA – PHASE [ ])

THIS MEMORANDUM OF GROUND LEASE (CITY PLACE SANTA CLARA – PHASE [ ]) (this "Memorandum") is made as of the ___ day of _____, 20__, by and between the CITY OF SANTA CLARA, CALIFORNIA, a chartered municipal corporation, as landlord (and any successor entities thereto, "Landlord") and [INSERT TENANT], a _____ ("Tenant").

W I T N E S S E T H:

WHEREAS, City and Tenant entered into that certain Ground Lease (City Place Santa Clara – Phase [ ]), dated as of the date hereof (the "Lease")

WHEREAS, pursuant to the Lease: (x) City has leased to Tenant, and Tenant has hired from City, the premises more particularly described on Exhibit A attached hereto and made a part hereof (the "Premises"), together with all easements, appurtenances and other rights and privileges now or hereafter belonging or appertaining to the Premises; [(y) City has granted and demised to Tenant certain non-exclusive easements, coupled with an interest, as more particularly described in the Lease] and (z) City has agreed to grant to Tenant an exclusive right to purchase from Landlord certain portions of the Premises in accordance with the terms of the Lease; [and]

[for Phases 2-7 only][WHEREAS, the Premises lie above the Landfill Parcel, as defined and more particularly described in the Lease and as described on Exhibit B attached hereto and made a part hereof, over and through which Tenant has various easements, as more particularly described in the Lease and in this Memorandum; and]

WHEREAS, in accordance with Section 27280 of the California Government Code, the parties desire to record this Memorandum summarizing certain (but not all) of the provisions, covenants and conditions set forth in the Lease.

NOW, THEREFORE, City and Tenant declare as follows:

1. The term of the Lease shall commence on the date hereof, and shall end on _____, 2___, unless such term shall sooner end pursuant to any

of the covenants, agreements, terms, provisions and limitations of the Lease or pursuant to law.

2. **[for Phases 2-7 only]**[Pursuant to and in accordance with Section 2.3 of the Lease, the City grants the following easements to Tenant, on terms and conditions more particularly described in the Lease (capitalized terms used but not defined herein shall have the meanings ascribed to such terms in the Lease):

   (a) An easement over, under, upon, in and through all portions of the Landfill and Landfill Parcel that underlie the Airspace Parcel for the construction, reconstruction, replacement, removal, relocation, maintenance, modification, repair, operation and use of (i) all pilings, infrastructure and other support mechanisms, improvements and equipment intended by Tenant to support, operate, maintain, secure, use or stabilize Improvements and Buildings constructed or planned to be constructed by Tenant under the DDA, the Lease or any other Authorization, (ii) utility facilities, lines, cable, equipment and other improvements necessary or convenient to facilitate the provision of utility and other services to the Premises, Buildings and Improvements thereon as Tenant may desire from time to time (including water, electricity, sewage, cable, internet and gas) to be constructed over, under, upon, in or though the Landfill Parcel and (iii) all other penetrations, installations, equipment and/or improvements from the Premises (or adjacent areas) into (or through) the Landfill Parcel that are permitted or required under the terms of the DDA, the Lease or any other Authorization or otherwise are necessary or convenient from time to time during the Term to enable, facilitate, enhance or provide for the economical and efficient construction, development, installation, maintenance, repair, removal, relocation, replacement, use, management, and operation of the Improvements, together with the right of access to the areas covered by this easement and areas immediately adjacent thereto as may be necessary or convenient for such purposes;

   (b) An easement over, under, upon, in and through the Project Site for the construction, development, reconstruction, replacement, relocation, maintenance, repair, operation and use by Tenant of Infrastructure Improvements contemplated by the Infrastructure Master Plan and/or that are required or permitted by the DDA, the Lease, any other Authorization or the CC&Rs to be built or installed, or caused to be built or installed, together with the right of access to the areas covered by this easement and areas immediately adjacent thereto as may be necessary or convenient for such purposes; provided, that the easement granted in this paragraph (b) shall not be deemed to encumber or be enforceable with respect to any portion of the Project Site that is subject to a ground lease from City covering all or any portion of the Project Site; and

(c) An easement over, under, upon, in and through the Landfill Parcel in order to allow Tenant, its agents or contractors to take such action as Tenant desires to ameliorate, mitigate, manage, remedy, remediate and/or repair any environmental, soils or other physical condition within the Landfill Parcel that (i) is causing damage to, or is threatening to cause damage to, any Improvements, pylons or other installations or equipment installed, operated or used by Tenant under Section 2.3.1 of the Lease or any Improvements or property located within the Premises or any business operated within the Improvements, or (ii) poses any form of threat to the health and safety of any occupants or visitors to the Premises, the Improvements (or any businesses operated therein) (or to any Subtenant) or that may otherwise interfere with the operation of the Premises or any business contained in the Premises.]

3. The Lease contains a purchase option given by City in favor of Tenant to acquire fee title to certain portions of the Premises and any and all buildings and improvements located thereon, pursuant to and in accordance with the provisions of Article 7 of the Lease.

4. The Lease contains a provision for the severance of the Premises and the execution and creation of one or more severed parcel leases, pursuant to and in accordance with Article 7 of the Lease.

5. This Memorandum shall be deemed terminated and of no further force or effect following the date upon which the Term of the Lease (as defined therein) shall have expired, in accordance with the terms of the Lease.

6. In the event of any inconsistency or conflict between the terms of this Memorandum and the terms and conditions of the Lease, the terms and conditions of the Lease shall control.

7. This Memorandum may be executed in any number of counterparts, each of which shall constitute an original, but all of which, taken together, shall constitute but one and the same instrument.

8. A copy of the Lease is maintained at the offices of City.

[Remainder of Page Intentionally Left Blank]

EXHIBIT N
FORM OF MEMORANDUM OF GROUND LEASE

IN WITNESS WHEREOF, this Memorandum has been duly executed by the parties hereto as of the day and year first above written.

CITY OF SANTA CLARA, CALIFORNIA,
a chartered municipal corporation

By:_____
Name:
Title:

ACKNOWLEDGEMENT

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

STATE OF CALIFORNIA)
) ss.
COUNTY OF SANTA CLARA)

On _____ before me, _____, Notary Public, personally appeared
_____, who proved to me on the basis of satisfactory evidence-to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

_____ (Seal)
Notary Public

[Signatures continue on following page]

EXHIBIT N
FORM OF MEMORANDUM OF GROUND LEASE

[TENANT],
a Delaware limited liability company

By:_____
Name:
Title:

ACKNOWLEDGEMENT

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

STATE OF CALIFORNIA)
) ss.
COUNTY OF _____)

On _____ before me, _____, Notary Public, personally appeared

_____, who proved to me on the basis of satisfactory evidence-to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

_____ (Seal)
Notary Public

Exhibit A

Premises

[To be attached upon execution]

Exhibit B

Landfill Parcel

[To be attached upon execution]

EXHIBIT G-2
FORM OF GROUND LEASE (PHASES 2-7)

GROUND LEASE
(CITY PLACE SANTA CLARA – PHASE [ ])

by and between

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

as landlord,

and

_____,

a _____,

as tenant,

dated as of _____, 20__

Premises:

Phase ___ of City Place Santa Clara

Santa Clara, CA

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[Add if Applicable]:

ATTACHMENT 1 – Provisions Regarding Public Financing

* To be added upon Ground Lease execution.

GROUND LEASE
(City Place Santa Clara - Phase [ ])[1]

This GROUND LEASE (CITY PLACE SANTA CLARA – PHASE [ ]) is made and entered into as of _____, 20___ (the "**Commencement Date**") by and between the **CITY OF SANTA CLARA, CALIFORNIA**, a chartered municipal corporation, as landlord ("**City**"), and **[INSERT TENANT]**, a _____, as tenant ("**Tenant**").

RECITALS

Tenant and City enter into this Lease with reference to the following facts and circumstances:

A. Capitalized terms used herein are defined or referenced in Article 1.

B. City owns a fee interest in the real property generally located in the North of Bayshore Area in Santa Clara, California consisting of approximately two hundred thirty acres as shown on the Phasing Plan (the "**City Landfill Parcels**") to be developed under the DDA and the other Project Documents as part of the City Place Santa Clara project (as more particularly described in the DDA and the other Project Documents, the "**Project**"). Master Developer under the DDA has obtained City approval of a tentative subdivision map (the "**Tentative Subdivision Map**") and a first phased final map (the "**First Final Map**") that subdivided the City Landfill Parcels into two sets of vertical parcels: (1) one parcel (the "**Landfill Parcel**") which, in general, constitutes City's fee interest in the Landfill; and (2) multiple parcels comprising the "**Airspace Parcels**," which constitute City's fee interest in the airspace parcels above the Landfill Parcels.

C. The legal description of the Landfill Parcel is in Exhibit A-1 and the legal description of the Airspace Parcel applicable to Phase [ ] of the Project is more particularly described in Exhibit A-2 and more particularly defined below as the Phase [ ] Airspace Parcel. In accordance with Section 2.2 hereof, the Parties will process a boundary adjustment through a lot line adjustment or other legal process upon Completion of the applicable Infrastructure in order to finally determine the boundaries of the Phase [ ] Airspace Parcel that is subject of this Lease.

D. City and Related Santa Clara, LLC, a Delaware limited liability company, entered into that certain Disposition and Development Agreement (City Place Santa Clara) dated as of August 12, 2016 (as the same has been amended as of the Commencement Date and may be further amended from time to time, the "**DDA**"), under which, among other things, City has agreed to enter into this Lease and Tenant has agreed to enter into this Lease and construct the Initial Improvements for Phase [ ].

E. Master Developer and City also entered into that certain Development Agreement (City Place Santa Clara) dated as of August 12, 2016 (as the same has been amended as of the Commencement Date and may be further amended from time to time, the "**Development Agreement**"), which, among other things, grants certain rights to Master Developer and to

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[1] Note: the form of Ground Lease for Phase 2A shall be this form subject to modification in accordance with Section 4.8 of the DDA.

Tenant as the tenant under this Lease. By its execution and delivery of that certain Development Agreement Assignment and Assumption [dated concurrently herewith], Tenant has become a party to the Development Agreement having the rights and obligations provided therein with respect to Phase [ ].

F. The City, by Ordinance No. 1957, adopted on July 12, 2016, established procedures pursuant to Cal. Government Code Section 37380, in which it authorized leases of up to 99 years of City-owned property that is subject to the CityPlace Santa Clara Master Community Plan, so long as the form of lease is in substantially the form of ground lease attached to the DDA and includes regular base rent escalations and periodic base rent escalations, including a market rate base rent adjustment in years 45 and 70 (each, a "**Qualifying Lease**").

G. The City has determined that this Lease is a Qualifying Lease and subject to the further terms and conditions set forth in this Lease, City desires to ground lease to Tenant, and Tenant desires to ground lease from City, the Premises on each and all of the terms and conditions set forth herein.

AGREEMENT

NOW, THEREFORE, in reliance on the foregoing and in consideration of the mutual covenants, agreements and conditions set forth herein, and for other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged by the Parties, the Parties hereby agree as follows:

ARTICLE 1
DEFINITIONS

The following terms used in this Lease shall have the meanings ascribed to them below:

"**45th Project Lease Year**" means the Lease Year commencing on _____, _____.[2]

"**70th Project Lease Year**" means the Lease Year commencing on _____, _____.[3]

"**AA&R**" is defined in Section 11.3(c).

[for Phase 2 or Phase 3 only] "**Additional Initial Buildings**" means _____ gross square feet of Additional Initial Buildings to be developed on the Premises in accordance with Section 5.3.3 of the DDA, as described in Exhibit D.

[for Phase 2 and Phase 3 only] "**Additional Retail Buildings**" means _____ gross square feet of Additional Retail Buildings for which Tenant must use best efforts to develop in accordance with Section 5.3.5 of the DDA.

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[2] The first day of the 45th Lease Year under the Phase 1 Ground Lease.
[3] The first day of the 70th Lease Year under the Phase 1 Ground Lease.

EXHIBIT G-2
FORM OF GROUND LEASE (PHASES 2-7)

"**Additional Rent**" is defined in Section 3.6.

"**Adjusted Floor**" as defined in Section 3.3.3(a).

"**Affiliate**" means, with respect to any specified Person, any other Person that directly or indirectly, through one or more intermediaries, controls, is controlled by, or is under common control with the specified Person. For purposes of this definition, the term "**control**" means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of a Person, whether through ownership of voting stock, by contract or otherwise. The possession, directly or indirectly, by another Person of a right to approve or consent to (or otherwise restrict) certain business or affairs of the specified Person only through major decision rights or similar protective approval rights shall not, in and of itself, constitute or indicate "control", nor shall a Person be deemed not to have "control" solely because another Person possesses, directly or indirectly, such major decision rights or similar protective approval rights with respect to the specified Person.

"**Aggregate Project Allowed Square Footage**" means the aggregate Allowed Square Footage allocated to the Project Site.

"**Airspace Parcels**" is defined in the Recitals.

"**Airspace Parcel Easement Area**" is defined in Section 2.3.4.

"**Airspace Parcel Easements**" is defined in Section 2.3.1.

"**Allowed Square Footage**" is defined in the DDA.

"**Applicable Law**" means any and all applicable present and future laws, rules, orders, ordinances, regulations, statutes, requirements, directives, permits, consents, certificates, approvals, codes and executive orders of all Governmental Authorities now existing or hereafter created, and of all their departments and bureaus, including City zoning regulations to the extent applicable, and of any applicable fire rating bureau or other body exercising similar functions affecting the Premises; provided, however, that in all cases the foregoing shall be subject, with respect to the laws, rules, orders, orders, ordinances, regulations, statutes, requirements, directives, permits, consents, certificates, approvals, codes and executive orders of City, to the Development Agreement.

"**Applicable MMRP Measures**" is defined in Section 21.3.

"**Appraisal Instructions**" is defined in Section 3.4.1.

"**Approved Restoration Plans and Specifications**" is defined in Section 9.2.2.

"**Arbitrable Claim**" is defined in Section 28.1.2.

"**Arbitrator**" is defined in Section 28.1.2(a).

"**Arbitrator's Qualifications**" is defined in Section 28.1.2(a).

EXHIBIT G-2
FORM OF GROUND LEASE (PHASES 2-7)

"**Assignment**" is defined in Section 11.2.2.

"**Authorizations**" means all permits, approvals, entitlements, agreements, permits to enter, utility services, subdivision maps (including under the Subdivision Code), Building Permits or other authorization(s) required under Applicable Law for the work Tenant is required or authorized to perform under this Lease, the DDA or any other of the Project Documents and as may be necessary or desirable to effectuate and implement such work.

"**Base Rent**" is defined in Section 3.1.1.

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

"**Business Day**" means any day that is not a Saturday, Sunday or a day observed as a holiday by either the State of California or the federal government.

"**Casualty**" is defined in Section 9.1.

"**Casualty Termination Work**" is defined in Section 9.7.2.

"**CC&Rs**" means that certain Master Declaration of Covenants, Conditions and Restrictions and Grant of Easements for City Place Santa Clara dated as of _____, 201_ and recorded in the Official Records on _____, 201_, as the same has been amended as of the Commencement Date and may be further amended from time to time.

"**Change**" is defined in Section 9.2.3.

"**Change of Control**" means, as to any specified Person, a change in the Controlling Owner of the specified Person.

"**City**" has the meaning set forth in the preamble or, depending on the context, may mean the territorial jurisdiction of the foregoing.

"**City Appraisal Materials**" is defined in Section 3.4.2.

"**City Council**" means the City Council of City or means any successor governing body of City designated by or under law.

"**City Fault**" means the gross negligence, willful misconduct or fraud of City or any City Indemnitee or any licensee or invitee of City or a material breach of this Lease or any other Project Document by City.

"**City Indemnitees**" is defined in Section 18.1.

"**City Landfill Parcels**" is defined in the Recitals.

"**City Manager**" means the City Manager of City, or any successor chief executive officer of City designated by or under law.

"**City Residual Improvements Interest**" means, as of the date of the Taking, the net present fair market value of City's residual interest in the Improvements, which shall be deemed to be an amount equal to the net present fair market value of the Improvements as of the date of the Taking, discounted to account for the remaining Lease Term from the date of the Taking to the Expiration Date at a discount rate of six and one half percent per annum. For purposes of determining the City Residual Improvements Interest, the fair market value of the Improvements shall be determined by the process contained in Section 3.4; provided, however, that (a) references to the Phase [ ] Airspace Parcel Fee Fair Market Value therein shall be deemed to be "fair market value of the Improvements" and (b) the City Appraisal Materials shall be delivered no later than thirty days after the amount of the Condemnation Proceeds is finally determined.

"**City Residual Land Interest**" means, as of the date of the Taking, the net present fair market value of City's residual fee interest in the Phase [ ] Airspace Parcel, which shall be deemed to be an amount equal to the Phase [ ] Airspace Parcel Fee Fair Market Value as of the date of the Taking, discounted to account for the remaining Lease Term from the date of the Taking to the Expiration Date at a discount rate of six and one-half percent per annum. For purposes of determining the City Residual Land Interest, the Phase [ ] Airspace Parcel Fee Fair Market Value shall be determined by the process contained in Section 3.4; provided, however, that the City Appraisal Materials shall be delivered no later than thirty days after the amount of the Condemnation Proceeds is finally determined.

"**City's Termination Rights**" is defined in Section 11.7.6.

"**Claims, Damages and Costs**" is defined in Section 18.1.

"**Commencement Date**" is defined in the preamble.

"**Condemnation Expenses**" is defined in Section 10.1.2.

"**Condemnation Proceeds**" is defined in Section 10.1.2.

"**Condemnation Proceeds Depository**" means an Institutional Lender that is reasonably acceptable to both City and Tenant to hold the Condemnation Proceeds under Article 10. A Leasehold Mortgagee that is an Institutional Lender shall, upon its request, be entitled to serve as the Condemnation Proceeds Depository; provided, that such Leasehold Mortgagee shall have agreed in writing, for the benefit of City and under an instrument reasonably satisfactory to City, to hold such funds in a segregated account to be used and distributed as set forth in Article 10.

"**Consent Transfer**" is defined in Section 11.2.

"**Consent Transfer Request Notice**" is defined in Section 11.3.3.

"**Controlling Owner**" means, as to a specified Person, the Person who holds the Controlling Ownership in the specified Person.

"**Controlling Ownership**" means, with respect to a specified Person, the ownership, directly or indirectly, of the right to direct the day-to-day business and affairs of the specified Person. The ownership, directly or indirectly, by a Person of a right to approve or consent to (or

otherwise restrict) certain business or affairs of the specified Person only through major decision rights or similar protective approval rights shall not, in and of itself, constitute or indicate "Controlling Ownership" in the specified Person, nor shall a Person be deemed not to have "Controlling Ownership" in the specified Person solely because another Person possesses, directly or indirectly, such major decision rights or similar protective approval rights with respect to the specified Person.

"**CPI**" means the Consumer Price Index for All Urban Consumers (CPI-U), San Francisco-Oakland-San Jose, California, published by the Bureau of Labor Statistics of the United States Department of Labor or its successors, All Items (1982-84 = 100), or any successor index thereto designated by the Bureau of Labor Statistics or its successor, appropriately adjusted. If the CPI ceases to be published and there is no such successor index, another comparable index selected by mutual agreement of City and Tenant shall be used. If the Parties cannot agree within a reasonable time, the successor index and any appropriate adjustments shall be determined under Article 28 and shall be substituted for the CPI.

"**CPI Adjustment**" means an adjustment of each dollar amount that is expressly subject to CPI Adjustment under this Lease and is made by multiplying the dollar amount being adjusted by the sum of (a) one hundred percent, plus (b) the CPI Increase.

"**CPI Increase**" means the percentage increase, if any (but not decrease, if any), between the CPI for the calendar month that is three months prior to the effective date of adjustment and the CPI for the calendar month that is fifteen months prior to the effective date of adjustment.

"**Date of the Taking**" is defined in Section 10.2.

"**DDA**" is defined in the Recitals.

"**Default Rate**" means the lesser of (i) the prime rate of interest announced from time to time by Citibank, N.A. or any successor thereof, plus four percent per annum, or (ii) the maximum rate permitted by Applicable Law.

"**Depository**" means any of the Restoration Fund Depository, the Condemnation Proceeds Depository or the Impositions Depository.

"**Development Agreement**" is defined in the Recitals.

"**DAP**" means one or more Development Area Plans approved for Phase [ ] in accordance with the MCP, as the same may be amended from time to time.

"**Due Date**" means, with respect to an Imposition, the last date on which such Imposition can be paid without any fine, penalty, interest, fee, cost or expense being added thereto or imposed by law for the non-payment thereof (but excluding any early payment discount).

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

"**Environmental Law**" means and includes all applicable present and future federal, State and local laws, statutes, rules, regulations, ordinances, standards, directives, and conditions of approval, all administrative or judicial orders or decrees and all permits, license approvals or other entitlements, or rules of common law pertaining to Hazardous Substances, the protection of the environment, natural resources, wildlife, human health or safety, or employee safety or community right-to-know requirements related to the work being performed pursuant to this Lease.

"**Event of Default**" is defined in Section 22.1.

"**Experience Requirement**" is defined in Section 11.3.3(d).

"**Expiration Date**" means the day immediately preceding the later of (a) the ninety-ninth anniversary of the Project Commencement Date and (b) the eighty-ninth anniversary of the Commencement Date.

"**Financial Requirement**" is defined in Section 11.3.3(d).

"**First Final Map**" is defined in the Recitals.

"**Force Majeure**" is defined in Section 30.1.

"**Governmental Authority**" means all federal, state, local and/or regional governmental and quasi-governmental bodies and authorities including departments, agencies, boards and councils, and any political subdivision, public corporation, district or other political or public entity or department thereof having or exercising jurisdiction over City, Tenant or the Project or the Premises, or such portions thereof as the context indicates.

"**Guaranty**" means a guaranty in the form attached hereto as Exhibit B with only such changes as may be approved by Tenant and City in their respective sole and absolute discretion that is executed by a Person(s) (i) meeting or exceeding the Net Worth Requirement.

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

"**Impositions**" is defined in Section 4.1.

"**Impositions Depository**" means an Institutional Lender that is reasonably acceptable to both City and Tenant that would hold the Impositions contested under Section 4.4. A Leasehold Mortgagee that is an Institutional Lender shall, upon its request, be entitled to serve as the Impositions Depository; provided that such Leasehold Mortgagee shall have agreed in writing, for the benefit of City and under an instrument reasonably satisfactory to City, to hold such funds in a segregated special account to be used and distributed solely as set forth in Section 4.4. All funds held by an Impositions Depository shall be drawable in California.

"**Improvements**" means all structures, buildings, improvements, fixtures, additions, alterations and betterments of whatsoever nature or description, including, without limitation, all Infrastructure Improvements and Buildings included in any DAP approved for the Premises.

"**Infrastructure Improvements**" means all infrastructure improvements (installed in or under the Premises, in the Landfill Parcel or elsewhere) supporting or provided for the benefit of the Premises or the Buildings, including all Improvements installed in the Airspace Parcel Easement Areas other than Buildings and including all Required Initial Infrastructure.

"**Infrastructure Master Plan**" means the Infrastructure Master Plan attached as an exhibit to the MCP, as amended from time to time.

"**Initial Improvements**" means, individually or collectively as the context requires, the Required Initial Infrastructure, **[add the following for Phase 2/Phase 3 as applicable:** the Minimum Retail Buildings and subject to Section 5.3.5 of the DDA, the Additional Retail Buildings.]

"**Institutional Lender**" means any one or more of the following, whether acting for its own interest and capacity or in an agency, fiduciary or other representative capacity for one or more Persons none of which need be an Institutional Lender: (i) a savings bank, a savings and loan association, a commercial bank or trust company or branch thereof, an insurance company, a governmental agency, a real estate investment trust, a religious, educational or charitable institution, an employees' welfare, benefit, pension or retirement fund or system, an investment banking, merchant banking or brokerage firm, or any other Person or group of Persons which, at the time a Leasehold Mortgage is recorded in favor of such Person or Persons, has or is an Affiliate of a Person which has assets of at least $500 million in the aggregate (or the equivalent in foreign currency), and in the case of any Person or group of Persons none of whom is a savings bank, a savings and loan association, a commercial bank or trust company, an insurance company, a governmental agency, or a real estate investment trust, is regularly engaged or is an Affiliate of a Person regularly engaged in the business of commercial real estate (whether as an owner, investor, lender, sponsor or otherwise), or (ii) any special account, managed fund, department, agency or Affiliate of any of the foregoing, or (iii) any person acting in an agency, fiduciary or other representative capacity for any of the foregoing. For purposes hereof, acting in an "agency, fiduciary or other representative capacity" shall be deemed to include acting as a trustee, agent, or in a similar capacity under a mortgage, loan agreement, indenture or other loan document.

"**Insurance Premiums**" means the aggregate annual insurance premiums to be paid in respect of any insurance required to be carried by Tenant under this Lease.

EXHIBIT G-2
FORM OF GROUND LEASE (PHASES 2-7)

"**Landfill**" means the Santa Clara All-Purpose Landfill, which is that portion of the Project Site located within the Landfill Parcel that was formerly used as a sanitary landfill and comprised an approximately two hundred ten-acre site with a waste footprint of approximately one hundred thirty six acres.

"**Landfill Operation and Management Agreement**" shall mean that certain binding agreement entered into by the City and Master Developer pursuant to Section 14.1 of the DDA, dated as of _____, 20__.

"**Landfill Parcel**" is defined in the Recitals.

"**LEA**" means the Santa Clara County Department of Environmental Health acting as the Solid Waste Local Enforcement Agency (LEA).

"**Lease**" means this Ground Lease (City Place Santa Clara – Phase [ ]) and all future amendments, modifications, extensions and renewals hereof, including the exhibits attached hereto and thereto.

"**Lease Addendum**" is defined in Section 3.3.2(a)(i).

"**Lease Year**" means each consecutive twelve month period during the Term, commencing with the Commencement Date. However, if the first day of the first Lease Year falls on a day other than the first day of a month, then (1) the first Lease Year shall end at midnight of the last day of the month in which the first anniversary of the Commencement Date falls and (2) all subsequent Lease Years shall begin on the first day of the month following the month in which the prior Lease Year ended. The last Lease Year shall end at midnight on the Expiration Date or earlier termination of the Term. Notwithstanding the foregoing, effective on _____, _____[4], a new Lease Year shall commence and thereafter each succeeding Lease Year shall commence on the anniversary of such date.

"**Leasehold Interest**" means Tenant's interest in this Lease.

"**Leasehold Mortgage**" means any mortgage, deed of trust, pledge or similar instrument, including any modification, amendment, spreader, consolidation or renewal thereof that constitutes a lien on the Leasehold Interest and the beneficiary of which is an Institutional Lender. Once any mortgage, deed of trust, pledge or similar instrument qualifies as a Leasehold Mortgage, no transfer by a Leasehold Mortgagee of all or any interest in such indebtedness and obligations secured thereby shall affect such qualification so long as the transferee is an Institutional Lender except in the case where the transferee is a purchaser in foreclosure or under a sale in lieu of foreclosure of the Leasehold Mortgage and such purchaser is not an Affiliate of the Leasehold Mortgagee under such Leasehold Mortgage.

"**Leasehold Mortgagee**" means the mortgagee or beneficiary under a Leasehold Mortgage.

"**Lender Notice of Cure**" is defined in Section 11.7.4.

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[4] Such date is the first day of the 15th Lease Year under the Phase 1 Ground Lease.

"**Major Occupant**" is defined in Section 7.2.

"**Major Occupant Fee Parcel**" is defined in Section 7.2.

"**Major Occupant Lease**" is defined in Section 7.7.1.

"**Major Occupant Purchase Option**" is defined in Section 7.2.

"**Major Restoration**" is defined in Section 9.2.1.

"**Map Act**" is defined in Section 7.6.

"**Master Association**" means the master owners' association described in the CC&Rs.

"**Master Association Documents**" means the governing documents of the Master Association.

"**Master Developer**" means the Person that is Master Developer under the DDA and the Development Agreement.

"**MCP**" means the Master Community Plan adopted by the City Council by Resolution No. 16-8339 on June 28, 2016, as amended from time to time.

"**Mezzanine Lender**" means the lender under a Mezzanine Loan.

"**Mezzanine Loan**" means any financing secured by interests in Tenant or, if the financing documents so provide, in any Person controlling Tenant (and not by a lien on the Leasehold Interest).

"**Minimum Initial Buildings**" means the following minimum initial development to be constructed in accordance with Section 5.3.2 of the DDA: _____[5].

"**Minimum Retail Buildings**" means the following minimum initial development to be constructed in accordance with Section 5.3.4 of the DDA: _____[6].

"**Mitigation Measures**" means the mitigation measures identified in the Project EIR that are applicable to the Project and adopted by the City in connection with its approval of the Project, to be implemented as provided in the Project MMRP and, as applied to the Premises, the Applicable MMRP Measures.

"**Monetary Default**" means a default by Tenant under this Lease in the payment of any item of Rent or any other amount due and payable by Tenant to City hereunder.

"**Monthly Base Rent**" is defined in Section 3.1.1.

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[5] Insert the amount of the Minimum Initial Buildings allocated to the Phase 2 Ground Lease; such amount may be transferable to the other Phase without City consent.

[6] Insert the amount of the Minimum Retail Buildings allocated to the Phase 2 or Phase 3 Ground Lease; such amount may be transferable to the other Phase without City consent.

"**MO Purchase Closing**" is defined in Section 7.5.

"**MO Purchase Price**" is defined in Section 7.2.

"**Mortgage Condemnation Proceeds Procedure**" is defined in Section 10.3.3.

"**Mortgage Restoration Procedure**" is defined in Section 9.3.2.

"Net Worth" means net worth calculated using generally accepted accounting principles (**"GAAP"**). In the case of a corporation, "Net Worth" shall mean shareholders' equity calculated in accordance with GAAP. Any reference in this Agreement to a minimum Net Worth or a Net Worth Requirement shall mean that the Net Worth must be satisfied and maintained at all times. Upon City's request, a Person required to maintain a minimum Net Worth under this Agreement shall provide to City reasonable evidence that it satisfies the Net Worth Requirement, including a copy of the most recent audit of such Person (which shall in no event be dated more than thirteen (13) months before the date of City's request). Any such audit must have been performed by an independent third-party auditor and must include the opinion of the auditor indicating that the financial statements are fairly stated in all material respects.

"**Net Worth Requirement**" means either: (i) for Transfers of a Phase or portions of a Phase that cumulatively equal or exceed a land area of seventy percent (70%) or more of the Phase, a Net Worth calculated as of the scheduled closing of the proposed Assignee's acquisition of the Lease covering the applicable Phase or Partial Phase, equal to or more than Seventy Five Million Dollars ($75,000,000) increased automatically by ten percent (10%) on each five (5) year anniversary of the Effective Date or (ii) for Transfers of one or more Partial Phases that cumulatively equal less than seventy percent (70%) of the land area in a Phase, a Net Worth calculated as of the scheduled closing of the proposed Assignee's acquisition of the Lease covering the applicable Phase or Partial Phase equal to or more than the higher of (A) Twenty Five Million Dollars ($25,000,000), increased automatically by ten percent (10%) on each five (5) year anniversary of the Effective Date or (B) the amount determined under clause (i) above times the percentage of the total land area in the Phase that is being Transferred. Any entity required to satisfy the Net Worth Requirement can do so either by either meeting the Net Worth Requirement itself or by providing a Guaranty, covering all of that entity's obligations under this Lease without limitation, from an entity that meets the Net Worth Requirement.

"**New Lease**" is defined in Section 11.8.1.

"**New Parcel**" is defined in Section 6.1.

"**New Parcel Share**" is defined in Section 7.7.1.

"**New Tenant**" is defined in Section 11.8.1(a).

"**Non-Monetary Default**" means a default by Tenant under this Lease other than a Monetary Default.

"**Non-Water Corrective Action Plan**" means that plan prepared by City and Master Developer and submitted to the LEA addressing non-aqueous components of the corrective

actions to be taken at the Landfill, including non-aqueous aspects of the groundwater monitoring and leachate collection system, Landfill gas extraction system, Landfill cover, and pilings into the waste.

"**Official Records**" means the Official Records of Santa Clara County maintained by the Santa Clara County Recorder's Office.

"**Parcelization**" is defined in Section 6.1.

"**Partial Taking**" is defined in Section 10.3.

"**Partial Taking Rent Reduction Percentage**" is defined in Section 10.3.1(b).

"**Parties**" means City and Tenant.

"**Party**" means City or Tenant as the context requires.

"**Patriot Act**" means the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001, and all rules and regulations promulgated thereunder from time to time, in each case as amended from time to time.

"**Permitted Exceptions**" means the exceptions to title to the Premises listed on Exhibit C and shall also include all matters created by or on behalf of, or with the consent of, Tenant.

"**Permitted Transfer**" is defined in Section 11.5.

"**Permitted Uses**" is defined in Section 21.1.

"**Person**" means any natural person or a corporation, partnership, trust, limited liability company, limited liability partnership or other entity.

"**Phase**" means, individually or collectively as the context requires, any or each of the Phases of the Project as determined from time to time under and as defined in the DDA.

"**Phase [ ]**" means Phase [ ] of the Project, the Phase associated with the Premises, as determined under the DDA as of the Effective Date.

"**Phase [ ] Airspace Parcel**" means, subject to Articles 6 and 7, the real property comprising Phase [ ], the legal description for which is contained on Exhibit A-2.

"**Phase [ ] Airspace Parcel Fee Fair Market Value**" means, as of a particular date, the fair market value of City's fee interest in the Phase [ ] Airspace Parcel calculated in accordance with the Appraisal Principles set forth in Section IV, paragraphs 1 through 6 of Exhibit H attached hereto, as may be amended from time to time.

"**Phase 1 Ground Lease**" means that certain Ground Lease (City Place Santa Clara – Phase 1), dated as of _____, by and between City and [_____], as in effect on the Commencement Date and, unless otherwise approved by Tenant in its sole and absolute discretion, without regard to any subsequent amendments thereto.

EXHIBIT G-2
FORM OF GROUND LEASE (PHASES 2-7)

"**Phasing Plan**" means the Phasing Plan under, as defined in and attached as an exhibit to the DDA, as the same is amended from time to time.

"**Post-Closure Land Use Plan**" means that plan prepared by City and Master Developer and submitted to the LEA demonstrating that post-closure activities will not pose a threat to health and safety and the environment.

"**Post-Closure Permit**" means the permit issued by the LEA following approval of the Revised Post-Closure Maintenance Plan.

"Pre-Approved Arbitrators List" is defined in Section 28.1.2(a).

"**Pre-Casualty Condition**" is defined in Section 9.1.

"**Premises**" means the Phase [ ] Airspace Parcel.

"**Premises Premium Costs**" means the Premium Costs allocated to the Premises.

"**Premium Costs**" is defined in the DDA.

"**Project**" is defined in the Recitals.

"**Project Commencement Date**" means _____, _____, which is the Commencement Date under and as defined in the Phase 1 Ground Lease.

"**Project Documents**" means collectively, the CC&Rs, the DDA, the Development Agreement, the Landfill Operation and Management Agreement, this Lease, the MCP, the Non-Water Corrective Action Plan, the Post-Closure Land Use Plan, the Post-Closure Permit, the Project MMRP, the Revised Closure Plan, the Revised Post-Closure Maintenance Plan, the Waste Discharge Requirements, the Water Corrective Action Plan, and any other Authorizations received for any portion of the Project and agreements entered into pursuant to the DDA, together with all exhibits thereto, as any of the foregoing may be amended from time to time.

"**Project EIR**" means that certain Environmental Impact Report for the City Place Santa Clara Project, certified by the City Council by Resolution No. 16-8337.

"**Project MMRP**" means the Mitigation Monitoring Reporting Program adopted by the City Council in connection with its approval of the Project and attached hereto as Exhibit E.

"**Project Site**" is defined in the Recitals.

"**Proposed Restoration Plans and Specifications**" is defined Section 9.2.1.

"**Qualifying Sublease**" is defined in Section 11.13.1.

"**Qualifying Subtenant**" is defined in Section 11.13.1.

"**Recognition Agreement**" is defined in Section 11.13.2.

"**Relevant Landfill Requirements**" is defined in Section 14.3.1(b).

"**Rent**" means, individually or collectively as the context requires, Base Rent and Additional Rent.

[add as appropriate to Phase 2] "**Required Buildings**" means the Minimum Initial Buildings and Minimum Retail Buildings that are required to be constructed by Tenant under the DDA, the Additional Initial Buildings (subject to Section 5.3.3 of the DDA) and the Additional Retail Buildings (subject to Section 5.3.5 of the DDA), as such Buildings are described on Exhibit F.

"**Required Initial Infrastructure**" means the infrastructure on, under or in support of the Premises and the Buildings that is required to be constructed and completed by Tenant under the DDA in accordance with each DAP approved for the Premises and all other applicable Authorizations.

"**Restoration**" and "**Restore**" are defined in Section 9.1.

"**Restoration Fund Depository**" means an Institutional Lender that is regularly engaged in the business of administering construction loans and reasonably acceptable to both City and Tenant to hold the Restoration Funds under this Lease; provided, however that any Leasehold Mortgagee that is an Institutional Lender shall automatically be entitled to serve as Restoration Fund Depository hereunder.

"**Restoration Funds**" is defined in Section 9.3.3.

"**Restoration Notice**" is defined in Section 9.2.2.

"**Restoration Standard**" is defined in Section 9.1.

"**Restoration Submission Exceptions**" is defined in Section 9.2.1.

"**Restoration Work**" is defined in Section 9.1.

"**Revised Closure Plan**" means the plan prepared by City and Master Developer and submitted to the LEA detailing closure of the groundwater monitoring and leachate collection system, Landfill gas extraction system, Landfill cover, and pilings into the waste.

"**Revised Post-Closure Maintenance Plan**" means the plan prepared by City and Master Developer and submitted to the LEA detailing the maintenance of the Landfill following completion of the Revised Closure Plan.

"**Shortfall Amount**" is defined in Section 9.3.3.

"**Subtenant**" means any tenant or subtenant under a written sublease of space in the Premises from Tenant. Subtenant shall not include any Person that holds only a license to enter into and use the Premises, such as Persons using parking facilities located in the Premises.

"**Sublease**" means any written sublease of space in the Premises and/or the Improvements between Tenant and a Subtenant.

"**Succession Date**" is defined in Section 11.13.2.

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

"**Temporary Taking**" is defined in Section 10.3.4.

"**Tenant**" is defined in the preamble hereof or, following a Permitted Transfer of such Person's rights and obligations under this Lease, means such transferee.

"**Tenant Airspace Parcel Easement Activities and Operations**" is defined in Section 14.3.1(b).

"**Tenant Appraisal Materials**" is defined in Section 3.4.2.

"**Tenant Parties**" is defined in Section 12.2.2.

"**Tenant Related Party**" is defined in Section 11.5(c).

"**Tentative Subdivision Map**" is defined in the Recitals.

"**Term**" is defined in Section 2.4.

"**Termination Notice**" is defined in Section 9.7.1.

"**Total Taking**" is defined in Section 10.1.1.

"**Transferee Team**" is defined in Section 11.3.3(c).

"**Waste Discharge Requirements**" means the requirements for discharge of waste materials at the Landfill issued by the California Regional Water Quality Control Board, San Francisco Bay Region on January 23, 2002, as such requirements may be amended or revised from time to time.

"**Water Corrective Action Plan**" means that plan prepared by City and Master Developer and submitted to the LEA addressing aqueous components of the corrective actions to be taken at the Landfill, including aqueous aspects of the groundwater monitoring and leachate collection system, Landfill gas extraction system, Landfill cover, and pilings into the waste.

ARTICLE 2
PREMISES AND TERM OF LEASE

2.1 Lease of Premises. City hereby leases to Tenant, and Tenant hereby hires from City, the Premises, together with all easements, appurtenances and other rights and privileges now or hereafter belonging or appertaining to the Premises, subject to the Permitted Exceptions.

2.2 Boundary Adjustment. The Parties acknowledge that the final vertical and horizontal boundaries of the Premises will not be known until Tenant has Completed (as that term is defined in the DDA) certain Infrastructure Improvements as necessary to define such boundaries. Upon Completion of the applicable Infrastructure Improvements required to be constructed for this Phase [ ] under the DDA, this Lease and all applicable Authorizations, the Parties shall diligently proceed to process a lot line adjustment or subsequent subdivision map to the extent necessary to finally determine the boundaries of the applicable Airspace Parcel that is subject to the Lease. Upon recordation of the applicable boundary adjustment, the Parties shall prepare a revised Exhibit A-2 that will be appended to this Lease and become a part thereof that sets forth the legal description of the Airspace Parcel and the Landfill Parcel underlying the Airspace Parcel, and the Parties shall record an amended Memorandum of Lease pursuant to Section 31.25 hereof with the revised legal description.

2.3 Airspace Parcel Easements.

2.3.1 Grant of Easements. City hereby grants and demises to Tenant, for the entirety of the Term, the following non-exclusive (except as otherwise provided herein) easements, coupled with an interest, which each shall be deemed to be appurtenant to Tenant's interest in the Premises and shall run with such interest, together with the right to grant subeasements in the same to Persons constructing, maintaining, repairing, reconstructing, relocating, operating or using the same (collectively, the "**Airspace Parcel Easements**"):

(a) An easement over, under, upon, in and through all portions of the Landfill and Landfill Parcel that underlie the Airspace Parcel for the construction, reconstruction, replacement, removal, relocation, maintenance, modification, repair, operation and use of (i) all pilings, infrastructure and other support mechanisms, improvements and equipment intended by Tenant to support, operate, maintain, secure, use or stabilize Improvements and Buildings constructed or planned to be constructed by Tenant under the DDA, this Lease or any other Authorization, (ii) utility facilities, lines, cable, equipment and other improvements necessary or convenient to facilitate the provision of utility and other services to the Premises, Buildings and Improvements thereon as Tenant may desire from time to time (including water, electricity, sewage, cable, internet and gas) to be constructed over, under, upon, in or though the Landfill Parcel and (iii) all other penetrations, installations, equipment and/or improvements from the Premises (or adjacent areas) into (or through) the Landfill Parcel that are permitted or required under the terms of the DDA, this Lease or any other Authorization or otherwise are necessary or convenient from time to time during the Term to enable, facilitate, enhance or provide for the economical and efficient construction, development, installation, maintenance, repair, removal, relocation, replacement, use, management, and operation of the Improvements, together with the right of access to the areas covered by this easement and areas immediately adjacent thereto as may be necessary or convenient for such purposes;

(b) An easement over, under, upon, in and through the Project Site for the construction, development, reconstruction, replacement, relocation, maintenance, repair, operation and use by Tenant of Infrastructure Improvements contemplated by the Infrastructure Master Plan and/or that are required or permitted by the DDA, this Lease, any other Authorization or the CC&Rs to be built or installed, or caused to be built or installed, together with the right of access to the areas covered by this easement and areas immediately adjacent thereto as may be necessary or convenient for such purposes; provided, that the easement granted in this paragraph (b) shall not be deemed to encumber or be enforceable with respect to any portion of the Project Site that is subject to a ground lease from City covering all or any portion of the Project Site; and

(c) An easement over, under, upon, in and through the Landfill Parcel in order to allow Tenant, its agents or contractors to take such action as Tenant desires to ameliorate, mitigate, manage, remedy, remediate and/or repair any environmental, soils or other physical condition within the Landfill Parcel that (i) is causing damage to, or is threatening to cause damage to, any Improvements, pylons or other installations or equipment installed, operated or used by Tenant under this Section 2.3.1 or any Improvements or property located within the Premises or any business operated within the Improvements, or (ii) poses any form of threat to the health and safety of any occupants or visitors to the Premises, the Improvements (or any businesses operated therein) (or to any Subtenant) or that may otherwise interfere with the operation of the Premises or any business contained in the Premises.

2.3.2 Covenants of Tenant. During the Term, Tenant agrees that it will conduct its activities within the Airspace Parcel Easements in accordance with the Project Documents, Authorizations and all Applicable Laws, and shall use commercially reasonable efforts to not materially and adversely interfere with the City's ability to carry out its obligations under the Landfill Operation and Management Agreement in accordance with the Project Documents and all Applicable Laws.

2.3.3 Covenants of City. During the Term, City agrees that (a) except for the Permitted Exceptions, it shall not grant or permit any easements, leases, licenses, possessory rights, rights of entry or similar rights to any other Person in respect of the Landfill Parcel at any time that will in any manner conflict with, threaten or interfere with the full exercise of the easements and rights granted to Tenant under Section 2.3.1 or will otherwise interfere with the installation, operation, maintenance, repair and/or replacement of any Improvements, Infrastructure Improvements or equipment permitted to be installed by Tenant in or under the Landfill Parcel under Section 2.3.1, and (b) cooperate, and assist when requested to do so (without expense to City), with the efforts of Tenant and any agent or contractor thereof to exercise its rights under Section 2.3.1, including the execution, acknowledgment and delivery of any documents, instruments, applications, notices or written materials reasonably requested by Tenant in connection with such exercise. In addition, upon request by Tenant, City shall

execute, acknowledge, deliver and record such instruments and documents as may be reasonably necessary to evidence or confirm Tenant's rights under this Section 2.3.

2.3.4 No Termination; Expiration. Each Airspace Parcel Easement may be exercised or used by Tenant, its agents, Affiliates, any Tenant Related Party, Subtenants or contractors at any time, and from time to time during the Term. Subject to City's approval (which will not be unreasonably withheld), any area within the Landfill Parcel that is the location of any pylon, penetration, Improvement or equipment installation of Tenant installed as part of the Initial Improvements, or as a replacement therefor or the construction thereof, together with areas adjacent thereto designated in good faith by Tenant (each, an "**Airspace Parcel Easement Area**") shall constitute exclusive easement areas for the benefit of Tenant and shall be exclusive for use and entry by Tenant. Following delivery to City of reasonable information from Tenant describing the location of such Airspace Parcel Easement Areas and City's approval thereof, City shall not enter or permit entry into such areas, other than under Section 20.1. The Airspace Parcel Easements may not be terminated, amended or restricted without Tenant's consent, which consent may be granted or denied in Tenant's sole and absolute discretion, which consent shall not be valid without the prior consent of all Leasehold Mortgagees. The Airspace Parcel Easements shall expire and shall be of no further force or effect upon the Expiration Date (or any earlier termination of the Term).

2.4 Term. The "**Term**" of this Lease shall commence upon the Commencement Date and shall expire on the earlier to occur of the Expiration Date or the earlier termination of this Lease in accordance with the provisions hereof.

2.5 Ownership of Improvements.

2.5.1 During the Term. During the Term, Tenant shall own each of the following: (i) all Improvements, including the Initial Improvements, hereafter constructed by, for the benefit of, or on behalf of Tenant, in each case that are located upon or within the Premises; (ii) all other Improvements constructed by or on behalf of Tenant and located within the Landfill Parcel; and (iii) all Infrastructure Improvements provided by Master Developer prior to the Commencement Date for the exclusive benefit of the Premises, except to the extent Tenant dedicates any Improvements to City or transfers the same to the Master Association; provided, that Tenant shall not own Improvements that, by agreement with Subtenants, are owned by Subtenants. Without limiting the foregoing, City will not claim, and during the Term Tenant (or its designee) alone shall be entitled to, all of the federal tax attributes of ownership, including, without limitation, the right to claim depreciation or cost recovery deductions.

2.5.2 Upon the Expiration Date. Subject to the terms of this Section 2.5.2, upon the Expiration Date or the earlier termination of the Term, all Improvements then existing on the Premises shall remain upon and be surrendered to City with the Premises, and title thereto shall vest in City without compensation therefor to Tenant, except as provided otherwise in Article 9 or Article 10; provided, however, that, notwithstanding the foregoing, (a) nothing contained in this Lease shall be construed to deny or abrogate the right of Tenant or any Subtenant to receive any and all proceeds attributable to a condemnation or, at any time prior to the Expiration Date or an earlier termination of the Term (or within a reasonable time thereafter, on account of any termination of this Lease prior to the Expiration Date), to remove any furniture, equipment, or

fixtures not permanently affixed to, and not reasonably necessary for the operation of, the Premises, any signage identifying Tenant or any Subtenant (as opposed to other signage used in the operation of the Premises or the Project), or any personal property, and (b) nothing contained herein shall be construed to deny Tenant or any Subtenant any right to remove any so-called "trade-dress" items installed in or on the Premises. Tenant shall be responsible for repairing any damage to the Improvements on the Premises incurred in connection with the removal from the Premises of any of the items described in this Section 2.5.2. In the event that any Buildings are, as of the Expiration Date or an earlier termination of the Term, in a state of poor condition and repair and constitute either (a) a nuisance or threat to public health and safety or (b) are of no economic value, Tenant and City shall consult in good faith with one another regarding the appropriate disposition of such Buildings, and following such consultation Tenant shall have an obligation to do one of the following, at Tenant's option and at its expense: (i) demolish and remove such Buildings and repair any damage caused by such removal; (ii) repair such Buildings so that they are not in such poor condition and repair; or (iii) replace such Buildings with Buildings that are consistent with the then use of the Premises.

ARTICLE 3
RENT

3.1 Base Rent.

3.1.1 Tenant shall pay to City, for each Lease Year during the Term, the annual amounts set forth in this Article 3 (the "**Base Rent**"), in equal monthly installments ("**Monthly Base Rent**"), which Monthly Base Rent shall be payable in advance on the first Business Day of each calendar month during the Term. Monthly Base Rent for any partial month, and Base Rent for any Lease Year of fewer than twelve (12) months, shall be prorated on the basis of twelve months of thirty (30) days each. Base Rent shall include any escalation or restatement of the original Base Rent provided for in Sections 3.2 and 3.3.

3.1.2 Base Rent for the first Lease Year shall be _____ dollars.

3.2 Regular Base Rent Escalations.

3.2.1 Escalations Before the 45th Project Lease Year. For each Lease Year commencing with the second Lease Year and continuing until the end of the Lease Year immediately preceding the 45th Project Lease Year, Base Rent shall be an amount equal to the Base Rent for the immediately preceding Lease Year *multiplied by* one hundred three percent (103%).

3.2.2 Escalations After the 45th Project Lease Year. For each Lease Year commencing with the first Lease Year after the 45th Project Lease Year and continuing until the Expiration Date or any earlier termination of the Term, Base Rent shall be an amount equal to the Base Rent for the immediately preceding Lease Year *multiplied by* the lesser of (i) the sum of one hundred percent (100%) plus the CPI Increase and (ii) one hundred three percent (103%).

3.2.3 Exceptions. Notwithstanding the foregoing, Sections 3.2.1 and 3.2.2 shall not apply with respect to the Lease Years commencing on _____ __, 20__, _____ __, 20__,_____

__, 20__,_____ __, 20__,_____ __, 20__,_____ __, 20__,_____ __, 20__,_____ __, 20__, and _____ __, 20__,[7]; Base Rent for those Lease Years shall be adjusted as set forth in Section 3.3.

3.3 Periodic Base Rent Escalations.

3.3.1 10% Annual Escalations. For the Lease Years commencing on _____, 20__, 20__, 20__, 20__, 20__, 20__, and 20__[8], Base Rent shall be an amount equal to the Base Rent for the immediately preceding Lease Year *multiplied by* one hundred ten percent (110%).

3.3.2 Base Rent Adjustments in the 45th and 70th Project Lease Years.

(a) Determination of Premium Costs and Allowed Square Footage. Premium Costs and Allowed Square Footage shall be calculated and documented as follows:

(i) Premium Costs. For purposes of this Section 3.3.2, calculating the Base Rent Adjustment in the 45th and 70th Project Lease Years, the Premium Costs allocated to the Premises shall be determined as provided in Section 16.1.3(a) of the DDA. References in this Lease to the Premium Costs allocated to the Project Site or any portion thereof (for the avoidance of doubt, including to the Premises) shall mean the Premium Costs Allocation allocated thereto under the DDA as of each date of determination. Upon each determination of Premium Costs under the DDA and upon the final reconciliation under Section 16.1.3(b) of the DDA, the Parties shall append an addendum to this Lease in the form of Exhibit G attached hereto (a "**Lease Addendum**"), to be executed by City and Tenant, which shall in each instance become a part hereof, provided, however, that the failure of Tenant to execute the Lease Addendum or the Parties' failure to append it to this Lease shall not affect the determination of the Premium Costs Allocation determined under Section 16.1.3 of the DDA, which shall be binding on the Parties.

(ii) Allowed Square Footage. The Allowed Square Footage allocated to the Premises shall be determined as provided in the DDA, subject to Sections 7.5, 7.7.2 and 9.9 of this Lease. References in this Lease to the Allowed Square Footage allocated to the Project Site or any portion thereof (for the avoidance of doubt, including to the Premises) shall mean the Allowed Square Footage allocated thereto under the DDA, subject to Sections 7.5, 7.7.2 and 9.9 of this Lease, in any case as of the date of determination. Upon determination of Allowed Square Footage under the DDA, the Parties shall append a Lease Addendum to this Lease, to be executed by City and Tenant, which shall in each instance become a part hereof, provided, however, that the failure of Tenant to execute the Lease Addendum or the Parties' failure to append it to this Lease shall not affect the determination of the Allowed Square Footage determined under the DDA, which shall be binding on the parties.

(b) Base Rent Adjustment in the 45th Project Lease Year. For the 45th Project Lease Year, Base Rent shall be an amount equal to the greatest of:

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[7] The first day of the 15th, 25th, 35th, 45th, 53rd, 61st, 70th, 80th and 90th Lease Years under the Phase 1 Ground Lease.

[8] The first day of the 15th, 25th, 35th, 53rd, 61st, 80th and 90th Lease Years under the Phase 1 Ground Lease.

(i) the Phase [ ] Airspace Parcel Fee Fair Market Value as of the commencement of such Lease Year (but in no event an amount greater than (x) the Allowed Square Footage allocated to the Premises *multiplied by* (y) two hundred dollars ($200)) *less* the Premises Premium Costs, *multiplied by* (ii) six and one half percent (6.5%);

(ii) thirty million dollars ($30 million) (as adjusted under Section 3.3.3) *multiplied by* a fraction, the numerator of which is the Allowed Square Footage allocated to the Premises and the denominator of which is the Aggregate Project Allowed Square Footage; and

(iii) the Base Rent for the immediately preceding Lease Year.

(c) Base Rent Adjustment in the 70th Project Lease Year. For the 70th Project Lease Year, Base Rent shall be an amount equal to the greater of:

(i) the Phase [ ] Airspace Parcel Fee Fair Market Value as of the commencement of such Lease Year (but in no event an amount greater than (x) the Allowed Square Footage allocated to the Premises, multiplied by (y) three hundred fifty dollars ($350)) *less* the Premises Premium Costs, *multiplied by* (ii) six and one half percent (6.5%); and

(ii) the Base Rent for the immediately preceding Lease Year *multiplied by* one hundred ten percent (110%).

3.3.3 Adjustments to Base Rent Determination in the 45th Project Lease Year.

(a) If the Aggregate Project Allowed Square Footage determined under the reconciliation procedures of Section 10.1 of the DDA as of the 44th Anniversary of the Effective Date thereof is 7,516,400 gross square feet (i.e., ninety five percent (95%) of 7,912,000 GSF) or less, then the thirty million dollars ($30 million) set forth in Section 3.3.2(b) shall be thirty million dollars ($30 million) *multiplied by* a fraction, the numerator of which is the Aggregate Project Allowed Square Footage and the denominator of which is 7,912,000. The resulting amount shall be considered the "**Adjusted Floor**".

(b) Without limiting Section 3.3.3(a) hereof, if the City terminates any Phase or Partial Phase in accordance with Section 7.1 of the DDA, then upon any such termination, the Base Rent adjustment in the 45th Project Lease Year, as calculated in Section 3.3.2(b) and 3.3.3 of this Lease, shall be adjusted so that the thirty million dollars ($30 million) or Adjusted Floor as applicable as set forth in those sections shall be thirty million dollars ($30 million) or the Adjusted Floor as applicable, multiplied by a fraction, the numerator of which is the gross square footage of the footprint of Phases 2 through 7 (excluding Phase 2A) less the gross square footage of the footprint of any of Phases 2 through 7 (excluding Phase 2A) that have been terminated (as such gross square footage is calculated based upon the Final Map for each Phase), and the denominator of which will be

the gross square footage of all Phases 2 through 7 (excluding Phase 2A) (calculated based upon the Final Map for each Phase).

3.4 Phase [ ] Airspace Parcel Fee Fair Market Value Determinations. The Phase [ ] Airspace Parcel Fee Fair Market Value shall be determined in the following manner:

3.4.1 The Parties have agreed upon appraisal instructions to determine the Phase [ ] Airspace Parcel Fee Fair Market Value in the form of those attached hereto as Exhibit H (the "**Appraisal Instructions**"). The Appraisal Instructions direct each appraiser for purposes of this Section 3.4 to prepare and deliver to the applicable party an appraisal report consistent with the methodology set forth therein for determining the Phase [ ] Airspace Parcel Fee Market Value. The Parties hereto may agree to amend the Appraisal Instructions from time to time, which agreement to amend shall not be unreasonably withheld, conditioned or delayed by either Party. If material changes are proposed to the Appraisal Instructions, including assumptions, special assumptions, limiting conditions, hypothetical conditions, and other special instructions, the requesting Party shall propose such amendment in writing, and, if the Parties disagree, they shall follow the dispute resolution procedures set forth in Article 28 hereof.

3.4.2 Not more than eighteen (18) months and not less than six (6) months before the commencement of each of the 45th Project Lease Year and the 70th Project Lease Year, City shall deliver to Tenant an appraisal (including all relevant backup information necessary for Tenant to fully assess such appraisal) prepared by an appraiser selected by City and setting forth such appraiser's determination of the Phase [ ] Airspace Parcel Fee Fair Market Value (collectively, the "**City Appraisal Materials**"). Not more than eighteen (18) months before the commencement of each of the 45th Project Lease Year and the 70th Project Lease Year, but no later than ninety (90) days after Tenant's receipt of the City Appraisal Materials, Tenant shall deliver to City an appraisal (including all relevant backup information necessary for City to fully assess such appraisal) prepared by an appraiser selected by Tenant and setting forth such appraiser's determination of the Phase [ ] Airspace Parcel Fee Fair Market Value (collectively, the "**Tenant Appraisal Materials**"). Thereafter, City and Tenant shall attempt in good faith to resolve any disagreement over the Phase [ ] Airspace Parcel Fee Fair Market Value; if such disagreement is not resolved within seventy-five (75) days after City's receipt of the Tenant Appraisal Materials, then either Party may, by notice to the other and to the two appraisers selected by the Parties under this Section 3.4.2, require that the disagreement be resolved under Section 3.4.4. If either Party fails to deliver the required appraisal within the time period provided in this Section 3.4.2 and such failure continues for twenty (20) Business Days after notice of such failure is given by other Party, the appraisal that was timely delivered (if any) shall determine the Phase [ ] Airspace Parcel Fee Fair Market Value.

3.4.3 Each appraisal under this Section 3.4 shall be prepared by a qualified appraiser, which for purposes of this Lease shall be defined as an appraiser (i) licensed in the State of California as a Certified General Appraiser and holding the MAI designation from the Appraisal Institute, (ii) practicing or working for at least ten (10) years in either a national firm, or regional firm based in California, (iii) who is not an Affiliate of Tenant and has no equity investment in Tenant or its Affiliates, (iv) who has particular experience with Northern California real property transactions involving commercial [**and residential**] mixed-use developments, and (v) who has no conflict of interest as evidenced by contractual relationships

with the selecting Party, either existing or in the immediately prior twenty-four (24) months, unless a conflict waiver is obtained from the other Party.

3.4.4 Within thirty Business Days after notice from either Party under Section 3.4.2 requesting resolution under this Section 3.4.4, the two appraisers selected by the Parties under Section 3.4.2 shall agree upon and appoint a third appraiser, who shall meet the qualifications in Section 3.4.3. The three appraisers shall, on or before the date that is sixty (60) days after the appointment of the third appraiser, attempt to reach a decision as to the Phase [ ] Airspace Parcel Fee Fair Market Value. The agreement of two of the three appraisers on the Phase [ ] Airspace Parcel Fee Fair Market Value shall be binding on the Parties. If the two appraisers fail to agree on and appoint a third appraiser or if two of the three the appraisers are unable to agree on the Phase [ ] Airspace Parcel Fee Fair Market Value, in either case within the applicable time period above, then either Party may at any time within the succeeding thirty (30) days submit the matter to arbitration under Article 28.

3.4.5 The Parties shall share equally the cost of the third appraiser under Section 3.4.4. However, promptly following the final determination of the Phase [ ] Airspace Parcel Fee Fair Market Value under Section 3.4.4, the Party that delivered the appraisal under Section 3.4.2 that was closest to the Phase [ ] Airspace Parcel Fee Fair Market Value finally determined under Section 3.4.4 shall be entitled to be promptly reimbursed by the other Party for such cost (and such other Party shall promptly pay any unpaid cost of such third appraiser); provided, that if the appraisals delivered by each Party differ from the Phase [ ] Airspace Parcel Fee Fair Market Value finally determined under Section 3.4.4 by more than five percent (5%), then the Parties shall share equally the cost of the third appraiser under Section 3.4.4. For the avoidance of doubt, the cost of the appraiser selected by a Party, including costs of the initial appraisal delivered under Section 3.4.2 and the costs of such appraiser under Section 3.4.4, shall be paid by the Party that selected such appraiser.

3.4.6 If for any reason the Phase [ ] Airspace Parcel Fee Fair Market Value has not been finally determined by the first day of the 45th Project Lease Year or the 70th Project Lease Year, whichever is applicable, then until such final determination, the Base Rent for such Lease Years shall be determined under Section 3.3.2 and Section 3.3.3, whichever is applicable, without reference to Section 3.3.2(a) or Section 3.3.3(a), respectively, and within thirty days of any such final determination the Parties shall make such adjusting payments as are necessary, if any, to align the Monthly Base Rent paid since the beginning of the 45th Project Lease Year or the 70th Project Lease Year, whichever is applicable, to the Monthly Base Rent finally determined under Section 3.3.2 and Section 3.3.3, whichever is applicable, with reference to Section 3.3.2(a) or Section 3.3.3(a), respectively.

3.5 Net Lease. Except as expressly set forth in this Lease, it is the intent of City and Tenant, and City and Tenant hereby agree, that all Base Rent shall be absolutely net to City without any abatement, counterclaim, set-off or offset whatsoever, so that this Lease shall yield, net, to City the Base Rent for each Lease Year during the Term; provided, however, that this Section 3.5 shall not apply to City's obligations under this Lease with respect to the Landfill and/or the Landfill Parcel, and Tenant's rights and remedies with respect to any breach of such obligations.

3.6 Other Charges. Tenant shall pay (or shall cause to be paid) to the Person legally entitled thereto, as additional rent ("**Additional Rent**") under this Lease, all Impositions and all Insurance Premiums.

3.7 Late Charges. All Base Rent and other sums due from Tenant to City as landlord under this Lease (for the avoidance of doubt, not including Impositions), or from City to Tenant under this Lease, that are not paid within ten days after the date due under this Lease shall bear interest at the Default Rate from the date due until paid.

3.8 Examples. Examples of the calculation of Base Rent escalations under Sections 3.2 and 3.3 are contained in Exhibit I.

ARTICLE 4
IMPOSITIONS [AND PUBLIC FINANCING]

4.1 Impositions. Subject to any exemptions or abatements that may be granted by any Governmental Authority (or shall otherwise be applicable to the Premises or Tenant under Applicable Laws), Tenant shall pay all of the following items assessed, levied or imposed on Tenant in connection with its use of the Premises, the Phase [ ] Airspace Parcel, the Improvements thereon or Tenant's interest in the foregoing by any Governmental Authority with respect to the period after the Commencement Date and before the Expiration Date or any earlier termination of the Term (collectively, "**Impositions**"), all of which shall be calculated without taking into account available exemptions arising on account of the ownership of the Phase [ ] Airspace Parcel by City in its capacity as a Governmental Authority: (a) real property ad valorem taxes and special assessments; (b) personal property taxes; (c) commercial rent or occupancy taxes; (d) taxes or assessments, charges, license fees, municipal liens, levies, excise taxes, impact fees, or imposts, whether general or special, ordinary or extraordinary, that at any time may be levied for any reason by the State, County, City (subject to the Development Agreement) or any other tax or assessment levying body; and (e) any fines, penalties, interest, fees, costs or expenses arising from the failure to make timely payment of the foregoing. Each Imposition, or installment thereof, shall be paid not later than the Due Date therefor. However, if by law any Imposition may at the option of the payor be paid in installments (whether or not fines, penalties, interest, fees, costs or expenses shall accrue on the unpaid balance of such Imposition), Tenant may exercise the option to pay the same in such installments and shall be responsible for the payment of such installments only, together with applicable fines, penalties, interest, fees, costs or expenses, if any. Notwithstanding any provision of this Lease to the contrary, for the avoidance of doubt, (i) Tenant reserves its rights to contest any Impositions, as more completely described in Section 4.4, (ii) City, not Tenant, shall be responsible for any amount assessed, levied or imposed upon City by any Governmental Authority with respect to the Landfill Parcel, as more completely described in Section 4.2, and (iii) City, and not Tenant, shall be responsible to pay, prior to delinquency, any documentary transfer tax or similar amount assessed, levied or imposed relating to creation of this Lease, the Term or the granting of a leasehold estate to Tenant under this Lease.

4.2 Possessory Interest; Impositions on Landfill Parcel. City owns the fee interest in the Landfill Parcel and the Phase [ ] Airspace Parcel, which on the Commencement Date are not subject to certain amounts that would otherwise be assessed, levied or imposed thereon by a

Governmental Authority on account of the status of City as a Governmental Authority. Under Section 24.3, City is prohibited from transferring, directly or indirectly, its fee interest in the Landfill Parcel or in the Phase [ ] Airspace Parcel. Nevertheless, if for any reason such fee interest or any part thereof or interest therein is directly or indirectly transferred to a Person that is subject to amounts assessed, levied or imposed thereon by any Governmental Authority, or for any other reason such fee interest becomes subject to such amounts, (a) City and not Tenant shall be responsible therefor and on account of any such transfer, without reimbursement from Tenant, and (b) the successor in interest to City as the fee owner of the Phase [ ] Airspace Parcel and/or the Landfill Parcel shall be responsible for payment, without reimbursement from Tenant, for any documentary transfer or similar taxes or taxes in lieu thereof that are or become payable on account of any change from time to time in the ownership of the fee ownership of the Phase [ ] Airspace Parcel and/or the Landfill Parcel. All amounts payable by City (or any successor in interest as the fee owner of the Phase [ ] Airspace Parcel and/or of the Landfill Parcel) shall be paid by such City (or such successor in interest) prior to the delinquency date therefor and if either (i) City (or such successor in interest) shall fail to make a payment required to be made by it under this Section 4.2 (or in the last sentence of Section 4.1) on a timely basis, and such failure continues for ten days following delivery of notice thereof by Tenant to City (or such successor in interest), or (ii) such payment may only be made by Tenant, then Tenant shall have the right to make such payment on behalf of City (or such successor in interest) and following such payment Tenant shall be entitled to be reimbursed by City (or such successor in interest) (within ten days after City's (or such successor in interest's) receipt of a written invoice therefor) for such payment (together with any late charges, default interest or other fees applicable thereto) with interest thereon at the Default Rate from the date paid by Tenant until so reimbursed. If such amounts are not timely reimbursed by City (or such successor in interest), Tenant shall have the right of offset such unreimbursed amounts (and any such interest to the date of offset) against Rent otherwise payable under this Lease.

4.3 Impositions Beyond the Term. Any Imposition relating to a fiscal period, a part of which relates to the period after the Commencement Date and before the Expiration Date and part of which relates the period on or before the Commencement Date or on or after the Expiration Date or any earlier termination of the Term (whether or not such Imposition is assessed, levied or imposed or the Due Date therefor occurs during the Term) shall be apportioned between City and Tenant as of the Commencement Date or the Expiration Date (or the date of earlier termination of the Term), as the case may be, so that Tenant shall pay that portion of such Imposition to which that part of such fiscal period included in the period of time after the Commencement Date and before the Expiration Date (or the date of earlier termination of the Term) bears to such fiscal period.

4.4 Tenant's Contest.

(a) Tenant shall have the right to contest the amount or validity, in whole or in part, of any Imposition by appropriate proceedings diligently conducted in good faith, in which event payment of such Imposition may be postponed at the election of Tenant if and only as long as (i) neither the Phase [ ] Airspace Parcel nor any part thereof or interest therein or income therefrom or any other assets of or funds appropriated to City would, by reason of such postponement or deferment, be in danger of being forfeited

or lost, and (ii) neither City nor Tenant would by reason thereof be subject to any civil or criminal liability. Such proceedings shall be at Tenant's sole cost and expense, and Tenant shall be solely responsible for and shall indemnify and hold City harmless from the consequences thereof.

(b) In the event Tenant does not pay the contested amount when due, and the amount contested and unpaid (together with all interest and penalties in connection therewith and all charges that are reasonably estimated by Tenant to be assessed against or become a charge on the Premises or any part thereof in (or during the pendency of) the contest proceedings) exceeds five million dollars ($5,000,000) (or in the case of a Major Tenant Lease, the lesser of five million dollars ($5,000,000) or twenty-five percent (25%) of the subject Imposition), subject to CPI Adjustment on the first day of each Lease Year (but not including the first day of the first Lease Year), Tenant shall have either (i) deposited with the Impositions Depository, prior to or simultaneously with commencement of the contest proceedings, an amount equal to one hundred percent (100%) of the amount so contested and unpaid and such estimated charges or (ii) delivered to City a letter of credit in favor of City with a face amount equal to the amount so contested and unpaid and such estimated charges issued by an Institutional Lender (or other security in form and substance approved by City).

(c) Upon the termination of such proceedings, Tenant shall pay the amount of such Imposition or part thereof as finally determined in such proceedings (to the extent the payment was deferred during the prosecution of such proceedings), together with any costs, fees (including attorneys' fees and disbursements), interest, penalties or other liabilities imposed on Tenant in connection therewith. Promptly upon such payment, the Impositions Depository shall return and City shall cause the Impositions Depository to return, with interest, if any, any amount deposited with it in respect of such Imposition; provided, that the Impositions Depository, at Tenant's request (or, upon Tenant's failure to make such payment in a timely manner, at City's request) shall disburse such amounts and interest directly to the taxing authority or other Person to whom such payments are to be made and any remaining such amounts and interest shall be returned promptly to Tenant and the payment of any remaining balance of such Imposition not satisfied by such direct disbursement by the Impositions Depository shall remain the sole responsibility and obligation of Tenant.

(d) Tenant shall notify City of any such contest involving an amount of two million dollars ($2,000,000) or more (or in the case of a Major Tenant Lease, the lesser of two million dollars ($2,000,000) or twenty-five percent (25%) or more of the subject Imposition) and shall deliver to City copies of any applications in connection with any such contest within a reasonable period following Tenant's submission of the same to the applicable taxing authority.

4.5 City Cooperation. City shall not be required to join in any proceedings referred to in Section 4.4 unless Applicable Law so requires or requires that such proceedings be brought by or in the name of City, in which event City shall join and reasonably cooperate in such proceedings, or permit the same to be brought and pursued by Tenant in City's name. In no event shall City be liable to pay the amount of any Imposition determined to be payable as a result of any such proceedings. Further, City shall not be liable for the payment of any costs or expenses incurred by City in connection with any such proceedings, and Tenant agrees to reimburse City for any and all costs or expenses that City may reasonably sustain or incur in connection with any such proceedings, including reasonable attorneys' fees and disbursements. If Tenant institutes a proceeding referred to in Section 4.4 and Applicable Law does not require that such proceeding be brought by and/or in the name of City, City, nevertheless, shall, at Tenant's sole cost and expense, reasonably cooperate with Tenant in any such proceeding.

4.6 Invoices for Impositions. Tenant shall make all necessary arrangements with the applicable taxing authorities to have invoices for Impositions sent directly to Tenant. At Tenant's request, City shall promptly cooperate in making such arrangements. If after the Commencement Date City receives any invoices for Impositions payable by Tenant hereunder, City shall promptly forward the same to Tenant, but City's delay in forwarding or failure to forward such invoices to Tenant shall not relieve Tenant of its obligation to pay such Impositions.

4.7 Separation of Tax Assessment Parcels. City agrees to cooperate reasonably with Tenant in any applications to be made by Tenant for the creation of a separate tax parcel or parcels within the Premises, including the execution of any documents that may be required by a Governmental Authority in connection therewith. The costs associated with any such applications for a separate tax parcel, including surveying costs, and the expenses reasonably incurred by City in cooperating with Tenant, shall be paid by Tenant.

4.8 Public Financing **[add as applicable]** As material consideration for the City entering into this Lease, Tenant shall comply with all of the covenants and acknowledgements set forth in Attachment 1 attached hereto related to the public financing and special tax matters related to the Premises.

ARTICLE 5
CC&RS; MASTER ASSOCIATION

5.1 CC&Rs. The Phase [ ] Airspace Parcel is subject to the CC&Rs, and during the Term City and Tenant shall be entitled to all of their respective rights and benefits under the CC&Rs.

5.2 Master Association. City has heretofore approved the Master Association Documents as in effect on the Commencement Date. City will accept the performance by the Master Association of any obligation of Tenant hereunder.

EXHIBIT G-2
FORM OF GROUND LEASE (PHASES 2-7)

ARTICLE 6
FURTHER PARCELIZATION

6.1 Parcelization. Tenant shall have the right from time to time to create additional legal parcels (each, a "**New Parcel**", and the creation of such parcel, a "**Parcelization**") within the Premises in order to create condominiums or other common ownership schemes, a separate legal parcel for all or a portion of a particular Building, a Major Occupant Fee Parcel or otherwise.

ARTICLE 7
MAJOR OCCUPANT PURCHASE OPTION AND MAJOR OCCUPANT NEW LEASES

7.1 Major Occupants. The Parties acknowledge that (i) it is critical to the success of Tenant's efforts with respect to the Premises and the overall Project that Tenant be able to attract to the Premises and the Project the most significant and highest quality business occupants, including major office space occupants, hotel operators and retail project and/or operation operators and/or occupants and (ii) a necessary prerequisite to attracting certain of such occupants (particularly those considering multiple locational alternatives) to the Premises and the Project is the ability of the prospective major occupant to either acquire a fee simple equity interest in the real estate property to be occupied (as opposed to acquiring a leasehold or subleasehold interest for occupancy) or to directly assume the role of the tenant under a ground lease with the City for the subject property.

7.2 Major Occupant Purchase Option. Subject to the provisions of this Article 7, Tenant is hereby granted the option (the "**Major Occupant Purchase Option**") from time to time during the Term to purchase City's fee simple interest in that portion of the Phase [ ] Airspace Parcel designated by Tenant to be ultimately purchased by a Major Occupant (a "**Major Occupant Fee Parcel**") for a cash purchase price (a "**MO Purchase Price**") equal to the positive difference between (i) the then fair market value of the Major Occupant Fee Parcel and (ii) the Premium Costs allocated to the Major Occupant Fee Parcel under this Article 7. A "**Major Occupant**" shall be a prospective occupant which has agreed to occupy or operate (as applicable) not less than one hundred thousand rentable square feet of Building(s) and the Major Occupant Fee Parcel shall comprise that portion of the Phase [ ] Fee Parcel that the Major Occupant has agreed to occupy or operate within a reasonable period of time following the MO Purchase Closing.

7.3 Exercise of Major Occupant Purchase Option. Each Major Occupant Purchase Option shall be exercised by Tenant by delivery of notice of exercise not later than seventy-five (75) days prior to the proposed closing date for the purchase from City of the Major Occupant Fee Parcel, which notice of exercise shall (i) identify by plot plan and legal description the proposed Major Occupant Fee Parcel, (ii) identify the proposed Major Occupant and provide a reasonable description of its qualifications as a Major Occupant, (iii) provide a reasonable description of the Major Occupant's proposed use of the Major Occupant Fee Parcel, and (iv) identify a proposed closing date for the purchase from City of the Major Occupant Fee Parcel and for the MO Purchase Closing.

7.4 Determination of Fair Market Value. For purposes of the Major Occupant Purchase Option, in determining the fair market value of the Major Occupant Fee Parcel, the Parties shall utilize the definition of Phase [ ] Airspace Parcel Fee Fair Market Value (with the exception that the valuation shall be of the Major Occupant Fee Parcel alone, not the entire Phase [ ] Airspace Parcel) and in the event that the parties are unable to agree on such fair market value, the Parties shall determine the same in accordance with the procedure set forth in Section 3.4. Approval by City and Tenant of the MO Purchase Price ultimately determined shall be a condition of the MO Purchase Closing.

7.5 MO Purchase Closing. Prior to the closing of the Major Occupant Fee Parcel purchase, Tenant shall notify City as to (i) the amount, if any, of Premium Costs required to be expended by the Major Occupant following its purchase, and the amount of Required Initial Infrastructure, if any, required to be provided by the Major Occupant following its purchase, (ii) **[Phase 2 and Phase 3 only if applicable]** the Required Buildings (as to number and square footage) included in the Major Occupant Fee Parcel and any Required Buildings to be constructed by the Major Occupant following the closing of its purchase (a "**MO Purchase Closing**"), and (iii) the Allowed Square Footage allocated to the Major Occupant Fee Parcel. In each case, all such rights and/or obligations so allocated to the Major Occupant by Tenant shall reduce by the same amount the corresponding rights and obligations of Tenant under this Lease, the DDA and the other Project Documents. At the MO Purchase Closing, Tenant and the Major Occupant shall execute and deliver documents prepared by Tenant (and approved by City) evidencing such allocations. Also, at the MO Purchase Closing, (i) City and Tenant shall enter into an amendment of this Lease (reasonably prepared by Tenant and approved by City) providing for the termination of this Lease as to the Major Occupant Fee Parcel and (ii) the Major Occupant, City and Tenant shall enter into covenants, conditions and restrictions governing Major Occupant's use and operation of the Major Occupant Fee Parcel reasonably prepared by Tenant (and approved by City) covering the rights and obligations of such parties (as applied to the Major Occupant Parcel) with respect to the noneconomic matters which were applicable to the Premises generally prior to MO Purchase Closing under this Lease (including a duplication of all rights and obligations benefiting and burdening Tenant and City relating to the Landfill and the Landfill Parcel under this Lease for the benefit and burdening of the Major Occupant and City as to the Major Occupant Fee Parcel), the DDA, the CC&Rs and other Project Documents (and otherwise governing the interplay of the Major Occupant Parcel with the Premises after the MO Purchase Closing).

7.6 MO Purchase Closing Conditions. In order to facilitate the proposed acquisition by the Major Occupant of the Major Occupant Fee Parcel, at the election of Tenant in its sole and absolute discretion, the transactions shall be structured such that the fee simple interest of City in the Major Occupant Fee Parcel shall be either (i) first sold to Tenant, provided that it shall be a condition of such transfer to Tenant that such fee simple interest shall be concurrently thereafter conveyed by Tenant to the Major Occupant or (ii) sold directly by City to the Major Occupant. City's obligation hereunder to so sell and transfer the Major Occupant Fee Parcel in question shall be conditional upon (a) Tenant reasonably demonstrating that the proposed Major Occupant qualifies as a Major Occupant hereunder and that such Person's proposed use and occupancy of the Major Occupant Fee Parcel is compatible with any applicable DAP, (b) the Major Occupant agreeing to occupy through it and its Affiliates not less than eight-five percent (85%) of the planned Building square footage if the primary use planned for the Major Occupant

Fee Parcel is retail, or fifty percent (50%) of the planned Building square footage if the primary use planned for the Major Occupant Fee Parcel is office, in either case, for a reasonable period (not less than ten years) and (c) Tenant creating the Major Occupant Fee Parcel as a New Parcel in compliance with the California Subdivision Map Act, section 66400 et seq. of the California Government Code (the "**Map Act**"). The MO Purchase Price shall be payable to City in cash at the MO Purchase Closing, and the form of the purchase and sale agreement, all conveyance documents and all relevant closing cost allocations and/or prorations shall be consistent with the then custom of Santa Clara County for sales of raw land. The Parties shall work in good faith together to facilitate a closing of Major Occupant purchase of the Major Occupant Fee Parcel consistent with the schedule therefor of the Major Occupant, to the extent reasonably possible.

7.7 Major Occupant Parcel Lease.

7.7.1 Major Occupant Lease. If determined reasonably necessary by Tenant to attract a Major Occupant to the Project, Tenant may from time to time create a New Parcel for the benefit of a Major Occupant and request that City enter into a new ground lease with the Major Occupant for such New Parcel on terms substantially similar to those in this Lease but in compliance with this Section 7.7 (each such lease, a "**Major Occupant Lease**"). The rights and obligations of Tenant under this Lease and the DDA that are allocated to the Major Occupant Lease and the Major Occupant are referred to herein as the "**New Parcel Share**". The combination of the New Parcel Share and the rights and obligations of Tenant remaining under this Lease and the DDA following the creation of the Major Occupant Lease shall be the same in all material respects as the rights and obligations of Tenant under this Lease and the DDA immediately prior to the execution and delivery of the Major Occupant Lease. Tenant shall have the right to fashion the New Parcel Share in such manner as is commercially reasonable in the circumstances. Tenant shall prepare the form of Major Occupant Lease for review and approval by City. At its expense, Tenant shall take all actions necessary to cause each New Parcel to comprise a separate tax lot and a separate legal lot under the Map Act. City, in its capacity as fee owner of the Phase [ ] Airspace Parcel, shall, promptly upon the request of Tenant, execute all documents, notices, applications and other instruments as shall be necessary or convenient to the creation of any New Parcel or Major Occupant Lease desired by Tenant.

7.7.2 Major Occupant Lease Requirements. Without limiting the generality of Section 7.7.1, each Major Occupant Lease shall specify: (a) the Allowed Square Footage allocated to the New Parcel; (b) any Initial Improvements that the Major Occupant will construct or cause to be constructed; (c) the Base Rent as of the Commencement Date thereunder (as such terms are defined in the Major Occupant Lease) and all escalations payable with respect thereto; (d) the Premium Costs allocated to the New Parcel; (e) the legal description of the New Parcel; (f) the easements and rights of way over and through the Landfill Parcel that are the same as those contained in Section 2.3 and related to the New Parcel; (g) all other provisions needed to include the New Parcel Share; and (h) such other matters as are required by the nature of the Major Occupant Lease.

7.7.3 Lease Amendment. Simultaneously with the execution and delivery of each Major Occupant Lease, (a) City and Tenant shall each execute, acknowledge and deliver to the other an amendment to this Lease in form and substance reasonably satisfactory to City and Tenant that (i) replaces the legal description of the Premises attached hereto with a new legal

description of the Premises that omits the premises demised by such Major Occupant Lease and (ii) revises this Lease to eliminate the New Parcel Share and to otherwise make this Lease consistent with the provisions of the Major Occupant Lease; (b) City and Tenant shall each execute, acknowledge and deliver an amendment to the Memorandum of Lease to reflect the new legal description of the Premises, which amendment shall be recorded in the Official Records; (c) City and Major Occupant shall each execute, acknowledge and deliver to the other a memorandum of lease to the Major Occupant Lease, which either of them may record in the Official Records; and (d) City, Tenant and the New Parcel Tenant shall each execute, acknowledge and deliver all transfer tax forms required to be filed in connection with the creation of the Major Occupant Lease, it being agreed that any such transfer taxes are to be paid by Tenant or the New Parcel Tenant and not by City.

7.7.4 Rights of Tenant. Upon the execution and delivery of a Major Occupant Lease by City and the Major Occupant, Tenant shall have no rights or obligations under this Lease with respect to the Major Occupant Lease or the New Parcel covered thereby and shall be automatically and conclusively be released from all further liabilities arising with respect to such New Parcel or under the Major Occupant Lease arising from and after the date thereof. In addition, no Event of Default under and as defined in any Major Occupant Lease (including with respect to the payment of rent) shall be deemed an Event of Default under and as defined in any other Major Occupant Lease or under this Lease, and no Event of Default under this Lease (including with respect to the payment of Rent) shall be deemed an Event of Default under and as defined in any Major Occupant Lease.

7.7.5 Conditions Precedent. As conditions to creating a Major Occupant Lease, (a) there shall be no Event of Default hereunder, (b) the Person who will be the Major Occupant under the Major Occupant Lease shall have been approved by the City in accordance with the requirements governing a Consent Transfer under Sections 11.3.3 and 11.4 hereof, and (c) each Leasehold Mortgagee shall have consented in writing thereto.

7.7.6 Reimbursement of City Costs. Within thirty days after receipt of an invoice from City (together with reasonably substantiating evidence of costs), Tenant or the New Parcel Tenant under the Major Occupant Lease shall pay any and all reasonable costs and expenses (including reasonable attorneys' fees and expenses) incurred by City in connection with reviewing and implementing any request for a Major Occupant Lease.

ARTICLE 8
INSURANCE

8.1 Required Insurance. Tenant shall, at its sole cost and expense, provide and keep in full force and effect at all times during the Term the insurance coverages in accordance with the insurance requirements as described in Section 8.2 and on Exhibit J.

8.2 Other Insurance Requirements. In addition to the requirements specified in Exhibit J, Tenant and City shall cooperate in connection with the adjustment and collection of any insurance recoveries that may be due in the event of loss, and Tenant shall furnish City with such proofs of loss and other instruments as City may reasonably require to recover any proceeds from the required insurance policies. Such policies may be carried under a blanket policy

covering the Premises and other locations of Tenant and Tenant's Affiliates, if such blanket policy contains an endorsement that guarantees a minimum limit available for the Premises equal to the minimum limits required by this Article and that the minimum limits shall not be reduced for claims made with respect to other properties, and otherwise complies with this Article.

8.2.1 Tenant shall not carry separate comprehensive general liability or property damage insurance other than personal property and damage insurance concurrent in form or contributing in the event of loss with that required by this Lease to be obtained by Tenant, unless City is included therein as an additional insured with respect to such liability or a loss payee with respect to property, as their interests may appear, with loss payable as provided in this Lease. Tenant shall promptly notify City of the carrying of any such separate comprehensive general liability or property damage insurance and shall cause a certified copy of the policy evidencing such insurance to be promptly delivered to City as required in Exhibit J. The foregoing shall not prevent Tenant from carrying so-called "umbrella" or "excess" insurance or insurance that is not required by this Article 8 to be obtained, and City shall not be required to be named as an insured or additional insured under any of the insurance described in this sentence.

8.2.2 All general liability insurance and property damage liability insurance shall specifically insure the performance by Tenant of its indemnity obligations contained in Article 18 of this Lease, but the limits of such insurance shall not limit those indemnity obligations.

8.3 CPI Adjustment. All dollar amounts referenced in Exhibit J shall be subject to CPI Adjustment on the first day of each Lease Year (but not including the first day of the first Lease Year).

ARTICLE 9
CASUALTY AND USE OF INSURANCE PROCEEDS

9.1 Tenant's Obligation to Restore. If all or any portion of the Improvements located on or within the Premises (including any portions thereof encroaching on adjacent property) are destroyed or damaged in whole or in part by fire or other casualty of any kind or nature, ordinary or extraordinary, foreseen or unforeseen, and whether covered by insurance or not (a "**Casualty**"), upon acquiring actual knowledge of such Casualty, Tenant shall give City prompt notice thereof, and subject to Section 9.7, shall with reasonable promptness undertake and pursue with reasonable diligence to completion (subject to Force Majeure) the repair, alteration, restoration, replacement and/or rebuilding of (collectively, "**Restore**," and any such repair, alteration, restoration, replacement and/or rebuilding, a "**Restoration**") such portions of the Improvements and Buildings within the Premises as shall have been so damaged or destroyed. Any Restoration shall be either, as selected by Tenant, to a condition generally comparable to (i) the condition of the Improvements so damaged existing immediately prior to such occurrence (the "**Pre-Casualty Condition**"), or, (ii) with respect to any Building or any portion thereof, a condition that may differ in type and quality from the Pre-Casualty Condition due to changes in circumstances (and taking into account all relevant circumstances, including, without limitation, market feasibility) then applicable to Tenant, the Premises and this Lease as reasonably determined by Tenant (the "**Restoration Standard**"). All Restoration work following a Casualty ("**Restoration Work**") shall be at the sole cost and expense of Tenant; provided, that to the extent that such Casualty was caused, contributed to or exacerbated by City Fault, the

performance of such Restoration Work shall be, to that extent, at the cost and expense of City. In the case (and to the extent) where City is responsible for the cost and expense of performance of such Restoration Work, City shall pay such costs and expenses (as reasonably estimated by the Parties) to Tenant in progress payment installments as the Restoration Work in question progresses, in each case within a reasonable period following submission of a reasonably customary application for payment by Tenant to the City indicating the cost of labor and materials purchased and delivered to the Premises for incorporation into such Restoration, or incorporated therein since the last previous application, and due and payable or paid by Tenant, and otherwise conforming to the provisions of Section 9.4.1 and Section 9.4.2 as if City were the Restoration Fund Depository and the costs and expenses payable by City in connection with the Restoration Work were the Restoration Funds.

9.2 Restoration Plans and Specifications.

9.2.1 Tenant shall submit to City, not later than ten (10) days (sixty (60) days in the case where twenty percent (20%) or more of the rentable area of a Building or Buildings is materially damaged by the Casualty in question and is to be Restored under Section 9.1 (a "**Major Restoration**")) prior to the commencement of any Restoration, plans and specifications for the Restoration Work relating to such Restoration (the "**Proposed Restoration Plans and Specifications**") prepared by a licensed professional engineer or registered architect selected by Tenant for the performance of the Restoration; provided, however that notwithstanding the foregoing, nothing contained in this Section 9.2 shall prevent or restrict Tenant from (a) making any immediately necessary repairs in the event of an emergency situation or to comply with Applicable Laws or (b) making repairs immediately required to be made to comply with the requirements of any Sublease or other agreement binding on Tenant (collectively, "**Restoration Submission Exceptions**"), in each case without compliance with the foregoing approval process. Such Proposed Restoration Plans and Specifications (but not the Restoration Submission Exceptions) shall be subject to the review and approval of City, which review and approval shall be limited to the determination of whether such Proposed Restoration Plans and Specifications are substantially consistent with the Restoration Standard applicable to such Restoration; provided, however, if such Proposed Restoration Plans and Specifications (or any portion thereof) are substantially the same as (or not materially different from) the prior plans and specifications for the Improvements and/or Buildings (previously submitted by Tenant to City) damaged by the Casualty in question, City's review and approval of such Proposed Restoration Plans and Specifications (or portion thereof) shall not be required. If such Proposed Restoration Plans and Specifications are not substantially consistent with the Restoration Standard, and the deviations from the Restoration Standard are not reasonably acceptable to City, then City shall so notify Tenant, specifying in reasonable detail the basis on which it alleges such Proposed Restoration Plans and Specifications are not substantially consistent with the Restoration Standard (and are otherwise not reasonably acceptable to City). Upon receipt of such notice from City, Tenant shall then either (i) cause such Proposed Restoration Plans and Specifications to be revised and resubmitted to City for review and approval in accordance with the Restoration Standard under Section 9.1, or (ii) arbitrate City's disapproval of such Proposed Restoration Plans and Specifications under Article 28.

9.2.2 If City fails to approve or disapprove any Proposed Restoration Plans and Specifications within thirty (30) days (or sixty (60) days if that is the applicable time period

under Section 9.2.1) after Tenant submits the same to City, Tenant may provide to City a notice, which notice shall be headed with the following legend in a minimum of fourteen point type, all capital letters: "THIS NOTICE IS BEING GIVEN UNDER SECTION 9.2 OF THAT CERTAIN GROUND LEASE (CITY PLACE SANTA CLARA – PHASE [_]). YOUR FAILURE TO RESPOND WITHIN FIFTEEN (15) DAYS WILL RESULT IN YOUR DEEMED APPROVAL OF THE PROPOSED RESTORATION PLANS AND SPECIFICATIONS" (such notice, a "**Restoration Notice**"). If City does not approve or disapprove (based on the Restoration Standard) such Proposed Restoration Plans and Specifications within fifteen days after Tenant provides City with the Restoration Notice, City shall automatically (without further notice or action) conclusively be deemed to have approved such Proposed Restoration Plans and Specifications. As used herein, the term "**Approved Restoration Plans and Specifications**" means the final Proposed Restoration Plans and Specifications for Restoration Work that have been approved (or shall have been deemed approved) by City under this Section 9.2.

9.2.3 Tenant may make changes (which individually and in the aggregate are non-material) to the Approved Restoration Plans and Specifications for particular Restoration Work without the need to obtain the consent or approval of City. However, if Tenant desires to change the Approved Restoration Plans and Specifications for particular Restoration Work (other than the Restoration Submission Exceptions) in any material respect, Tenant shall submit its proposed changes (a "**Change**") to City for approval, which shall be limited to a determination as to whether the Change in question substantially complies with the Restoration Standard. City shall promptly review the proposed Changes to determine whether or not the Approved Restoration Plans and Specifications as modified by the proposed Change(s) substantially conform to the Restoration Standard. If City determines that the same do not so conform (and are not otherwise reasonably acceptable to City), City shall so notify Tenant, specifying in reasonable detail the aspects of such proposed Changes that do not so conform (and which are not reasonably acceptable to City). Following such notice, Tenant shall submit revised plans and specifications for the Restoration Work Changes to City for review. Each review by City of Tenant's submissions of Changes shall be carried out within twenty days after the date of delivery thereof, and if City does not notify Tenant of its determination within such twenty day period, City shall automatically be deemed to have agreed that the proposed Changes are satisfactory.

9.2.4 All Approved Restoration Plans and Specifications shall comply with all Applicable Laws, including City building codes, as well as the requirements of the CC&Rs, to the extent applicable.

9.3 Progress Payments for Major Restorations.

9.3.1 Prior to commencing any Major Restoration, Tenant shall furnish City with an estimate of the costs thereof, prepared by the licensed professional engineer or registered architect selected by Tenant.

9.3.2 Notwithstanding any provision of this Lease to the contrary, as to any Major Restoration, if the provisions of any Leasehold Mortgage then in effect requires that Tenant deposit with the Leasehold Mortgagee or any designee thereof all or any material portion of the cost of such Major Restoration for use solely in connection with the performance and completion

of such Major Restoration (a "**Mortgage Restoration Procedure**"), Tenant shall comply with the requirements of such Mortgage Restoration Procedure, as amended by Tenant and such Leasehold Mortgagee from time to time, and Tenant shall not be required to comply in any manner with the requirements of Sections 9.3.3, 9.3.4, and 9.4 in connection with such Major Restoration.

9.3.3 Subject to Section 9.3.2, if the cost of any Major Restoration is greater than twenty percent (20%) of the then replacement cost of the entirety of all Buildings damaged by the Casualty in question, all proceeds of insurance payable in respect of damage to such Improvements, if any, and any additional funds as may reasonably be needed from Tenant to complete such Restoration (the "**Shortfall Amount**") (such insurance proceeds and Shortfall Amount are collectively referred to herein as the "**Restoration Funds**"), shall be deposited with the Restoration Fund Depository before being utilized for any Restoration. However, in lieu of depositing the Shortfall Amount with the Restoration Fund Depository, Tenant may deliver to City an irrevocable, continuing guaranty of payment and performance in form and substance reasonably acceptable to City for such Shortfall Amount from a creditworthy guarantor subject to the reasonable approval of City.

9.3.4 Subject to the provisions of Section 9.4, all Restoration Funds deposited with the Restoration Fund Depository under Section 9.3.3 shall be paid to Tenant in progress payment installments as the Restoration Work in question progresses, in each case within a reasonable period following submission of a reasonably customary application for payment by Tenant to the Restoration Fund Depository indicating the cost of labor and materials purchased and delivered to the Premises for incorporation into such Restoration, or incorporated therein since the last previous application, and due and payable or paid by Tenant. If any vendor's, mechanic's, laborer's, or materialman's lien is filed against the Premises or the Improvements or any part of either thereof, or if any public improvement lien relating to the Restoration is created by Tenant and is filed against City (or any assets of, or funds appropriated to City), Tenant shall promptly satisfy and discharge all such liens, by bonding or otherwise. Upon completion of and payment in full for the Restoration Work by Tenant, the balance of the Restoration Funds deposited with the Restoration Fund Depository under Section 9.3.3 shall be paid to Tenant, subject to the rights of any Leasehold Mortgagee or Mezzanine Lenders to such balance of funds.

9.4 Conditions Precedent to Disbursements. Subject to Section 9.3.2, the following shall be conditions precedent to each progress payment to be made by the Restoration Fund Depository to Tenant with respect to Restoration Funds under Section 9.3.4:

9.4.1 Tenant shall have submitted an application for payment (i) certifying that the sum then requested to be withdrawn either has been paid by Tenant (or is due and payable) to contractors, subcontractors, materialmen, engineers, architects or other Persons (whose names and addresses shall be stated) who have rendered or furnished services or materials for the Restoration, (ii) giving a brief description of such services and materials and the principal subdivisions or categories thereof and the several amounts so paid or due to each of said Persons in respect thereof, (iii) stating in reasonable detail the progress of the Restoration Work in question up to the date of said certificate and/or application for payment, (iv) certifying that no part of such expenditures has been or is being made the basis, in any previous or then pending requisition, for the withdrawal of the Restoration Funds or has been made out of the Restoration

Funds previously received by Tenant, and (v) certifying that the balance of the Restoration Funds held by the Restoration Fund Depository (whether from the proceeds of insurance or by deposit of Tenant's own funds) will be sufficient upon completion of the Restoration to pay for the same in full; and

9.4.2 Tenant shall have furnished to City an official search, or a certificate of a title insurance company reasonably satisfactory to City, or other evidence reasonably satisfactory to City, showing that there has not been filed any vendor's, mechanic's, laborer's or materialman's statutory or other similar lien affecting the Premises or any portion thereof, or any public improvement lien with respect to the Premises or the Restoration Work affecting City, or the assets of, or funds appropriated to, City, which had not been discharged of record (by bonding or otherwise), except such as will be discharged upon payment of the requisite amount out of the sum then requested to be withdrawn.

9.5 Additional Requirements for Restoration. Tenant shall deliver to City (a) prior to commencement of any portion of the Restoration Work, any material building permits or discretionary governmental authorizations with respect thereto required by any Governmental Authority with respect to such portion then being undertaken, (b) prior to commencement of such Restoration, evidence that the insurance policies required under Article 8 that pertain to the Restoration are in effect, and (c) within thirty (30) days after the completion of any Restoration, a complete set of "as-built" plans therefor, together with a statement in writing from a registered architect or licensed professional engineer that such plans are complete and correct in all material respects.

9.6 No Abatement. Subject to Sections 9.7 and 9.8, Tenant hereby acknowledges and agrees that it shall have no right of reduction, abatement, setoff, refund or deduction of Rent by reason of damage to or total, substantial or partial destruction by Casualty of the Improvements or any part thereof, and, subject to Section 9.7, Tenant shall have no right to terminate this Lease on account of any such Casualty. Subject to the foregoing, nothing herein shall be deemed to limit or restrict any remedies available to Tenant at law or otherwise with respect to obligations of City under this Lease with respect to any Restorations (or the Casualty damage that is the subject thereof).

9.7 Termination.

9.7.1 Damage Near End of Term. Notwithstanding Section 9.1, in the event that the Casualty occurs on or after the date which is ten (10) year prior to the Expiration Date and the cost of Restoration (as reasonably determined by Tenant) is greater than twenty-five percent (25%) of the then fair market value of the Leasehold Interest (including the Improvements), and such Casualty was not caused by the misconduct of Tenant, Tenant may, at its option, terminate this Lease by notice ("**Termination Notice**") given to City no later than thirty (30) days after the date of such Casualty, provided all of the following conditions are met:

(a) Tenant has paid all Rent then due and all other amounts then payable by Tenant under this Lease through the date of the Casualty.

(b) Tenant has maintained in full force and effect the insurance policy or policies required to be maintained by Tenant under this Lease, and Tenant pays City an amount equal to such policy's or policies' deductibles.

(c) Tenant assigns to City all of its right, title and interest in the proceeds of any insurance covering the Casualty and reasonably cooperates with City's efforts to obtain such insurance proceeds (which obligation to assign and cooperate shall survive any termination of this Lease).

(d) Tenant has delivered to City all insurance proceeds actually received by Tenant covering the Casualty under the insurance policies that are required to be maintained by Tenant under this Lease.

(e) There are no Subtenants or other occupants whose leases or occupancy agreements have not been validly terminated by reason of such Casualty.

(f) Tenant has completed the Casualty Termination Work in a good and workerlike manner, lien free and in compliance with all Applicable Laws.

If such Termination Notice is given, this Lease shall cease and come to an end as of the later of the date forty five (45) days after the date City receives the Termination Notice and the date all of the foregoing conditions are met. Subject to the requirements of Section 9.7.1, Tenant shall not be required to perform any Restoration Work relating to such Casualty if the foregoing conditions are met. Tenant shall continue to pay all Base Rent and all other amounts payable by Tenant under this Lease, including Impositions, until all insurance proceeds covering the Casualty are paid to City. If, for any reason, all insurance proceeds are not paid to City or if the insurance company refuses to pay the insurance proceeds to City, Tenant's Termination Notice shall be void and this Lease shall be deemed in full force and effect.

9.7.2 Casualty Termination Work. If Tenant exercises its option to terminate this Lease pursuant to Section 9.7.1 of this Lease, Tenant, at Tenant's sole expense, shall demolish and remove the Improvements (except as otherwise directed in writing by City, which direction shall be given to Tenant within thirty (30) days after City receives Tenant's Notice of Termination pursuant to Section 9.7.1), remove all debris, and return the affected land to a level graded condition (collectively, the "**Casualty Termination Work**").

9.8 Casualty Damage to the Landfill Parcel. Notwithstanding any provision of this Lease to the contrary, in the event of any Casualty damage to the Landfill Parcel that materially affects the use, function, structural, physical or systems integrity or value of the Airspace Parcel Easements (or of the Airspace Parcel Easement Areas) or the Buildings, Improvements, and/or equipment contained within the Premises, (a) City shall, at its expense, immediately take all such action as may be required to restore the full use, function, structural, physical or systems integrity and value of the Airspace Parcel Easements, the Airspace Parcel Easement Areas and the Premises, Buildings, Improvements and equipment and (b) Base Rent hereunder shall abate

on a basis proportionate to the loss of use (by Tenants and Subtenants) of the Premises and Buildings.

9.9 Allowed Square Footage on Casualty. If at any time during the Term, but after the Allowed Square Footage allocated to the Premises has been determined, the Buildings suffer a Casualty and the Restoration Standard requires that more or fewer square feet of Buildings are reconstructed in the Premises than were used in the original determination of Allowed Square Footage allocated to the Premises under the DDA, then the Allowed Square Footage shall be increased or reduced accordingly, but in no event to less than has been built and is functional following such reconstruction.

9.10 Disputes. All disputes arising under this Article 9 shall be resolved in accordance with Article 28.

ARTICLE 10
CONDEMNATION

10.1 Taking of All or Substantially All of Premises. For purposes of this Lease a "**Taking**" means all or any portion of the Premises, the Improvements, the Buildings, the Airspace Parcel Easements or any portion of the Landfill Parcel subject thereto being taken for any public or quasi-public purpose by any lawful power or authority through the exercise of the right of condemnation or eminent domain or by agreement among City, Tenant and those authorized to exercise such right in lieu thereof.

10.1.1 Termination Upon Total Taking. If the whole or substantially all of the Premises, the Buildings, the Improvements, the Landfill Parcel, or the Airspace Parcel Easement Areas are subjected to a Taking for any public or quasi-public purpose by any lawful power or authority (collectively, a "**Total Taking**"), this Lease shall terminate on the date of such Taking and the Rent payable by Tenant hereunder shall be equitably apportioned as of the date of such Total Taking. The phrase "substantially all of the Premises, the Buildings, the Improvements or the Airspace Parcel Easement Areas" means such portion thereof as when so taken would leave remaining a balance which (due either to the area so taken or the location of the part so taken in relation to the part not so taken and/or other relevant factors), would not, under then-current economic conditions, applicable zoning laws and/or building regulations then existing or prevailing, reasonably permit the profitable and economic operation under this Lease by Tenant of the Improvements and Buildings located on such remaining portions of the Premises for their permitted uses hereunder.

10.1.2 Allocation of Condemnation Proceeds in a Total Taking. In the event of a Total Taking, the award of damages received from the condemning authorities with respect to the Premises, the Buildings, the Improvements, or the Airspace Parcel Easement Areas, net of any amounts ("**Condemnation Expenses**") reasonably expended by Tenant or any Leasehold Mortgagee in negotiating and/or contesting the same (such net amount is referred to herein as "**Condemnation Proceeds**") shall be apportioned as follows:

(a) First, to any Leasehold Mortgagees and Mezzanine Lenders up to (but not exceeding) all sums secured by its Mortgage that remain outstanding as of the date of the Taking;

(b) Second, to the City in the amount of the City Residual Land Interest as of the date of the Taking;

(c) Third, if any Condemnation Proceeds remain available for distribution to Tenant and/or City after the payments called for by Section 10.1.2(a) and (b), Tenant shall receive the balance, if any, of such Condemnation Proceeds up to (but not exceeding) the fair market value of the Leasehold Interest not including the fair market value of the Buildings and the Improvements for the remaining unexpired portion of the Term of this Lease as of the date of the Taking;

(d) Fourth, if any Condemnation Proceeds remain available for distribution to Tenant and/or City after the payments under subparagraphs (a), (b) and (c) above, each such dollar of Condemnation Proceeds shall be distributed equally between City up to the value of any City Residual Improvements Interest as of the date of the Taking and Tenant up to the fair market value of the Buildings and the Improvements for the remaining unexpired portion of the Term of this Lease as of the date of the Taking;

(e) Fifth, if any Condemnation Proceeds remain available for distribution to Tenant and/or City after the payments under subparagraphs (a), (b), (c) and (d) above, such remaining Condemnation Proceeds shall be shared equally by City and Tenant;

provided, however, that notwithstanding any provision of this Lease to the contrary, if there is a Total Taking by City, and/or any Person established by or controlled by City, and/or for the purpose of making the Premises available, directly or indirectly, to or for the benefit of City and/or its residents, then one hundred percent of all Condemnation Proceeds related to the Total Taking in question shall be paid to Tenant.

10.2 Date of the Taking. For purposes of this Article 10, the "**Date of the Taking**" shall be deemed to be the earlier of (a) the date on which actual possession of the whole or substantially all, or a partial portion of the Premises, or a part thereof, as the case may be, is acquired by any lawful power or authority under applicable federal or California state law or (b) the date on which title to the Premises or a portion thereof shall have vested in any lawful power or authority under applicable federal or California state law.

10.3 Partial Taking; Tenant's Obligation to Restore. In the case of any Taking other than a Total Taking or a Temporary Taking (a "**Partial Taking**"), this Lease shall continue as to the portion of the Premises remaining and the following provisions shall apply:

10.3.1 Partial Taking; Abatement of Base Rent and Allocation of Condemnation Proceeds.

(a) In the case of any Partial Taking, Base Rent in effect as of the date of the Taking shall be reduced by the Partial Taking Rent Reduction Percentage.

(b) "**Partial Taking Rent Reduction Percentage**" means: (i) if the Partial Taking has an immaterial impact on the value, aesthetics and function of the Premises, Buildings and Improvements and shall affect less than two percent of both the Premises and Buildings, the percentage number corresponding to the greater of (A) the portion of the Premises (calculated in land area) lost to Tenant due to the Partial Taking and (B) the portion of the rentable area of the Buildings lost to Tenant due to the Taking, and (ii) in all other cases, the percentage number corresponding to the loss in the economic value of the Leasehold Interest as of the date immediately prior to the date of the Taking due to the Taking, taking into account all reasonably relevant factors for determining such damage and loss to the economic value of the Leasehold Interest.

10.3.2 Partial Taking Restoration. In the event of any Partial Taking, Tenant shall (subject to Force Majeure) undertake, with reasonably diligence, Restoration of any remaining portion of the Improvements and Buildings within the Premises (and damaged by the Taking) not the subject of such Partial Taking such that the remaining part of the Improvements and Buildings shall be complete, operable and in good condition and repair but the configuration, quality, and scope of such Restoration shall be limited to that which shall then be commercially reasonable, given all circumstances relevant to Tenant, the Premises and this Lease.

10.3.3 Partial Taking Allocation of Proceeds. In the event of any Partial Taking, the entirety of the Condemnation Proceeds for or attributable to the portion of the Premises, the Buildings or the Improvements which are the subject of such Partial Taking shall be paid to the Condemnation Proceeds Depository as shall be necessary to be disbursed to Tenant (in accordance with the procedures set forth in Section 9.3) for reimbursement of the costs of Restoration of the portion of the Buildings and/or Improvements of the same remaining; provided, however, that notwithstanding the foregoing, (i) if the provisions of any Leasehold Mortgage then in effect requires that Tenant deposit all or any material portion of the Condemnation Proceeds with the Leasehold Mortgagee or a designee thereof for distribution in accordance with and only for the Restoration (a "**Mortgage Condemnation Proceeds Procedure**"), Tenant shall comply with the requirements of such Mortgage Condemnation Proceeds Procedure, as amended by Tenant and such Leasehold Mortgagee from time to time, and Tenant shall not be required to comply with the requirements of this Section 10.3.3 (and the Condemnation Proceeds shall not be paid to a Condemnation Proceeds Depository), and (ii) in any event no Condemnation Proceeds shall be required to be deposited with the Condemnations Deposit Depository unless such proceeds exceed two million dollars; if such Condemnation Proceeds total less than such amount, all Condemnation Proceeds shall be paid directly to Tenant. Any Condemnation Proceeds award held by the Condemnation Proceeds Depository remaining after completion of Restoration Work shall be divided equally between City and Tenant (subject to the rights of any Leasehold Mortgagees and Mezzanine Lenders). Each of City and Tenant shall execute any and all documents that may be reasonably required by any

Party in order to facilitate collection by the other of its respective portion of the Condemnation Proceeds.

10.3.4 Temporary Taking. If the use of the whole or any portion of the Premises, Improvements, Airspace Easements or any other rights appurtenant to the Premises are the subject of a Taking for any public or quasi-public purpose by any lawful power or authority by the exercise of the right of condemnation or eminent domain or by agreement between Tenant and those authorized to exercise such right for a temporary period less than the remaining Term (a "**Temporary Taking**"), Tenant shall promptly notify City, and Tenant shall be entitled to receive for itself any and all Condemnation Proceeds received in connection with such Temporary Taking. If the Temporary Taking is a Total Taking and extends beyond the remaining Term, the Lease shall terminate as of the date of the taking and all Condemnation Proceeds received in connection therewith shall be apportioned between City and Tenant as of the termination date in accordance with the provisions of Section 10.1.2 hereof. If the Temporary Taking is not a Total Taking and extends beyond the remaining Term, the portion of the Condemnation Proceeds allocable to the period prior to the expiration date of the Term is to be paid to Tenant and the portion allocable to the period after the expiration date of the Term is to be paid City. Except where the Temporary Taking is a Total Taking and extends beyond the remaining Term (in which case the Lease shall terminate as provided above), the Term shall not be reduced or otherwise affected by such Temporary Taking and Tenant shall continue to pay in full the Rent payable by Tenant hereunder without reduction or abatement; provided, that if the Temporary Taking is by City, and/or any Person established by or controlled by City, and/or for the purpose of making the Premises, the Building or the Airspace Parcel Easements available, directly or indirectly to or for the benefit of City or its residents, then Tenant shall have the right to offset against Rent otherwise payable under this Lease any damages that it and its Subtenants suffer on account of such Temporary Taking to the extent Tenant does not receive Condemnation Proceeds in an amount equal to such damages.

10.4 Sale-in-Lieu of Condemnation. In the event of a negotiated sale of all or a portion of the Premises in lieu of condemnation, the proceeds of such sale shall be distributed as provided in this Article 10 as if such sale were a Taking and such proceeds were Condemnation Proceeds, and all other provisions of this Article 10 shall apply as if such sale were a Taking. Neither Party shall agree to such a sale without the prior consent of the other Party (which consent may be granted or denied in such Party's sole and absolute discretion).

10.5 Participation in Proceedings and Other Issues. City, Tenant and any Leasehold Mortgagee shall be entitled to file a claim and otherwise participate in any condemnation or similar proceeding and all hearings, trials and appeals in respect thereof. City, Tenant and its Leasehold Mortgagees shall be reimbursed for all Condemnation Expenses incurred by them from available Condemnation Proceeds prior to any other payments to the Parties under this Article 10. Each of City and Tenant shall execute any and all documents that may be reasonably required in order to facilitate collection by the other Party of its respective portion of the Condemnation Proceeds under this Article 10. City agrees that it shall not, directly or indirectly, condemn all or any portion of the Premises or Improvements thereon (or any interests therein).

10.6 Claims for Personal Property. Notwithstanding anything to the contrary contained in this Article 10, in the event of any permanent or temporary Taking of all or any portion of the Premises, the Buildings or the Airspace Parcel Easement Areas, (i) Tenant and its Subtenants (to the extent permitted under a Sublease) shall have the exclusive right to assert claims for any trade fixtures and personal property so taken that were the property of Tenant or its Subtenants and for relocation expenses of Tenant or its Subtenants, (ii) all awards and damages in respect thereof shall belong to Tenant and its Subtenants, and (iii) City hereby waives any and all claims to any part thereof. However, if there is no separate award or allocation for such trade fixtures or personal property, then Tenant and its Subtenants shall have the right to assert claims in the condemnation proceedings for the same.

10.7 Taking of the Landfill Parcel. If all or any portion of the Landfill Parcel is the subject of a Taking for any public or quasi-public purpose by any lawful power or authority by the exercise of the right of condemnation or eminent domain and such Taking includes part or all of the Airspace Parcel Easements and/or the Improvements contained within such easements and the condemning authority or the City does not offer to replace promptly at no cost to Tenant the portion of the Airspace Easements (and/or the Improvements contained therein) so taken (and thereafter to promptly replace the same at no cost to Tenant), or to promptly grant to Tenant easements that are substantially identical to the Airspace Parcels Easements (including as to term, function and usability), then Tenant shall be entitled to pursue any option available, at law or in equity, to recover any damage or loss it suffers on account of such Taking, and Tenant shall be entitled to recover one hundred percent of the proceeds available in any condemnation proceeding that is awarded to reimburse Tenant for such damage or loss and to repair any damage caused by such Taking.

ARTICLE 11
ASSIGNMENT, SUBLETTING, MORTGAGES, ETC.

11.1 Limitations on Tenant's Right to Transfer. Tenant represents and agrees that its undertakings pursuant to this Lease are for the purpose of development of the Premises and not for speculation in land holding. Tenant further recognizes that: (a) the qualifications and identity of Tenant are of particular concern to City in light of the importance of the Project to the general welfare of City residents; (b) City's is relying upon the qualifications and ability of Tenant to serve as the catalyst for development of the Premises and to assure the quality of the use, operation, and maintenance in the development of the Premises; and (c) such qualifications and identity are material considerations inducing City to enter into this Lease with Tenant. Therefore, Tenant's rights to transfer any right or interest under this Lease shall be governed strictly in accordance with the provisions of this Article 11, and no voluntary or involuntary successor in interest of Tenant shall acquire any rights or powers under this Lease except as expressly set forth herein.

11.2 Consent Transfer. Except as otherwise specifically provided in this Article 11 (for the avoidance of doubt, including in Section 11.5), Tenant shall not without the prior written consent of City (each, subject to the exclusions set forth herein, a "**Consent Transfer**"):

11.2.1 sell, assign, transfer, pledge, mortgage, encumber or grant a security interest in this Lease or in all or any portion of the Premises, except as otherwise permitted hereunder

(including Permitted Transfers under Section 11.5 hereof and to Leasehold Mortgagees or Mezzanine Lenders under Section 11.7 hereof); or

11.2.2 sell, assign, transfer, pledge, mortgage, encumber or grant a security interest in any interest of Tenant in this Lease or in all or any portion of the Premises, whether by operation of law or otherwise, nor shall any sale, Assignment, transfer, pledge, mortgage, or encumbrance or grant of a security interest be effected of all or any part of the issued or outstanding capital stock of a corporation that is Tenant or of its Controlling Owner, whether held directly or indirectly, and whether made voluntarily, involuntarily, by operation of law or otherwise, if the same shall result in a Change of Control of Tenant, nor shall there be any merger or consolidation of Tenant or of such Controlling Owner into or with another corporation, nor shall any of the same be effected with respect to any interest in a partnership that is Tenant or in a partnership that is its Controlling Owner, whether directly or indirectly, and whether made voluntarily, involuntarily, by operation of law or otherwise, if the same will or could result in a Change of Control of Tenant, nor shall any of the same be effected with respect to any managing member's interest in a limited liability company that is Tenant or in a limited liability company that is its Controlling Owner, whether directly or indirectly, and whether made voluntarily, involuntarily, by operation of law or otherwise, if the same will or could result in a Change of Control of Tenant (any of the transactions or events in the foregoing Sections 11.2.1 and 11.2.2 is referred to herein as an "**Assignment**").

Notwithstanding any provision of this Lease to the contrary, nothing contained in this Article 11 shall restrict in any manner, prohibit, require notice to, or require the consent or approval of City for (a) any Assignment or any form of transfer in or of the equity interests in any Person whose common stock is quoted on a recognized securities exchange such as the New York Stock Exchange or NASDAQ or (b) an Assignment or any form of other transfer of any equity interests in Tenant or any other Person that does not and could not, directly or indirectly, result in a Change of Control of Tenant or such other Person.

11.3 Conditions Precedent to Consent Transfers. Except as otherwise provided in this Article 11, Tenant shall only have the right to effect a Consent Transfer subject to and upon fulfillment of the following conditions precedent:

11.3.1 No Event of Default. No Event of Default by Tenant (or event subject to an outstanding notice by City could become an Event of Default) shall be outstanding and uncured as of the effective date of the proposed Consent Transfer, unless City has received adequate assurances satisfactory to City in its sole discretion that such Event of Default shall be cured in a timely manner either by Tenant or the transferee under the Consent Transfer.

11.3.2 Timing. **for Phases 2 and 3 if it includes Minimum Retail Buildings**]: Unless Section 22.4.2(a) of the DDA is waived by the City Council in its sole discretion and except for a transfer of a Major Occupant Fee Parcel or Major Occupant Lease which may occur at any time in accordance with Article 7 hereof, the provisions of Article 22 of the DDA shall govern the transfer of this Lease until such time as all of the conditions set forth in Section 22.4.2(a) of the DDA have been satisfied. Thereafter, Tenant may effect a Consent Transfer or Permitted Transfer of this Lease in accordance with the applicable provisions of this Article 11.

11.3.3 Notice to City. If Tenant desires to engage in a Consent Transfer, then at least thirty (30) days prior to the proposed effective date of the Consent Transfer, Tenant shall submit to City a request for consent by City (a "**Consent Transfer Request Notice**") of the proposed Consent Transfer, which request shall include or attach the following:

(a) A statement that precisely sets forth the rights and obligations to be transferred, including the boundaries of any land area that is the subject of the Consent Transfer Request Notice;

(b) A statement that precisely sets forth the rights and obligations to be transferred, including the boundaries of any land area that is the subject of the Consent Transfer Request Notice;

(c) A statement containing: (i) the name and address of the proposed transferee; (ii) the proposed effective date of the proposed Consent Transfer; and (iii) a description of the experience of the proposed transferee (and members of such transferee's team, by contract or otherwise (the "**Transferee Team**")) in the ownership, operation, management and, if applicable, development of real estate assets of the use classes represented by the Buildings then located within the portion of the Project that is the subject of the Consent Transfer Request Notice (and/or then planned to be developed within such area);

(d) Additional reasonably sufficient information and documentation evidencing that (i) the proposed Transferee Team and/or its Controlling Owner (if such Controlling Owner would be financially liable as part of the proposed Transfer) has the financial standing and/or strength (taking into account all of the proposed transferee's other obligations and liabilities) to perform its rental and other obligations under any applicable ground lease that would be entered into for the Phase that is the subject of the proposed Consent Transfer, provided, however, that a transferee that meets the Net Worth Requirement (by itself or by providing a Guaranty, covering all of the proposed transferee's obligations under this Lease without limitation, from an entity that meets the Net Worth Requirement) for that Phase shall be deemed to satisfy this subsection (d)(i)) (in either case, the "**Financial Requirement**") and (ii) the proposed Transferee Team and/or its Controlling Owner (x) has a commercially reasonable amount of experience in the ownership, development, operation, leasing and management of real estate assets within the United States of the use classes represented by the then-current Buildings located within the applicable Phase (and, if a material amount of development of the Premises is then planned to occur in the future during the Term, in the development of real estate assets of the use classes then planned to be developed in the Phase in the future during the Term) and (y) has a commercially reasonable amount of experience in the construction and operation of Infrastructure Improvements of the same type and quality as that proposed or constructed within the applicable Phase (together, the "**Experience Requirement**").

Such documentation shall include (but may not be limited to) financial statements, references, and examples of prior development projects; and

(e) an agreement or certificate, in form and substance reasonably satisfactory to City (each, an "**AA&R**"), whereby the transferee shall (i) assume the obligations and performance of this Lease and agree to be bound by all of the covenants, agreements, terms, provisions and conditions hereof on the part of Tenant to be performed or observed on and after the effective date of any such Transfer, and (ii) agree no further Transfer shall be made except in accordance with this Article 11, and if applicable, the obligations of Tenant hereunder to be retained or released as to the applicable Phase.

11.4 Procedures for Consent Transfer.

11.4.1 City Approval. Subject to the conditions precedent set forth in Section 11.3 above, the City Manager within thirty (30) Business Days of receiving the information and documentation above, shall approve or disapprove the proposed Consent Transfer.

11.4.2 City's Consent; Standards. The withholding or conditioning of City's consent to any proposed Consent Transfer shall be reasonable and shall be based solely on one or more of the following criteria:

(i) The proposed transferee and/or its Controlling Owner (if applicable) do not meet the Financial Requirement;

(ii) The proposed transferee and its Transferee Team together do not meet the Experience Requirement; and

(iii) The proposed transferee and/or its Controlling Owner have not provided any Adequate Security as and to the extent required under Article 27 of the DDA, which shall apply to the obligations assumed by the Transferee unless replacement Adequate Security is provided by the proposed transferee and approved by the City Manager.

(iv) If approved, the AA&R shall be recorded in the Official Records concurrently with the consummation of the Consent Transfer, and a copy thereof, certified by the County Recorder as a duplicate copy of the approved assumption agreement with recording information, shall be delivered to City within three (3) days after consummation of the Consent Transfer. Upon City's approval, the Consent Transfer shall be effective upon the effective date of transfer under the fully executed AA&R.

11.4.3 Appeal to City Council. If City Manager withholds or conditions its consent to any proposed Consent Transfer, Tenant may appeal the decision to the City Council in writing within ten (10) days of the City Manager's decision. The City Council shall hear and decide the appeal at its next regularly scheduled meeting (allowing for legally required agenda notice requirements to be met) subject to any reasonable continuation by the City Council, but in no event more than thirty (30) days after such request; provided, however, that the City Council may continue the matter to a date no more than twenty (20) days past the original hearing. If the

City Council disapproves the Consent Transfer, Tenant may submit the matter to the dispute resolution procedures of Article 28 hereof.

11.5 Permitted Transfers and Procedures. Notwithstanding anything to the contrary in this Article 11, so long as Tenant is not in Material Breach of this Lease, Tenant shall have the right at any time to Transfer all or a portion of its rights and corresponding obligations under this Lease without the approval of City (except as set forth in this Section 11.5) as set forth below (any of the following, a **"Permitted Transfer"**):

(a) Any transaction that would otherwise constitute a Consent Transfer if such transaction is to one or more Affiliates of Tenant; provided, that in each case where such transaction is a Direct Assignment in which the Affiliate does not meet the Financial Requirement, Tenant shall remain liable as the Tenant or Phase Developer, as the case may be, under this Lease;

(b) **[for Phases 1, 2 or 3]** Any transfer to Related-MPG JV, LLC, or an Affiliate of Related-MPG JV, LLC;

(c) Any grant by Tenant, any Affiliate of Tenant or any Person related to the foregoing (collectively, a "**Tenant Related Party**") to equity or debt providers to or directly or indirectly in Tenant (or any Tenant Related Party) of a participation in the profits and/or losses of the business of Tenant so long as such providers do not acquire Controlling Ownership in Tenant;

(d) Any grant, transfer, creation, amendment, modification, or termination of any Mortgage or Mezzanine Loan by Tenant or any Tenant Affiliate;

(e) The exercise by a Mezzanine Lender of (y) any rights it may have under its Mezzanine Loan with respect to obtaining title to the direct or indirect equity interests of Tenant that may have been pledged to such Mezzanine Lender under its Mezzanine Loan or (z) any foreclosure remedies the Mezzanine Lender may have; provided, that such Mezzanine Loan shall have been made for a valid business purpose and not principally for the purpose of transferring such equity interests and/or the leasehold estate created hereby; and

(f) The exercise by a Mortgagee of any foreclosure, transfer in lieu of foreclosure or other rights and/or remedies under or with respect to its Mortgage (or related loan documents).

11.5.2 All Permitted Transfers that constitute an Assignment shall be subject to the following terms:

(a) In the event of a direct Assignment of this Lease (for the avoidance of doubt, not including transfers in the equity interests of any

Person) (a "**Direct Assignment**"), not later than ten (10) Business Days after the effective date of any such Direct Assignment, Tenant shall deliver to City (a) a duplicate original or certified copy of the Direct Assignment instrument, (b) evidence that the transferee meets the Financial Requirement, (c) evidence that the transferee meets the Experience Requirement, and (d) if applicable, proof in a form reasonably acceptable to the City Manager that there continues to exist Adequate Security as and to the extent required under Article 27 of the DDA, which shall apply to the obligations assumed by the transferee unless replacement Adequate Security is provided by the transferee and approved by the City Manager;

(b) Any Direct Assignment shall not be effective for purposes of this Lease unless and until the transferee thereunder executes, acknowledges and delivers to City an AA&R in form and substance reasonably satisfactory to City whereby the transferee shall (i) assume the obligations and performance of this Lease and agree to be bound by all of the covenants, agreements, terms, provisions and conditions hereof on the part of Tenant to be performed or observed on and after the effective date of any such Transfer, and (ii) agree no further Transfer shall be made except in accordance with this Article 11, and, if applicable, the obligations of Tenant hereunder are released as to the applicable Phase.

11.6 Release. Except as may otherwise be provided under Section 11.5(a) above, if, as and when Tenant enters into a Direct Assignment (whether under a Consent Transfer or Permitted Transfer) and the Transferee thereunder assumes all of Tenant's obligations under this Lease as set forth above, then from and after the date of such Direct Assignment the Tenant assigning this Lease as part of such Direct Assignment (and all prior Tenants) shall automatically and conclusively be released from all obligations under this Lease, other than any obligations that arose and were to be performed prior to the effective date of such Direct Assignment (unless also assumed in writing, in recordable form, by the transferee), which release shall be confirmed in the AA&R or such other instrument in form and substance reasonably satisfactory to City and Tenant.

11.7 Leasehold Mortgages and Mezzanine Loans.

11.7.1 Notwithstanding any provision of this Lease to the contrary, Tenant shall have the right to mortgage or pledge the Leasehold Interest to one or more Leasehold Mortgagees and/or to permit the direct or indirect interest in Tenant to be pledged to a Mezzanine Lender, in each case without City's consent, at any time and from time to time during the Term; provided, that no holder of any Leasehold Mortgage or Mezzanine Loan, nor anyone claiming by, through or under any such Leasehold Mortgage or Mezzanine Loan, shall by virtue thereof acquire any greater rights hereunder than Tenant has, except the right to cure or remedy Tenant's defaults or to become entitled to a New Lease as more fully set forth below in this Article 11 and such other rights as are expressly granted to Leasehold Mortgagees or Mezzanine Lenders under this Lease. Notwithstanding any provision of this Lease to the contrary, each Subtenant and each Major Subtenant shall have the right to mortgage its interest in a Sublease (or permit its interest in a Sublease to be pledged) to one or more Leasehold Mortgagees and/or permit the direct or

indirect interests in such Subtenant to be pledged to Mezzanine Lenders without the need to obtain City's consent thereto, at any time and from time to time during the Term. Notwithstanding the foregoing, however, no Leasehold Mortgage or Mezzanine Loan shall be effective, unless:

(a) at the time such Leasehold Mortgage or such Mezzanine Loan becomes effective there is no existing Event of Default; and provided, that, unless otherwise notified in writing by City that there is an existing Event of Default, any actual or prospective Leasehold Mortgagee and Mezzanine Lender may conclusively rely on a statement to the effect that there is no existing Event of Default given by City under Section 26.2 for a period of thirty days after the delivery thereof;

(b) such Leasehold Mortgage shall be subject to all the agreements, terms, covenants and conditions of this Lease;

(c) such Leasehold Mortgage shall contain in substance the following provision (and no provisions inconsistent therewith in any material respect):

> "This instrument and all rights of the mortgagee hereunder are, without the necessity for the execution of any further documents, subject and subordinate to the rights of City under the Lease hereby mortgaged, as said Lease may have been previously modified, amended or renewed, or may hereafter be modified, amended or renewed with the consent of the mortgagee, which consent may not be unreasonably withheld, conditioned or delayed. Nevertheless, the holder of this mortgage agrees from time to time upon request and without charge to execute, acknowledge and deliver any instruments reasonably requested by City to evidence the foregoing subordination."

11.7.2 Tenant or the Leasehold Mortgagee or Mezzanine Lender shall give to City written notice of the making of any Leasehold Mortgage or Mezzanine Loan (which notice shall contain the name and office address of the Leasehold Mortgagee or Mezzanine Lender and shall contain information in reasonable detail demonstrating that the Leasehold Mortgagee or Mezzanine Lender is a Leasehold Mortgagee or Mezzanine Lender as defined in this Lease) no later than ten (10) days after the execution and delivery of such Leasehold Mortgage or Mezzanine Loan and a duplicate original or certified copy thereof after the recording of any Leasehold Mortgage executed by Tenant and upon the written request of City, Tenant shall, at Tenant's own cost and expense, record in the Official Records a written request, executed and acknowledged by City, for a copy of any notice of default and a copy of any notice of sale under such Leasehold Mortgage to be mailed to City at the address specified in the request by City.

11.7.3 City shall give to each Leasehold Mortgagee or Mezzanine Lender, at the address of such Leasehold Mortgagee or Mezzanine Lender set forth in a written notice from

such Leasehold Mortgagee or Mezzanine Lender or from Tenant delivered in the manner provided by Article 24 a copy of each notice given by City to Tenant under Section 22.1 at the same time as and whenever any such notice shall thereafter be given by City to Tenant, and, without affecting or extending the commencement of any grace or cure period available to Tenant as provided in this Lease, no such notice by City shall be deemed to have been duly given to Tenant (and no grace or cure period in favor of such Leasehold Mortgagee or Mezzanine Lender shall be deemed to have commenced) unless and until a copy thereof shall have been given to each such Leasehold Mortgagee and Mezzanine Lender. Each Leasehold Mortgagee and Mezzanine Lender (i) shall thereupon have a period of ten days more in the case of a Monetary Default and thirty days more in the case of a Non-Monetary Default, after the applicable period afforded Tenant for remedying the same or causing the same to be remedied has expired and (ii) shall, within such period and otherwise as herein provided, have the right (but not the obligation) to remedy such Monetary or Non-Monetary Default or cause the same to be remedied. City shall accept performance by or on behalf of a Leasehold Mortgagee or Mezzanine Lender of any covenant, condition or agreement on Tenant's part to be performed hereunder with the same force and effect as though performed by Tenant, so long as such performance is made in accordance with the terms and provisions of this Lease. City shall not object to and shall cooperate with any entry onto the Premises by or on behalf of a Leasehold Mortgagee or a Mezzanine Lender to the extent necessary to effect such Leasehold Mortgagee's or Mezzanine Lender's cure rights, provided such entry is in compliance with Applicable Law.

11.7.4 No Non-Monetary Default or Event of Default arising from a Non-Monetary Default shall be deemed to exist as long as a Leasehold Mortgagee or Mezzanine Lender, in good faith, (i) shall have commenced to cure (or caused to be commenced such cure) such Non-Monetary Default or Event of Default arising from a Non-Monetary Default within thirty (30) days after the expiration of the applicable period afforded to Tenant for remedying such Non-Monetary Default or Event of Default arising from a Non-Monetary Default, and continuously prosecutes or causes to be prosecuted the same to completion with reasonable diligence (subject to Force Majeure) or (ii) if possession or control of the Premises or any part thereof is required in order to cure such Non-Monetary Default or Event of Default arising from a Non-Monetary Default, and Leasehold Mortgagee or Mezzanine Lender shall have notified City within thirty days after the expiration of the applicable period afforded to Tenant for remedying such Non-Monetary Default or Event of Default arising from a Non-Monetary Default of its intention to institute foreclosure proceedings to obtain possession or control of the Premises, directly or through a receiver, and thereafter promptly commences such foreclosure proceedings, prosecutes such proceedings with all reasonable diligence and continuity (subject to Force Majeure) and, upon obtaining possession and/or control of the Premises, commences or causes its designee to commence promptly to cure the Non-Monetary Default or Event of Default arising from a Non-Monetary Default and prosecutes the same to completion with all reasonable diligence and continuity (subject to Force Majeure); provided that the Leasehold Mortgagee or Mezzanine Lender or its designee shall have delivered to City, in writing, within the time periods set forth in clause (i) or (ii) above, its agreement, subject to the last sentence of this Section 11.7.4, to cause the Person obtaining possession and/or control of the Premises to agree to take the action described in clause (i) or (ii) above (the "**Lender Notice of Cure**"); and, provided further, that during the period in which the actions comprising the Lender Notice of Cure are being performed, all of the other obligations of Tenant under this Lease (other than those that require possession or control of the Premises in order to cure) are being duly performed (including

payment of all Rent due hereunder) within any applicable notice and cure periods (including any applicable notice and cure rights of Leasehold Mortgagees and Mezzanine Lenders hereunder). In the event that at any time after the delivery of the Lender Notice of Cure, the Leasehold Mortgagee or Mezzanine Lender notifies City, in writing, that it has relinquished possession or control of the Premises or that it will not institute foreclosure proceedings or, if such proceedings have been commenced, that it has discontinued them, thereupon City shall have the unrestricted right to terminate this Lease by reason of any Event of Default (and to take any other action it deems appropriate by reason of any Event of Default by Tenant).

11.7.5 A Leasehold Mortgagee, Mezzanine Lender, successor leasehold owner, assignee or transferee gaining possession or control of the Premises pursuant to a foreclosure or transfer in lieu of foreclosure shall not be bound by any deadline for completion of any construction or alterations required of Tenant under this Lease; provided, however, that such Person gaining possession and/or control of the Premises pursuant to a foreclosure or transfer in lieu of foreclosure shall with all reasonable diligence and continuity prosecute completion of same; and provided further, that upon gaining such ownership and possession, it shall be an obligation of such Person under this Lease to cure any default of Tenant under the DDA (after the expiration of any applicable notice and cure period contained therein, which cure periods shall be extended to be conterminous with the cure rights of such Person under this Lease, and the Parties hereby agree to grant to such Person all necessary rights under the DDA or enter into a replacement agreement with such Person substantially identical to the DDA). Notwithstanding anything in this Lease to the contrary, a Leasehold Mortgagee, Mezzanine Lender, successor leasehold owner, assignee or transferee gaining possession or control of the Premises pursuant to a foreclosure or transfer in lieu of foreclosure shall not be required to cure any Non-Monetary Defaults or Events of Default arising from Non-Monetary Defaults that are not capable of being cured, and if any Leasehold Mortgagee, Mezzanine Lender, successor leasehold owner, assignee or transferee shall acquire the Premises pursuant to a foreclosure or transfer in lieu of foreclosure, then any such Non-Monetary Default or Event of Default arising from a Non-Monetary Default that is not capable of being cured shall no longer be deemed an Event of Default or Non-Monetary Default.

11.7.6 With respect to any Non-Monetary Default, so long as a Leasehold Mortgagee or Mezzanine Lender shall be diligently exercising its cure rights under this Lease, City shall not (i) re-enter the Premises, (ii) serve a termination notice, or (iii) bring a proceeding on account of such default to (x) dispossess Tenant and/or other occupants of the Premises, (y) re-enter the Premises, or (z) terminate this Lease or the leasehold estate (such rights described in clauses (i), (ii) and (iii), "**City's Termination Rights**"). In addition, with respect to any Monetary Default, City shall not exercise any of City's Termination Rights so long as a Leasehold Mortgagee or a Mezzanine Lender shall be diligently exercising its cure rights under this Section 11.7 within the time periods set forth above; provided, however, that (A) nothing contained in this Section 11.7.6 shall in any way impair the right of City to exercise any of City's Termination Rights or to enforce any other remedy in the event of any other Event of Default by Tenant in the performance of its obligations hereunder, subject to a Mortgagees or Mezzanine Lender's right hereunder with respect to any such Event of Default, and (B) upon any cessation of a Leasehold Mortgagee or Mezzanine Lender so exercising such rights and undertaking such activities, City may exercise any of City's Termination Rights hereunder. Nothing in the protections to Leasehold Mortgagees or Mezzanine Lenders provided in this Lease shall be

construed to either (I) extend the Term beyond the Expiration Date provided for in this Lease that would have applied if no default had occurred, or (II) require such Leasehold Mortgagee or Mezzanine Lender to cure any Non-Monetary Default by Tenant that is not capable of being cured as a condition to preserving this Lease or to such Leasehold Mortgagee obtaining a New Lease as provided in Section 11.8.

11.7.7 Notwithstanding anything to the contrary herein, the exercise of any rights or remedies of a Leasehold Mortgagee under a Leasehold Mortgage or a Mezzanine Lender under a Mezzanine Loan, including the consummation of any foreclosure or transfer in lieu of foreclosure, shall not constitute a default under this Lease or require the consent of City.

11.7.8 No Leasehold Mortgagee or Mezzanine Lender shall become liable under this Lease unless and until such time as it becomes, and then only for so long as it remains, the owner of the leasehold estate created hereby, and no performance by or on behalf of a Leasehold Mortgagee or Mezzanine Lender of Tenant's obligations hereunder shall cause such Leasehold Mortgagee or Mezzanine Lender to be deemed to be a "mortgagee in possession" unless and until such Leasehold Mortgagee shall take possession or control or of the Premises, or such Mezzanine Lender shall take possession or control of Tenant, as applicable.

11.7.9 If there is more than one Leasehold Mortgagee, the rights and obligations afforded by this Section 11.7.9 to a Leasehold Mortgagee shall be exercisable only by the Leasehold Mortgagee whose Leasehold Mortgage is most senior in lien (or that has obtained the consent of any Leasehold Mortgagees whose Leasehold Mortgage is senior to the Leasehold Mortgage of such Leasehold Mortgagee).

11.7.10 Without limiting Section 11.7.7 and notwithstanding anything contained in the DDA to the contrary, if possession or control of the Premises or any part thereof is required in order for a Leasehold Mortgagee or Mezzanine Lender to cure a Non-Monetary Default by Tenant under the DDA, then, following the giving of the Lender Notice of Cure and during the pendency of any proceedings to foreclose such Leasehold Mortgage or Mezzanine Loan and obtain ownership of Tenant's interest in the Premises, no "Default" under and as defined in the DDA shall be deemed to exist (and, for the avoidance of doubt, neither Leasehold Mortgagee nor Mezzanine Lender will be required to assume any obligation under the DDA unless and until it or its nominee has obtained ownership of Tenant's estate hereunder) so long as such Leasehold Mortgagee or Mezzanine Lender shall comply with its obligations under this Section 11.7.

11.8 New Lease.

11.8.1 In the event of a termination of this Lease prior to the Expiration Date, whether by summary proceedings to dispossess, service of notice to terminate, or otherwise, due to an event specified in Article 22, City shall serve upon each Leasehold Mortgagee who is entitled to notice, notice of such termination promptly following the same, together with a statement of any and all sums which would at that time be due under this Lease but for such termination, and of all other defaults, if any, under this Lease then known to City. Subject to clause (e) of this Section 11.8, the Leasehold Mortgagee entitled to the rights afforded by this Section 11.8 shall thereupon have the option to obtain a new lease in accordance with and upon the following terms and conditions (a "**New Lease**"):

(a) Upon the request of such Leasehold Mortgagee, served upon City in accordance with Article 22, within forty-five (45) days after service upon the Leasehold Mortgagee of notice of termination by City, City shall enter into a New Lease of the Premises with such Leasehold Mortgagee, a special-purpose Affiliate thereof or any good faith designee of such Leasehold Mortgagee (such Leasehold Mortgagee, Affiliate thereof or designee, the "**New Tenant**").

(b) The New Lease shall be effective as of the date of termination of this Lease and shall be for the remainder of the Term and at the Rent and upon all the agreements, terms, covenants and conditions hereof. Upon the execution of such New Lease, the New Tenant shall pay any and all sums that would at the time of the execution thereof be due under this Lease but for its termination, together with interest thereon at the Default Rate, and shall otherwise with reasonable diligence commence to remedy any Non-Monetary Defaults and shall pay all costs and expenses, including reasonable attorneys' fees, court costs and disbursements incurred by City in connection with such defaults and termination, the recovery of possession of the Premises and the preparation, execution and delivery of such New Lease, less any net monies received by City from the date of termination of this Lease for rent or for use and occupancy of the Premises. City shall have no obligation to deliver physical possession of the Premises in connection with the giving of any such New Lease to the extent that City shall not previously have recovered possession of same. Nothing herein contained shall release Tenant from any of its obligations under this Lease which shall not have been discharged or fully performed by Tenant or by such Leasehold Mortgagee or New Tenant.

11.8.2 As between City and New Tenant, any New Lease, and the leasehold estate created thereby, subject to the same conditions contained in this Lease, shall continue to maintain the same priority as this Lease with regard to any Leasehold Mortgage or any other lien, charge or encumbrance whether or not the same shall then be in existence.

11.8.3 Upon the execution and delivery of a New Lease, all subleases that theretofore may have been assigned to City shall be assigned and transferred, without recourse, by City to the New Tenant. Between the date of termination of this Lease and the date of execution and delivery of the New Lease, if a Leasehold Mortgagee shall have requested such New Lease, City shall not enter into any new subleases, cancel or modify in any material respect any then-existing subleases or accept any cancellation, termination or surrender thereof (unless such termination shall be effected as a matter of law on the termination of this Lease) without the consent of the Leasehold Mortgagee, not to be unreasonably withheld, conditioned or delayed, except as permitted in the subleases.

11.8.4 If there is more than one Leasehold Mortgagee, City shall enter into a New Lease with the Leasehold Mortgagee whose Leasehold Mortgage is senior in lien (or that has obtained the consent of any Leasehold Mortgagees whose Leasehold Mortgage is senior to the

Leasehold Mortgage of such Leasehold Mortgagee) as the Leasehold Mortgagee entitled to the rights afforded by this Section 11.8.

11.9 Any rejection of this Lease by or on behalf of Tenant in any bankruptcy, reorganization, arrangement or similar proceeding that would otherwise cause this Lease to terminate, shall, without any action or consent by City, Tenant or any Mortgagee, effect the transfer of Tenant's interest hereunder to the Leasehold Mortgagee whose Leasehold Mortgage is most senior in lien or its nominee or designee. Upon any such transfer to a Leasehold Mortgagee, such Leasehold Mortgagee may (i) reject the transfer of this Lease upon giving notice thereof to City no later than forty-five (45) days after notice from City of such transfer, in which case such Leasehold Mortgagee shall have no further obligations hereunder, or (ii) may request a new lease in accordance with the provisions of this Section 11.9. In the event that the Leasehold Mortgagee whose Leasehold Mortgage is most senior in lien shall fail either to effect the transfer of this Lease or request a new lease, then City shall notify all remaining Leasehold Mortgagees that such Leasehold Mortgagee failed to exercise such right whereupon each other Leasehold Mortgagee may, within twenty days after receiving such notice, have the same alternative rights, exercisable within the same period after receipt of such notice. If more than one Leasehold Mortgagee shall have elected to either effect such transfer or request such new lease (subject to the liens of all Leasehold Mortgagees senior in lien in each case) the Leasehold Mortgagee whose Leasehold Mortgage is most senior in lien shall be deemed to have exercised such right.

11.10 Additional Mortgagee Protections. In addition to the other rights, notices and cure periods afforded to Leasehold Mortgagees, City further agrees that:

(a) without the prior consent of each Leasehold Mortgagee (which consent is not to be unreasonably withheld, conditioned or delayed), to the extent required in the Leasehold Mortgage, City will neither agree to any modification or amendment of this Lease (other than an immaterial modification or amendment), nor accept a surrender or cancellation of this Lease;

(b) City shall consider in good faith any modification to this Lease requested by a Leasehold Mortgagee as a condition or term of granting financing to Tenant, so long as the same does not materially increase City's obligations, materially diminish Tenant's obligations, or diminish City's rights and immunities hereunder;

(c) the Leasehold Mortgagee whose Leasehold Mortgage is most senior in lien (or that has obtained the consent of any Leasehold Mortgagees whose Leasehold Mortgage is senior to the Leasehold Mortgage of such Leasehold Mortgagee) shall have the right to participate in any arbitration proceedings under Section 28.1.2, although only one Leasehold Mortgagee shall have such participation rights at any given time;

(d) the Leasehold Mortgagee whose Leasehold Mortgage is most senior in lien (or that has obtained the consent of any Leasehold

Mortgagees whose Leasehold Mortgage is senior to the Leasehold Mortgage of such Leasehold Mortgagee) shall have the right to participate in the adjustments of any insurance claims of the nature set forth in Articles 8 and 9 and condemnation awards of the nature set forth in Article 10; provided, however, that only one Leasehold Mortgagee shall have such participation rights at any given time; and

(e) at the request of Tenant from time to time, City shall execute and deliver an instrument addressed to the holder of any Leasehold Mortgage or Mezzanine Loan confirming that such holder is a Leasehold Mortgagee or Mezzanine Lender (provided, that City may require such Leasehold Mortgagee or Mezzanine Lender to provide such reasonably detailed information as is necessary for City to make such determination) and entitled to the benefit of all provisions contained in this Lease that are expressly stated to be for the benefit of Leasehold Mortgagees or Mezzanine Lenders.

11.11 Rights Among Leasehold Mortgagees. Notwithstanding anything to the contrary contained in this Lease, the Leasehold Mortgage most senior in lien (and the Leasehold Mortgagee under a such Leasehold Mortgage) shall be and shall be deemed to be the Leasehold Mortgage (and the Leasehold Mortgagee) most senior in lien for purposes of this Article 11, and such Leasehold Mortgagee under such Leasehold Mortgage most senior in lien shall constitute the Restoration Fund Depository, the Condemnation Proceeds Depository and the Impositions Depository under and as defined in this Lease.

11.12 Subleases.

11.12.1 Notwithstanding any provision of this Lease to the contrary, Tenant may grant any Sublease or license to any Person or Persons to use or occupy any portion of the Premises and/or the Improvements without the necessity of obtaining the consent of (or providing notice thereof to) City, and no such transaction shall constitute a Consent Transfer.

11.12.2 Each Sublease or license of any portion of the Premises shall provide that: (i) such Sublease or license is subject to this Lease; (ii) such Sublease shall expire on or prior to the Expiration Date or upon the earlier termination of the Term; and (iii) City shall have no obligation to the Subtenant or licensee under such Sublease or the licensor under such license, as the case may be, except as provided in Section 11.13 and/or any applicable Recognition Agreement.

11.13 Recognition Right.

11.13.1 From time to time, Tenant may deliver to City a copy of any sublease or license of any portion of the Premises (which may be unexecuted but which shall, in all other respects, be in final form), together with a summary of the material terms thereof (including, without limitation, a description of the subleased or licensed premises, the rent and the term of such sublease or license), prior to or promptly after execution and delivery of the same. In addition, if Tenant desires to qualify the sublease as a Qualifying Sublease in accordance with

this Section 11.13.1, Tenant shall also submit reasonable evidence to support a finding that the rental is not less than the prevailing market rental for the applicable use. Such evidence may consist of relevant market data, comparable leases, appraisals and/or a sworn affidavit or declaration under penalty of perjury from the leasing broker (who may be either internal to Developer or a third party broker) that, in his or her professional judgement based on then-current experience with comparable properties, the rental is not less than the prevailing market rental for the applicable use. If Tenant submits a sworn broker affidavit or declaration under penalty of perjury in reliance on comparable properties, then upon City's request, Tenant shall also provide, on a confidential basis, supporting information relied upon by the broker to make such determination and/or shall coordinate discussions between the broker and appropriate City staff to provide support. Within thirty (30) days after receipt of the same by City, City shall notify Tenant whether same is a "**Qualifying Sublease**". City shall have the right to designate any sublease or license as a Qualifying Sublease; provided, however, that City shall be required to designate any sublease or license a Qualifying Sublease if (i) a Leasehold Mortgagee has executed a non-disturbance agreement with respect to such sublease or license or (ii) the Subtenant or licensee thereunder is an unrelated third party Subtenant or licensee of a space lease consisting of (I) not less than twenty-five thousand (25,000) square feet of office space at a rental not less than the prevailing market rental or (II) a retail or restaurant space under a space lease or license with a term of not less than five (5) years at a rental not less than the prevailing market rental (the Subtenant or licensee under any Qualifying Sublease, a "**Qualifying Subtenant**"). If City shall determine that any sublease or license is a Qualifying Sublease, then the provisions of Section 11.13.2 shall apply. If City shall determine that any sublease or license is not a Qualifying Sublease, City shall provide to Tenant written notice thereof, setting forth the reason for such determination in reasonable detail. If Tenant disputes such determination in writing within ten (10) days after its receipt of such notice from City, such dispute shall be resolved in accordance with Article 28 hereof.

11.13.2 In the event City acquires or succeeds to the interest of Tenant under a Qualifying Sublease (the date upon which such event occurs hereinafter referred to as the "**Succession Date**"), then, provided that on the Succession Date no event of default exists and is continuing under such Qualifying Sublease which would permit the City thereunder to terminate such Qualifying Sublease or exercise any dispossess remedies provided for in such Qualifying Sublease, then (i) such Qualifying Sublease shall continue as a direct lease between City and the Qualifying Subtenant upon all of the terms, covenants, conditions and agreements set forth in the Qualifying Sublease and remaining to be performed, with the same force and effect as if City, as landlord under the Qualifying Sublease, and the Qualifying Subtenant as tenant under the Qualifying Sublease, entered into a lease (on such terms, covenants and conditions, including any renewals thereof) as of the date of the termination of this Lease, for a term equal to the unexpired term of the Qualifying Sublease, (ii) at the request of either party, City and the Qualifying Subtenant shall execute and exchange an instrument confirming such direct lease relationship, but the failure of either party to execute such instrument shall not affect their rights and obligations with respect to said direct lease relationship, and (iii) the Qualifying Subtenant shall be bound by said direct lease relationship and to attorn to City and recognize City as its landlord and shall pay its rent, additional rent and all other sums due under the Qualifying Sublease at the address designated by City by written notice to such Qualifying Subtenant from time to time. Upon the request of City, Tenant or the Qualifying Subtenant, City and the Qualifying Subtenant shall promptly execute a recognition agreement (a "**Recognition**

Agreement") in the form of Exhibit K attached hereto, with only such changes as may be reasonably requested by a Qualifying Subtenant to meet its corporate leasing requirements (for example, as may be required of nationally-recognized brands as a pre-requisite to leasing), in favor of a Qualifying Subtenant, which Recognition Agreement shall provide that, in the event this Lease shall be terminated on account of the default of Tenant, City shall recognize and honor the terms of the Sublease between such Qualifying Subtenant and Tenant as a direct Lease between City and the Qualifying Subtenant and shall not disturb or interfere with such Qualifying Subtenant's possession of the premises under its Sublease due to such termination or otherwise, on the condition that: (a) City shall not be subject to any offsets or defenses that a Qualifying Subtenant might have as to Tenant or to any claims for damages against Tenant as its landlord, nor shall City be obligated to fund to, or for the benefit of, a Qualifying Subtenant, any then undisbursed (as of the effective date of such recognition) tenant improvement or refurbishment allowance or other allowances or monetary concessions; (b) City shall not be required or obligated to credit a Qualifying Subtenant with any rent, additional rent, security deposits, security or other amounts delivered or paid by such Qualifying Subtenant to Tenant; and (c) a Qualifying Subtenant shall make full and complete attornment to City, as its landlord, under a written agreement executed by City and such Qualifying Subtenant, so as to establish direct privity of contract between City and such Qualifying Subtenant with the same force and effect as though the Qualifying Sublease was originally made directly between City and the Qualifying Subtenant.

The provisions of this Section 11.13.2 are self-operative and shall apply, without any further action by any party, upon a determination in accordance with this Section that a sublease or license is a Qualifying Sublease, whether or not the parties enter into a Recognition Agreement as provided above.

ARTICLE 12
REPAIRS AND MAINTENANCE

12.1 Repairs. During the Term, Tenant shall, at its sole cost and expense, operate, maintain and repair (including the making of all necessary replacements, whether ordinary or extraordinary) the Premises, the Improvements, the Buildings (and every part of each of them) and all water, sewer, gas and other utility connections, pipes and mains that are located on the Premises (unless the same is within the operational control of City, a public utility company or any other independent third party) in good and safe order and condition, reasonable wear and tear (which could not be avoided by good maintenance practices) excepted, provided, however, that Tenant's obligations with respect to Restoration resulting from a Casualty or Condemnation shall be as provided in Articles 9 and 10. Tenant's obligations under this Section 12.1 include the maintenance of all common areas in a safe, clean and attractive condition, free of graffiti, and the maintenance of landscaped areas in an attractive and thriving condition. Tenant shall not commit or suffer waste to the Premises or to any Airspace Parcel Easement Area. Subject to Articles 9 and 10, all repairs to the Premises made by Tenant shall utilize workmanship and materials comparable or higher in quality and class to the original work and shall be made in compliance with (a) all Applicable Laws (including, for the avoidance of doubt, all Environmental Laws) and (b) the CC&Rs.

12.2 Ownership and Operation of Landfill.

12.2.1 City owns and operates the Landfill (and the Landfill Parcel), which is not part of the Premises and, although subject to the Airspace Parcel Easements granted hereunder, is not being leased to Tenant hereunder. During the Term, City agrees that it shall at all times operate, maintain, improve, repair, remediate and replace the Landfill and the Landfill Parcel (i) in accordance with the Project Documents, (ii) in good and safe condition, (iii) in a manner that will not pose any risk to the health and safety of occupants and visitors to the Premises and/or the Buildings, will not pose any threat of damage to tangible property contained thereon and will not interfere with the operation of any business contained within the Premises, and (iv) otherwise in accordance with Applicable Law (for the avoidance of doubt, including all Environmental Laws), at its sole cost and expense, except as provided otherwise in Section 12.2.2.

12.2.2 City agrees to indemnify and hold harmless Tenant, the Major Subtenants, the Mezzanine Lenders, the Leasehold Mortgagees and each officer, director, Affiliate, direct or indirect interest holder, manager, trustee, contractor, agent or representative of any of the foregoing (collectively, "**Tenant Parties**") from and against any and all Claims, Damages and Costs asserted against or incurred by any Tenant Party arising from or related to City's failure to perform its obligations under this Section 12.2.1, under Section 2.3, or under Section 14.3, except to the extent that such failure is caused by the material breach of this Lease by Tenant or any negligence or willful misconduct by a Tenant Related Party.

ARTICLE 13
CHANGES, ALTERATIONS AND ADDITIONS

13.1 Initial Improvements. Tenant shall construct and complete, or cause to be constructed and completed, the Required Initial Infrastructure and [**as to Phase 2 only:** the Required Buildings, and shall use its best efforts to construct and complete the Additional Initial Buildings in accordance with the requirements of the DDA[.] [**as to Phases 2 and 3 only**: the Required Retail Buildings] and shall use its best efforts to construct and complete the Additional Retail Buildings, all in accordance with the requirements of the DDA, including without limitation, Article 9 thereof (Construction Obligations). Notwithstanding the foregoing, Tenant shall have the right to transfer its obligations to construct and complete all or any portion of the [**include as applicable:** the Required Buildings, the Required Retail Buildings, the Additional Initial Buildings or the Additional Retail Buildings to the Phase Developer for [**insert the following as applicable]:** [**the Phase 2 Developer**] or [**the Phase 3 Developer**] by providing written notice thereof to City. Upon such notice, City and Tenant shall enter into an amendment to this Lease to remove the obligation to construct and complete (or use best efforts to construct and complete) the transferred amount of the Required Buildings, Required Retail Buildings, the Additional Initial Buildings or Additional Retail Buildings so transferred, effective upon a corresponding amendment to this Lease with the Phase Developer assuming such obligation.

13.2 Subsequent Improvements. After such Required Initial Infrastructure [**and Required Buildings**] have been Substantially Completed (or with City's consent, during the period that Tenant is constructing the Initial Improvements), Tenant shall have the right to add such additional Improvements and/or Buildings and make, construct, reconstruct, replace, modify and enhance the Required Initial Infrastructure [and Required Buildings], and such additional Improvements and/or Buildings and/or such other Improvements within the Premises or the Airspace Parcel Easements Areas as it shall deem necessary, convenient or appropriate,

including the right to demolish existing Improvements that in Tenant's good faith judgment, have become obsolete, unlawful, or uneconomic, or otherwise are not consistent with Tenant's plans for the optimal use of the Premises, including any Improvements (and any additions to existing Buildings or Improvements) as are required under Articles 9, 10 and 11 (any such demolition, replacement, alteration, rebuilding or addition of improvements, a "**Capital Improvement**"); provided, that Tenant shall complete all such Capital Improvements in compliance with the following requirements:

13.2.1 No Capital Improvement shall be undertaken unless and until Tenant shall have procured from all Governmental Authorities all permits, consents, certificates and approvals required from any Governmental Authority having jurisdiction for the applicable Capital Improvement which are required to be obtained prior to the commencement of the proposed Capital Improvement (each approval, an "**Improvement Approval**"). City, at the sole cost and expense of Tenant, shall promptly execute and deliver any applications for Improvement Approvals that require the execution by the fee owner of the Premises, and otherwise cooperate with Tenant as reasonably required or requested by Tenant in order for Tenant to obtain all Improvement Approvals, provided such documents or instruments do not impose any liability or obligation on City (unless paid by Tenant or against which City is indemnified by Tenant in a manner reasonably satisfactory to City) or reduce any of the rights of City under this Lease in more than a *de minimis* manner. True copies of all such Improvement Approvals shall be delivered by Tenant to City prior to commencement of any proposed Capital Improvement.

13.2.2 All Capital Improvements shall be made with reasonable diligence and continuity (subject to Force Majeure) and in a good and workmanlike manner and in compliance with (i) all Improvement Approvals and (ii) all other Applicable Laws.

13.2.3 No construction of any Capital Improvement shall be commenced until Tenant shall have delivered to City original insurance policies, or certificates of insurance with respect to such policies together with copies of such policies, issued by responsible insurers and bearing notations evidencing the payment of premiums or installments thereof then due or accompanied by other evidence satisfactory to City of such payments, for the insurance required by Article 8. If, under the provisions of any casualty, liability or other insurance policy or policies then covering the Premises or any part thereof, any consent to such Capital Improvement by the insurance company or companies issuing such policy or policies shall be required to continue and keep such policy or policies in full force and effect, Tenant, prior to the commencement of construction of such Capital Improvement, shall obtain such consent and pay any additional premiums or charges therefor that may be imposed by said insurance company or companies.

13.2.4 As-Built Plans. Upon completion of any Capital Improvement, Tenant shall furnish to City a complete set of "as-built" plans for such Capital Improvement together with a copy of the Certificate of Occupancy issued therefor, to the extent a modification thereof was required.

13.3 Title. Title to all additions, alterations, improvements and replacements made to the Improvements, including, without limitation, the Capital Improvements, shall forthwith vest

in City as provided in Section 2.5, without any obligation by City to pay any compensation therefor to Tenant.

ARTICLE 14
REQUIREMENTS OF PUBLIC AUTHORITIES AND OF INSURANCE UNDERWRITERS AND POLICIES

14.1 Compliance with Applicable Law. Subject to this Lease, Tenant shall comply, and shall cause Tenant's contractors and subcontractors and all Subtenants and other occupants of the Premises to comply, with all Applicable Law without regard to the nature or cost of the work required to be done, extraordinary, as well as ordinary; provided, however, that (i) the foregoing shall not apply to obligations that are the responsibility of City under this Lease, the DDA or any other Project Document and (ii) Tenant shall be entitled to avail itself of any variances, waivers, grandfather exceptions or similar relief as may be available from time to time.

14.2 Right to Contest. Tenant, at its sole cost and expense, may contest, by appropriate proceedings prosecuted diligently and in good faith, the validity or applicability of any Applicable Law; provided, that: (a) City shall not be subject to civil liability or criminal penalty or to prosecution for a crime, nor shall the Premises (including the City's fee interest therein) or any part thereof be subject to being sold, forfeited, condemned or vacated, by reason of non-compliance, by reason of such contest; (b) if an adverse decision in such proceeding or the failure to pay any judgment resulting from such adverse decision could reasonably result in the imposition of a lien in the amount of two million dollars ($2,000,000) or more against the Premises, then before the commencement of such contest, Tenant shall furnish to City the bond of a surety company reasonably satisfactory to City, or other deposit or security in each case in form, substance and amount reasonably satisfactory to City, and shall indemnify City against the cost of such compliance and liability resulting from or incurred in connection with such contest or non-compliance (including the costs and expenses in connection with such contest); (c) Tenant shall keep City regularly advised as to the status of such proceedings; (d) such contest shall be prosecuted with diligence and in good faith to final adjudication, settlement, compliance or other disposition of Applicable Law so contested; (e) such contest, and any disposition thereof (including the cost of complying therewith and paying all fines, penalties, interest, fees, costs and expenses in connection therewith), shall be at the sole cost and expense of and shall be paid by Tenant; (f) promptly after disposition of the contest, Tenant shall comply with such Applicable Law to the extent determined by such contest; (g) there is no existing Event of Default, (h) if the consent of any Leasehold Mortgagee or lender under a Mezzanine Loan is required in order for Tenant to commence such contest, such consent has been obtained and evidence thereof provided to City; and (g) notwithstanding any bond, deposit or other security furnished to City, Tenant shall comply with any Applicable Law in accordance with the applicable provisions of this Lease if the Premises, or part thereof, shall be in danger of being forfeited or if City is in danger of being subject to criminal liability or penalty, or civil liability, in connection with such contest.

14.3 Environmental Requirements.

14.3.1 Requirements Applicable to Tenant.

EXHIBIT G-2
FORM OF GROUND LEASE (PHASES 2-7)

(a) Subject to City performing its obligations under Section 14.3.2 or otherwise relating to Environmental Activities and/or environmental conditions under this Lease, (x) Tenant shall not undertake, permit or knowingly suffer any Environmental Activity with respect to the Premises or the Airspace Parcel Easement Areas other than (i) in compliance with Applicable Law and (ii) in such manner as shall keep the Premises (and in the case of Environmental Activity undertaken by Tenant affecting the same, the Airspace Parcel Easement Areas) free from any lien imposed in respect of or as a consequence of such Environmental Activity, and (y) Tenant shall take all commercially reasonable steps to assure that any Environmental Activity undertaken within the Premises (and any Environmental Activity undertaken by Tenant with respect to the Airspace Parcel Easement Areas) is undertaken in such a manner as to provide prudent safeguards against potential risks to human health and the environment.

(b) The activities to be conducted by Tenant within the Tenant Airspace Parcel Easements as described in Section 2.3 hereof are collectively referred to herein as the "**Tenant Airspace Parcel Easement Activities and Operations**". City acknowledges that (i) certain of the Tenant Airspace Parcel Easements Activities and Operations require the approval of certain Governmental Authorities and/or compliance with the requirements of the Project Documents related to the Landfill and other applicable requirements of Environmental Law related to the Landfill (collectively, the "**Relevant Landfill Requirements**") and (ii) the Tenant Airspace Parcel Easement Activities and Operations will require, among other things, (A) the penetration at multiple points of the existing "cap" on the Landfill, (B) the penetration at multiple points of the existing seal underlying the Landfill, and (C) the removal from the Landfill in certain areas of certain substances and trash now contained in the Landfill. The Parties hereby specifically agree that, subject to Tenant and the Tenant Related Parties complying with the Relevant Landfill Requirements to the extent applicable to the Tenant Airspace Parcel Easement Activities and Operations, (x) Tenant shall not be deemed to have assumed any liability or obligation for, and Tenant shall have no obligation or liability for, the existence, release, migration, leakage and/or escape (including from the areas of the Landfill into the groundwater underlying the Landfill), transport, generation, remediation and/or mitigation of any Hazardous Materials contained in the Landfill as of the Commencement Date or otherwise generated, or existing in the Landfill from time to time with respect to City's Environmental Activities (or any other violation of Environmental Law with respect thereto) and (y) City shall have complete liability for the existence, release, migration, leakage and/or escape, transport, generation, remediation and/or mitigation of all Hazardous Materials contained within the Landfill Parcel (except Hazardous Materials separately released by Tenant or Tenant Related Parties from the Premises into the Landfill Parcel).

14.3.2 Requirements Applicable to City. Subject to Tenant performing its obligations under Section 14.3.1 or otherwise relating to Environmental Activities and/or environmental conditions under this Lease, (a) City shall not undertake, permit or knowingly suffer any Environmental Activity with respect to the Landfill Parcel and the Landfill (or any areas of the Premises or the Improvements), if and to the extent City enters the same pursuant to the provisions of this Lease, other than (i) in compliance with Applicable Law and (ii) in such manner as shall keep the Landfill Parcel, the Landfill, the Premises and the Improvements free from any lien imposed or any violation of Environmental Law applicable to the Landfill Parcel in respect of or as a consequence of such Environmental Activity and (b) City shall take all commercially reasonable steps to assure that any Environmental Activity undertaken within the Landfill Parcel (and any Environmental Activity undertaken by City with respect to the Landfill Parcel, the Premises or the Improvements) is undertaken in such a manner as to provide prudent safeguards against potential risks to human health and the environment.

14.3.3 Right to Audit. Each Party shall have the right from time to time and at its expense to conduct, following reasonable advance notice of at least fifteen (15) Business Days, an environmental audit of, in the case of City, the Premises, and in the case of Tenant, the Landfill Parcel, if and only if there are commercially reasonable indications of a material breach of the other Party's obligations under this Section 14.3, and in each case, the other Party shall reasonably cooperate with the conduct of the audit by the auditing Party, subject in the case of an audit of the Premises, the rights of the Subtenants under their Subleases (which City shall not violate). The auditing Party shall use commercially reasonable efforts to minimize interference with the existing uses and occupancies of the property being audited (and in the case of any audit of the Premises, City shall not cause or create in any manner any material interference with the use and business operations of the Subtenants) and shall repair any damage to the property being audited resulting from such Party's entry and/or audit of such property. In the event any such audit shall indicate that a Party shall have committed a material breach of its obligations under this Section 14.3, such breaching Party shall bear the reasonable costs of such audit.

ARTICLE 15
DISCHARGE OF LIENS

15.1 Creation of Liens. Subject to Section 15.2, and except as otherwise expressly provided in this Lease, Tenant shall not create or permit to be created any lien, encumbrance or charge upon the Phase [ ] Airspace Parcel, the Landfill Parcel or the Premises or any part thereof, the income therefrom or any assets of, or funds appropriated to, City, and Tenant shall not suffer any other matter or thing whereby the estate, right and interest of City in the Premises or any part thereof might be impaired.

15.2 Discharge of Liens. If any mechanic's, laborer's or materialman's lien (other than a lien arising out of any work performed by or on behalf of City) or other lien, encumbrance or charge is at any time filed or asserted in violation of Section 15.1 against the Premises or any part thereof, the Phase [ ] Airspace Parcel or the Landfill Parcel, Tenant shall (a) within forty-five (45) days after notice of such filing or assertion (or sooner if necessary to prevent the enforcement or foreclosure of such lien), cause the same to be discharged of record by payment, deposit, bond, order of a court of competent jurisdiction or otherwise, and (b) indemnify, defend, protect and hold City harmless from and against any and all Claims, Damages and Costs arising

out of such lien and/or the sums claimed to be due which give rise to such lien. If Tenant fails to cause the lien to be so discharged of record within such forty-five (45) day period (or such shorter period as is necessary to prevent the enforcement or foreclosure of such lien), then, in addition to any other rights or remedies, City may, but shall not be obligated to, discharge the lien either by paying the amount claimed to be due or by procuring the discharge of the lien by deposit or by bonding proceedings. Any amount so paid by City, including all reasonable costs and expenses incurred by City in connection therewith, together with interest thereon at the Default Rate from the respective dates of City's making of the payment or incurring of the costs and expenses until the date of actual repayment to City of such amounts, shall constitute Additional Rent and shall be paid by Tenant to City within ten (10) days after demand. However, Tenant shall not be required to discharge any such lien if Tenant is contesting the same in good faith by proceedings in which the enforcement and foreclosure of such lien is stayed and has furnished a cash deposit, a security bond or other such security reasonably satisfactory to City in an amount sufficient to pay such lien including interest and penalties.

15.3 No Authority to Contract in Name of City. Nothing contained in this Lease shall be deemed as constituting the consent or request of City, express or implied, by inference or otherwise, to any contractor, subcontractor, laborer or materialman for the performance of any labor or the furnishing of any materials for any specific improvement, alteration to or repair of the Premises or any part thereof, nor as giving Tenant any right, power or authority to contract for or permit the rendering of any services or the furnishing of materials that would give rise to the filing of any lien against City's interest in the Premises, the Landfill Parcel or any part of either thereof, or any assets of, or funds appropriated to, City.

ARTICLE 16
DELIVERY OF POSSESSION AND CONDITION OF TITLE

16.1 As-Is Condition. Except as otherwise expressly provided in this Lease or in the other Project Documents, no representations or warranties, express or implied, have been made by or on behalf of City in respect of the Premises or the status of title or the physical condition thereof, including the environmental condition thereof and the zoning or other laws, regulations, rules and orders applicable thereto, the amount of Impositions that may be assessed or the use that may be made of the Premises, and Tenant accepts possession of the Premises in its "**AS IS,**" "**WITH ALL FAULTS**" condition on the Commencement Date. Except as otherwise expressly provided in this Lease or in the other Project Documents, (a) Tenant has full responsibility for the condition, alteration, maintenance, management, repair and replacement of the Premises, (b) City has no obligation whatsoever to perform any work or make any repairs with respect to the Premises, to furnish any services with respect to the Premises, or to incur any expenses with respect to the Premises, and (c) City has no responsibility with respect to the condition of the Premises (including any latent defects). Tenant expressly acknowledges and agrees that City has not made and is not making, and Tenant, in executing and delivering this Lease, is not relying upon, any warranties, representations, promises or statements, except to the extent that the same are expressly set forth in this Lease or the other Project Documents.

16.2 Tenant's Representations. Tenant hereby represents and warrants to City as of the Commencement Date that:

EXHIBIT G-2
FORM OF GROUND LEASE (PHASES 2-7)

16.2.1 Tenant is a [limited liability company] duly organized and existing in good standing under the laws of the State of [____], and qualified to do business in the State of California;

16.2.2 Tenant has the full right, power, authority and legal capacity to execute and deliver this Lease, to execute and deliver the instruments referred to herein, and to enter into and fully perform the transactions contemplated hereby, or thereby;

16.2.3 All actions and consents required by Tenant to authorize the transactions contemplated by this Lease have been duly performed and obtained;

16.2.4 All Persons who execute this Lease and the instruments contemplated by this Lease on behalf of Tenant will be duly authorized and empowered on behalf of Tenant to do so and to enter into all transactions contemplated by this Lease, and by such instruments;

16.2.5 The execution, delivery and consummation of the transactions contemplated hereby and performance of this Lease have not and will not conflict with any provisions of any federal, state or other governmental laws or regulations to which Tenant is subject, or conflict with, result in any breach of, or constitute a default under, any mortgage, deed of trust, lease, bank loan or credit agreement, corporate charter, bylaws or other instrument or agreement to which Tenant is a party or by which Tenant or its assets may be bound or affected;

16.2.6 This Lease is a legal, valid and binding obligation of Tenant, enforceable against Tenant in accordance with its terms, except to the extent that such enforcement may be limited by applicable bankruptcy, insolvency and other similar laws affecting creditors' rights generally;

16.2.7 There are no actions, suits or proceedings pending or, to the knowledge of Tenant, threatened against or affecting Tenant, at law or in equity or before any Governmental Authority which would impair Tenant's ability to perform its obligations under this Lease; and

16.2.8 Tenant is (i) in compliance with the Patriot Act, as applicable; (ii) in compliance with the Office of Foreign Assets Control sanctions and regulations promulgated under the authority granted by the Trading with the Enemy Act, 12 U.S.C. § 95 (a) et seq., and the International Emergency Economic Powers Act, 50 U.S.C. § 1701, et seq., in each case as applicable and as amended or replaced from time to time; and (iii) a Person that (w) is not, and has never been, under investigation by any Governmental Authority for, and has not been charged with or convicted of a crime under, 18 U.S.C. §§ 1956 or 1957 (as amended or replaced from time to time) or any predicate offense thereunder; (x) has never been assessed a civil penalty under, or had any of its funds seized, frozen or forfeited in any action relating to, any anti-money laundering laws or predicate offenses thereunder; (y) has taken such steps and implemented such policies as are reasonably necessary to ensure that it is not promoting, facilitating or otherwise furthering, intentionally or unintentionally, the transfer, deposit or withdrawal of criminally-derived property, or of money or monetary instruments that are (or that Tenant suspects or has reason to believe are) the proceeds of any illegal activity or that are intended to be used to promote or further any illegal activity; and (z) has taken such steps and implemented such policies as are reasonably necessary to ensure that it is in compliance with all

laws and regulations applicable to its business for the prevention of money laundering and with anti-terrorism laws and regulations, with respect both to the source of funds from its investors and from its operations, which steps include the development and implementation of an anti-money laundering compliance program within the meaning of section 352 of the Patriot Act, to the extent Tenant is required to develop such a program under the rules and regulations promulgated pursuant to section 352 of the Patriot Act.

16.3 City's Representations. City hereby represents and warrants to Tenant as of the Commencement Date that:

16.3.1 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 Lease, to execute and deliver the instruments referred to herein, and to enter into and fully perform the transactions contemplated hereby, or thereby;

16.3.2 All actions and consents required by City to authorize the transactions contemplated by this Lease have been duly performed and obtained;

16.3.3 All Persons who execute this Lease and the instruments contemplated by this Lease on behalf of City will be duly authorized and empowered on behalf of City to do so and to enter into all transactions contemplated by this Lease, and by such instruments;

16.3.4 The execution, delivery and consummation of the transactions contemplated hereby and performance of this Lease have not and will not conflict with any provisions of any federal, state or other governmental laws or regulations to which City is subject, or conflict with, result in any breach of, or constitute a default under, any mortgage, deed of trust, lease, bank loan or credit agreement, corporate charter, bylaws or other instrument or agreement to which City is a party or by which City or its assets may be bound or affected;

16.3.5 There are no actions, suits or proceedings pending or, to the knowledge of City, threatened against or affecting City, at law or in equity or before any Governmental Authority which would impair City's ability to perform its obligations under this Lease; and

16.3.6 This Lease is a legal, valid and binding obligation of City, enforceable against City in accordance with its terms, except to the extent that such enforcement may be limited by applicable bankruptcy, insolvency and other similar laws affecting creditors' rights generally.

ARTICLE 17
CITY NOT LIABLE FOR INJURY OR DAMAGE, ETC.

17.1 No Liability for Injury. Subject to the provisions of this Lease, and the Project Documents, City shall not in any event whatsoever be liable to Tenant or to any other Person for any injury or damage happening on, in or about the Premises and its appurtenances to Tenant or to any other Person, nor for any injury or damage to the Premises or to any property belonging to Tenant or to any other Person, that may be caused by any fire or breakage, or by the use, misuse or abuse any of the Improvements, or the streets or sidewalk area within the Premises or that may arise from any other cause whatsoever, except to the extent any of the foregoing shall have resulted from City Fault.

17.2 No Liability for Utility Failure. Subject to the provisions of this Lease, and the Project Documents, City (in its proprietary capacity as landlord under this Lease) shall not be liable to Tenant or to any other Person for any failure of water supply, gas or electric current, nor for any injury or damage to any property of Tenant or of any other Person or to the Premises, Improvements or Buildings caused by or resulting from gasoline, oil, steam, gas, electricity, or hurricane, tornado, flood, wind or similar storms or disturbances, or water, rain or snow which may leak or flow from the street, sewer, gas mains or subsurface area or from any portion of the Premises or the Buildings, or leakage of gasoline or oil from pipes, appliances, sewer or plumbing works therein, or from any other place, nor for interference with light or other incorporeal hereditaments by anybody, or caused by any public or quasi-public work, except to the extent any of the foregoing shall have resulted from City Fault.

ARTICLE 18
INDEMNIFICATION OF CITY AND OTHERS

18.1 Indemnification. Tenant, to the fullest extent permitted by law, shall indemnify, defend and save City and its agents, directors, Affiliates, officials, officers, managers, members, managing agents, contractors, servants and employees (collectively, the "**City Indemnitees**"), harmless from and against any and all loss, cost, liabilities, suits, obligations, fines, damages, penalties, claims, costs, charges and expenses (including engineers', architects' and attorneys' fees and charges) (collectively, "**Claims, Damages and Costs**") that may be suffered by, imposed upon or incurred by or asserted against any of the City Indemnitees by reason of any of the following occurring during the Term, except to the extent that the same shall have been caused in whole or in part by City Fault (or other conduct that otherwise is the subject of City's indemnification under Section 12.2.2):

18.1.1 any negligent or tortious act or failure to act of the Tenant Parties or any of them on or about or within the Premises or any part thereof (or otherwise in connection with any exercise by Tenant of its Airspace Parcel Easement rights) during the Term and after the Term for so long as Tenant, or any Person holding through or under Tenant, remains in possession of the Premises; or

18.1.2 any accident, injury (including death at any time resulting therefrom) or damage to any Person or property occurring in or on or about the Premises or any part thereof during the Term and after the Term for so long as Tenant, or any Person holding through or under Tenant, remains in possession of the Premises, without regard to the scope or amount of insurance actually carried by Tenant; or

18.1.3 any breach or default by Tenant under this Lease; or

18.1.4 any claims made or created by any Subtenants in respect of the Premises against any City Indemnitee during or after the Term (including claims for return of security deposits and prepaid rent); or

18.1.5 any holdover by Tenant, or by any Person(s) holding under or through Tenant, after the Term, except where such Person(s) are entitled to remain in possession by virtue of City's express agreement.

18.2 Obligations Not Affected by Insurance. The obligations of Tenant under this Article 18 shall not be affected or limited in any way by the presence or absence in any case of insurance coverage or by the failure or refusal of any insurance carrier to perform any obligation on its part under insurance policies affecting the Premises.

18.3 Notice and Defense Process. If any claim, action or proceeding is made or brought against any of the City Indemnitees by reason of any event for which Tenant has agreed to indemnify the City Indemnitees in Section 18.1, then, upon demand by such City Indemnitee, Tenant shall resist or defend such claim, action or proceeding (in such City Indemnitee's name, if necessary) by the attorneys for Tenant's insurance carrier (if such claim, action or proceeding is covered by insurance maintained by Tenant) or (in all other instances) by such attorneys as Tenant shall select and such City Indemnitee shall approve, which approval shall not be unreasonably withheld, conditioned or delayed. Notwithstanding the foregoing, and except with respect to personal injury or other liability claims within the coverage limits afforded by Tenant's liability insurance and being defended by attorneys for, or approved by, Tenant's insurance carrier, a City Indemnitee may, in the event that there exists a dispute, an actual or potential conflict of interest or a divergence of interest that (in each case) would make it inadvisable in the good-faith judgment of such City Indemnitee to be (or continue to be) represented by such attorneys, engage its own attorneys to defend or to assist in its defense of such claim, action or proceeding, and the Tenant shall pay the reasonable fees and disbursements (including disbursements for expert witnesses and consultants) of such attorneys promptly as they are incurred. No City Indemnitee will unreasonably withhold, condition or delay its consent to any settlement proposed by Tenant of a matter that is fully covered by Tenant's indemnification hereunder; provided, that such settlement provides solely for the payment of money and does not impose any other material liability on such City Indemnitee.

18.4 Survival. The provisions of this Article 18 (and Section 12.2.2) shall survive the Expiration Date or any earlier termination of the Term with respect to actions or the failure to take any actions or any other matter arising prior to the Expiration Date or such earlier termination.

ARTICLE 19
RIGHT OF INSPECTION, ETC.

19.1 City Right of Inspection. Tenant shall permit City and its contractors, employees, agents and representatives to enter the Premises at all reasonable times and upon reasonable notice (except in cases of emergency, in which case no notice is required) for the purpose of (a) inspecting the Premises, (b) determining whether or not Tenant is in compliance with its obligations under this Lease, (c) making any necessary repairs to the Premises and performing any work therein that City is entitled to perform under Section 20.1, (d) showing the Landfill Parcel or Phase [ ] Airspace Parcel to potential purchasers or to lenders or potential lenders, and during the last two years of the Term to potential tenants; provided, that, except in the event of an emergency and except as otherwise provided in this Lease, City shall have delivered to Tenant notice specifying such repairs or work and Tenant shall have failed to complete such repairs or such work as soon as reasonably possible, and in all cases within thirty (30) days after the giving of such notice (subject to Force Majeure), or if such repairs or such work cannot reasonably be completed during such thirty day period, to have commenced and be diligently pursuing the

same (subject to Force Majeure). Notwithstanding the foregoing, City's right to inspect the interior of any completed structure or Building shall be further limited to the extent that Tenant has only limited rights to enter same in accordance with any agreements with Subtenants and other occupants.

ARTICLE 20
RIGHT TO PERFORM COVENANTS

20.1 City Right to Perform Tenant Covenants. If City provides notice to Tenant of an event or circumstance that requires the action of Tenant which event or circumstance creates an emergency or in City's reasonable opinion creates a material risk of damage or injury to material interests of City and Tenant fails to commence to provide the required action within a reasonable period of time (which shall in no event be more than twenty (20) days after Tenant's receipt of any such notice), given the circumstances, after the receipt of such notice, then, without waiving any other rights or remedies which City may have under this Lease or at law or in equity, City may proceed to take the required action, and if such action was required under the terms of this Lease to be taken by Tenant, then City shall be entitled to reimbursement by Tenant of City's actual costs of taking such action, together with interest thereon at the Default Rate, such reimbursement to be made within thirty (30) days of Tenant's receipt of an invoice from City setting forth a reasonably particularized breakdown of such actual costs in connection with taking such action. If Tenant delivers to City within thirty (30) days after receipt of City's invoice an objection to the payment of such invoice, setting forth with reasonable particularity Tenant's reasons for its claim that such action did not have to be taken by City pursuant to the terms of this Lease, then City may submit such dispute to arbitration in accordance with the terms of Article 28. If City prevails in the arbitration and receives an award in its favor, Tenant shall pay the amount of the award to City within fifteen (15) Business Days after the date of the award, together with interest at the Default Rate computed from the date of the expenditure to the date of payment by Tenant to City of the amount of the award.

20.2 Tenant's Self-Help Right. In the event that Tenant provides notice to City of an event or circumstance that requires the action of City with respect to any of its obligations under this Lease and City fails to commence to provide the required action within a reasonable period of time (which shall in no event be less than twenty (20) days after City's receipt of any such notice, except in the event of an emergency), given the circumstances, after the receipt of such notice, then Tenant may proceed to take the required action upon delivery of an additional ten (10) Business Days' notice (or one Business Day notice in the event of an emergency) specifying that Tenant is taking such required action (and if City commences to provide the required action within such additional ten (10) Business Days (or one Business Day, as applicable) and thereafter prosecutes the action to completion with reasonable diligence, Tenant shall have no rights under this Section 20.2 to take such action), and if such action was required under the terms of this Lease to be taken by City, then Tenant shall be entitled to reimbursement by City of Tenant's actual costs of taking such action, together with interest thereon at the Default Rate. If City does not deliver a detailed objection to Tenant, within thirty days after receipt of an invoice by Tenant of its actual costs of taking action which Tenant claims should have been taken by City, and if such invoice from Tenant sets forth a reasonably particularized breakdown of such actual costs in connection with taking such action on behalf of City, then Tenant shall be entitled to deduct from Rent payable by Tenant under this Lease, the amount of its actual costs (and

interest thereon at the Default Rate) set forth in such invoice. If, however, City delivers to Tenant within thirty (30) days after receipt of Tenant's invoice an objection to the payment of such invoice, setting forth with reasonable particularity City's reasons for its claim that such action did not have to be taken by Tenant pursuant to the terms of this Lease, then Tenant may submit such dispute to arbitration in accordance with the terms of Article 28. If Tenant prevails in the arbitration and receives an award in its favor, City shall pay the amount of the award to Tenant within fifteen (15) Business Days after the date of the award, together with interest at the Default Rate computed from the date of the expenditure to the date of payment by City to Tenant of the amount of the award.

20.3 Time to Perform an Act, or Cure Non-Performance, if a Date is Not Otherwise Specified. If no specific date for the time to perform an act required by this Lease, or to cure the failure to perform such act, is stated in this Lease, the Party obligated to perform such act must perform the act within a reasonable time in the circumstances.

ARTICLE 21
PERMITTED USES

21.1 Permitted Use. Tenant shall occupy the Premises for the purposes of (i) constructing, maintaining, financing, refinancing, operating, developing, subleasing, repairing, altering, rebuilding, restoring and otherwise using the Premises, the Buildings, the Improvements, and the Airspace Parcel Easement Areas as contemplated by this Lease, the DDA, the Project Documents and any applicable Authorizations, (ii) any other uses specifically permitted in this Lease, consistent with any applicable DAP approved for the Premises, (iii) incidental uses thereto or in furtherance thereof and (iv) any other purposes approved by City in its sole and absolute judgment (collectively, the "**Permitted Uses**"), and for no other use or purpose.

21.2 No Unlawful Use. Tenant shall not use or occupy the Premises, nor knowingly permit or suffer the Premises or any part thereof to be used or occupied, for any unlawful, illegal or extra-hazardous business, use or purpose, or in such manner as to constitute a nuisance of any kind (public or private) or that unreasonably interferes with the beneficial use of other property. With reasonable promptness following the discovery of any such unpermitted, unlawful, illegal or extra-hazardous use, nuisance or interference with other property, Tenant, at its sole cost and expense, shall commence to take all necessary actions, legal and equitable, to compel the discontinuance of such use.

21.3 Compliance with CEQA Mitigation Measures. Tenant shall perform, or cause to be performed all Mitigation Measures identified in the Project MMRP that are both the responsibility of the project sponsor (including its successors in interest and contractors) and applicable to the Premises, as such measures are more particularly identified in Exhibit E attached hereto (the "**Applicable MMRP Measures**"). Tenant shall insure that all Subtenants and other occupants of all of any part of the Premises are provided with a copy of the Project MMRP and Applicable MMRP Measures and that they comply with the Applicable MMRP Measures as the same apply to their particular uses.

21.4 No Adverse Possession. Tenant shall not knowingly suffer or permit the Premises or any portion thereof to be used, and shall take all necessary actions to prevent the Premises or any portion thereof from being used, by the public in such manner as might reasonably tend to impair title to the Premises or any portion thereof, or in such manner as might reasonably make possible a claim or claims of adverse usage, prescriptive rights or adverse possession by the public, as such, or of implied dedication of the Premises or any portion thereof.

ARTICLE 22
EVENTS OF DEFAULT; CONDITIONAL LIMITATIONS, REMEDIES, ETC.

22.1 Events of Default. Subject to the provisions of Article 29, each of the events listed in Sections 22.1.1 through 22.1.9 shall be an "**Event of Default**" hereunder. To be effective, each notice required to be given by City to Tenant under this Section 22.1 shall be sent, contemporaneously with notice to Tenant, to the Persons listed on Exhibit L and to each Leasehold Mortgagee and Mezzanine Lender that has made a written request to City that a copy of any such notice:

22.1.1 if Tenant fails to pay any item of Rent, or any part thereof, when it becomes due and payable and such failure continues for ten (10) days after notice of such failure by City to Tenant specifying such failure;

22.1.2 if Tenant fails to observe or perform one or more of its other obligations under this Lease (for the avoidance of doubt, not including matters or failures covered by Sections 22.1.1 and 22.1.3 through 22.1.9), and such failure continues for thirty (30) days after notice of such failure from City to Tenant specifying such failure (unless such failure requires work to be performed, acts to be done, or conditions to be removed that, by their nature or because of Force Majeure, cannot reasonably be performed, done or removed, as the case may be, within such thirty-day period, in which case no Event of Default shall be deemed to exist as long as Tenant begins curing the same within such thirty-day period and, subject to Force Majeure, diligently and continuously prosecutes the same to completion); provided, however, that notwithstanding any provision of this Lease to the contrary, an Event of Default described in this Section 22.1.2 shall not be grounds for termination of this Lease under this Article 22 unless the nature of Tenant's failure to observe or perform one or more of its other obligations under this Lease materially impairs the interest of City in this Lease and the Phase [ ] Airspace Parcel and City has no other adequate remedy for such Event of Default;

22.1.3 if Tenant fails to discharge any mechanic's, laborer's or materialman's lien or other lien, encumbrance or charge that is its obligation to discharge under the terms of this Lease within the applicable time period provided in this Lease;

22.1.4 if Tenant fails to maintain any of the insurance required to be maintained by Tenant under the terms of this Lease;

22.1.5 if a levy under execution or attachment is made against the Premises and such execution or attachment has not been vacated or removed by court order, bonding or otherwise within a period of thirty (30) days;

22.1.6 if Tenant makes an assignment for the benefit of creditors;

22.1.7 if Tenant files a voluntary petition under Title 11 of the United States Code or if such petition is filed against it, and an order for relief is entered, or if Tenant shall file any petition or answer seeking, consenting to or acquiescing in any reorganization, arrangement, composition, readjustment, liquidation, dissolution, or similar relief under the present or any future federal bankruptcy code or any other present or future applicable federal, state or other statute or law, or shall seek or consent to or acquiesce in or suffer the appointment of any trustee, receiver, custodian, assignee, sequestrator, liquidator or other similar official of Tenant, or of all or any substantial part of its properties or of the Premises or any interest therein of Tenant;

22.1.8 if within ninety (90) days after the commencement of any proceeding against Tenant seeking any reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar relief under the present or any future federal bankruptcy code or any other present or future applicable federal, state or other statute or law, such proceeding shall not have been dismissed, or if, within ninety (90) days after the appointment, without the consent or acquiescence of Tenant, of any trustee, receiver, custodian, assignee, sequestrator, liquidator or other similar official of Tenant or of all or any substantial part of its properties or of the Premises or any interest therein of Tenant, such appointment shall not have been vacated or stayed on appeal or otherwise, or if, within ninety days after the expiration of any such stay, such appointment shall not have been vacated.

22.1.9 if a Material Breach (as defined in the DDA) on the part of Tenant as the Phase Developer occurs under the DDA (so long as it is in effect); provided, however, that the City's remedies shall be limited to the remedies set forth in the DDA and shall not result in a termination of this Lease unless City exercises its termination rights under the DDA for the Material Breach as to Tenant acting in its capacity as Phase Developer.

22.2 Primary Remedies; Termination of this Lease. If any Event of Default occurs:

22.2.1 Subject to the provisions of Section 22.1.2 and Section 22.1.9, City shall have the right at any time thereafter to give notice to Tenant stating that this Lease shall terminate on the date specified in such notice, which date shall be not less than thirty (30) days after the giving of such notice, and if City gives such notice, then this Lease shall terminate on such date; upon such termination, Tenant immediately shall quit and surrender the Premises and the provisions of Article 27 shall apply; and

22.2.2 Following an Event of Default by Tenant, City shall also have the right, with or without terminating this Lease, to re-enter the Premises pursuant to legal proceedings or pursuant to any notice provided by law and eject all parties in possession therefrom. Without terminating this Lease and with or without re-entering the Premises, City may, at any time and from time to time following an Event of Default, either recover all Rent provided for hereunder as it becomes due or re-let the Premises, or any part or parts thereof, for the account of Tenant, or otherwise, receive and collect the rents therefor, applying the same first to the payment of such expenses as City may have paid, assumed or incurred in recovering possession of the Premises, including reasonable costs, expenses and attorneys' fees, and for placing the same in good order and condition, or preparing or altering the same for re-letting, and all other expenses,

commissions and charges paid, assumed or incurred by City in or in connection with re-letting the Premises, and then to the fulfillment of the covenants of Tenant to be performed under this Lease. No reentry or taking possession of the Premises by City pursuant to this Section 22.2.2 shall be construed as an election to terminate this Lease or Tenant's liability for the payment of Rent or other charges due or accruing hereunder, or as an acceptance of Tenant's surrender of the Premises, unless a written notice of such intention is given to Tenant or unless the termination thereof is decreed by a court of competent jurisdiction. Notwithstanding any reletting without termination by City because of any Event of Default, City may at any time after such reletting elect to terminate this Lease for any such Event of Default.

22.3 Effect of Termination. If this Lease is terminated as provided in Section 22.2.1, City shall have all the rights and remedies of a landlord provided by section 1951.2 of the California Civil Code, and shall be entitled to recover from Tenant, and cause Tenant to pay City on demand:

22.3.1 the worth at the time of the award of the unpaid Rent that had been earned at the time of termination;

22.3.2 the worth at the time of the award of the amount by which the unpaid Base Rent that would have been earned after termination until the time of the award exceeds the amount of such rental loss that Tenant proves could have been reasonably avoided;

22.3.3 the worth at the time of the award of the amount by which the unpaid Base Rent after the time of award until the Expiration Date exceeds the amount of such rental loss that Tenant proves could be reasonably avoided;

22.3.4 any other amount necessary to compensate City for all the detriment proximately caused by Tenant's failure to perform its obligations under this Lease or which in the ordinary course of events would be likely to result therefrom including, without limitation, all costs and expenses incurred by City in (i) retaking possession of the Premise, including reasonable attorney's fees, (ii) maintaining or preserving the Premises, (iii) preparing the Premises for a new tenant, including repairs or alterations to the Premises, and (iv) leasing commissions; and

22.3.5 Such other amounts in addition to or in lieu of the foregoing as may be permitted from time to time by Applicable Law.

As used in Sections 22.3.1 and 22.3.2 above, the "worth at the time of award" is computed by allowing interest at the rate of ten percent (10%). As used in Section 22.3.3 above, the "worth at the time of award" is computed by discounting such amount at the discount rate of the Federal Reserve Bank of San Francisco at the time of award plus one percent (1%).

22.4 Injunction. In the event of any breach or threatened breach by a Party of any of the covenants, agreements, terms or conditions contained in this Lease, the non-breaching Party shall be entitled to seek to enjoin such breach or threatened breach and shall have the right to invoke any rights and remedies allowed at law or in equity or by statute or otherwise as though re-entry, summary proceedings, and other remedies were not provided for in this Lease. To the

extent permitted by law, each Party hereby waives any requirement for the posting of bonds or other security in any such action.

22.5 Rights Cumulative. Subject to the provisions of this Lease and Applicable Law, each right and remedy of each of City and Tenant provided for in this Lease shall be cumulative and shall be in addition to every other right or remedy provided for in this Lease or now or hereafter existing at law or in equity or by statute or otherwise, and the exercise or beginning of the exercise by a Party of any one or more of its rights or remedies provided for in this Lease or now or hereafter existing at law or in equity or by statute or otherwise shall not preclude the simultaneous or later exercise by such Party of any or all other rights or remedies provided for in this Lease or now or hereafter existing at law or in equity or by statute or otherwise.

22.6 Enforcement Costs. Tenant shall reimburse City, as Additional Rent, for all costs and expenses incurred by City in connection with any action or proceeding brought by City, or to which City may be made a party, by reason of any failure by Tenant in the performance or observance of any of the terms, covenants or conditions on Tenant's part to be observed or performed under this Lease. In the event City is the prevailing party in the case of an action or proceeding brought by City or if City has been made a party to an action or proceeding, Tenant shall also pay to City all costs and expenses (including reasonable attorneys' fees and disbursements) incurred by it in enforcing any of the covenants and provisions of this Lease and incurred in any action in which it was the prevailing party, and all such costs and expenses may be included in and form a part of any judgment entered in any related proceeding. Such amounts shall be paid to City within thirty (30) days after Tenant is billed for such costs and expenses.

22.7 Leasehold Mortgagee Protections. Nothing contained in this Article 22 shall be deemed to modify the provisions of Sections 12.7.

ARTICLE 23
NOTICES

23.1 Notice Addresses. Whenever this Lease permits or requires that a notice, demand, request, consent, approval or other communication 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), with a confirmatory copy to be delivered thereafter by duplicate notice in accordance with any of clauses (a) or (b) of this Section 23.1, in each case to the Parties at their addresses set forth on Exhibit L. A Party may change the address(es) to which any Notice is to be delivered to such Party by furnishing ten days' notice of such change(s) to the other Parties in accordance with the provisions of this Section 23.1. The attorney for any Party may send Notices on that Party's behalf.

23.2 Effectiveness. In addition to the requirements for effectiveness set forth in Section 23.1, to be effective, every notice given to a Party under the terms of this Lease 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 Lease 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.

23.3 When Notices Deemed Given. Every Notice shall be deemed to have been given or served (a) if given by personal delivery or overnight delivery service, upon delivery thereof, or (b) if given by telephonic facsimile transmitting machine, upon delivery by such means to the addressee, 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 23.3 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).

23.4 Notices to Mortgagees. Notwithstanding any provision of this Lease to the contrary, (a) if a Leasehold Mortgagee or Mezzanine Lender notifies City in writing of its identity and address, any Notice of default given by City hereunder to Tenant shall also be given contemporaneously to such Leasehold Mortgagee or Mezzanine Lender with a copy thereof, if requested, to such Leasehold Mortgagee's or Mezzanine Lender's attorneys and other Persons, in each case to the addresses specified in the request, and (b) no such Notice of default shall be valid as against such Leasehold Mortgagee or Mezzanine Lender unless and until City complies with this Section 23.4.

ARTICLE 24
NO FEE SUBORDINATION; RESTRICTIONS ON SUBORDINATION OF TENANT'S INTEREST; NO FEE MORTGAGES

24.1 No Fee Subordination. None of City's interest in this Lease or the Premises, City's fee interest in the Landfill Parcel or City's fee interest in the Phase [ ] Airspace Parcel shall be subject or subordinate to any mortgage, deed of trust or security instrument (including any Leasehold Mortgage or Mezzanine Loan) now or hereafter placed upon Tenant's interest in this Lease or upon Tenant without the prior consent of City, which consent may be granted or denied in City's sole and absolute discretion.

24.2 Restrictions on Subordination of Tenant's Interest. This Lease, and Tenant's interest in this Lease, shall not be subject or subordinate to any liens or encumbrances on City's fee estate in the Landfill Parcel, the Phase [ ] Airspace Parcel or City's interest in this Lease or in a Major Occupant Lease, except for the Permitted Exceptions and any other liens or encumbrances created or consented to by Tenant, which consent may be granted or denied in Tenant's sole and absolute discretion.

24.3 No Fee Mortgages; No Transfers. City agrees that it will not subject its fee interest in the Landfill Parcel or the Phase [ ] Airspace Parcel, or its interest in this Lease or the Premises, to any mortgage, deed of trust or other security instrument of any kind without the prior consent of Tenant, which consent may be granted or denied in Tenant's sole and absolute discretion. As a major inducement to Tenant to enter into this Lease, City agrees that in no case shall City sell, transfer, assign, or encumber, directly or indirectly, all or any portion of the Phase [ ] Airspace Parcel or the Landfill Parcel, or any interest of City in the same, and City agrees to not negotiate to, or enter into any agreement to, do any of the foregoing.

24.4 No Impairment of Title.

24.4.1 Nothing contained in this Lease or any action or inaction by City shall be deemed or construed to mean that City has granted to Tenant any right, power or permission to do any act or make any agreement that may create, give rise to, or be the foundation for, any right, title, interest, lien, charge or other encumbrance other than this Lease upon the estate of City in the Premises. Without limiting the foregoing, Tenant shall not permit any portion of the Premises to be used by any Person (for the avoidance of doubt, including any Subtenant), at any time or times during the Term of this Lease, in such manner as might impair City's title to or interest in the Premises or any portion thereof, or in such manner as might reasonably make possible a claim or claims of adverse use, adverse possession, prescription, dedication, or other similar claims of, in, to or with respect to the Premises or any part thereof.

24.4.2 Notwithstanding the provisions of this Article 24 to the contrary, Tenant shall have the right to create customary and ordinary utility easements that are reasonably required in connection with the construction of the Improvements, any Restoration, or the operation of the Premises for the Permitted Uses; provided, that Tenant provides each such utility easement to City for its prior approval; and provided, further, that in no event shall City be subject to any liability whatsoever under such utility easements. In addition, City agrees to cooperate with Tenant in the execution, acknowledgment and recordation of the CC&Rs and any other restrictive declarations or easement agreements required by Governmental Authorities or Tenant, including any documents subordinating this Lease (but not City's fee interest in the Phase [ ] Airspace Parcel or Landfill Parcel) to such restrictive declarations or easement agreements. Such restrictive declarations or easement agreements shall be in form and substance reasonably acceptable to City, City shall have no personal liability with respect to such other restrictive declarations or easement agreements, and all costs (including reasonable attorneys' fees) incurred by City in reviewing and/or executing and recording the same shall be at Tenant's sole cost and expense and shall be payable by Tenant within ten (10) Business Days of written demand by City.

ARTICLE 25
QUIET ENJOYMENT

25.1 City covenants that so long as this Lease is in full force and effect and there is no existing Event of Default, Tenant shall and may peaceably and quietly have, hold and enjoy the Premises for the term hereby granted without molestation or disturbance by or from City or any Person lawfully claiming through City, and free of any encumbrance created or suffered by City, except for (i) those encumbrances, liens or defects of title, created or suffered by Tenant and

(ii) the Permitted Exceptions. This covenant shall be construed as running with the land with respect to the Phase [ ] Airspace Parcel and the Landfill Parcel, to and against subsequent owners and successors in interest.

ARTICLE 26
ESTOPPELS

26.1 Tenant Estoppels. At any time, and from time to time, upon not less than fifteen (15) Business Days' notice by City, Tenant shall execute, acknowledge and deliver to City and to any other Person reasonably requested by City a statement certifying: (a) that this Lease and each other Project Document specified by City to which Tenant is a party 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) the date to which each obligation constituting Rent has been paid, (c) whether or not any other amounts due and owing by Tenant to City under this Lease or the other Project Documents specified by City have been paid, (d) whether or not, to Tenant's actual knowledge (without inquiry), City is in default in performance of any covenant, agreement or condition contained in this Lease or the other Project Documents specified by City, and, if so, specifying each such default of which Tenant has actual knowledge, and (e) as to any other matter with respect to this Lease or the other Project Documents specified by City as City may reasonably request.

26.2 City Estoppels. At any time, and from time to time, upon not less than fifteen (15) Business Days' notice by Tenant, City shall execute, acknowledge and deliver to Tenant and to any other Person reasonably requested by Tenant a statement certifying: (a) that this Lease and each other Project Document specified by Tenant 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) the date to which each obligation constituting Rent has been paid, (c) whether or not any other amounts due and owing by Tenant to City under this Lease or the other Project Documents specified by Tenant have been paid, (d) whether or not, to City's actual knowledge (without inquiry), Tenant is in default in performance of any covenant, agreement or condition contained in this Lease or the other Project Documents specified by Tenant and, if so, specifying each such default of which City has actual knowledge, and (e) as to any other matter with respect to this Lease or the other Project Documents specified by Tenant as Tenant may reasonably request.

ARTICLE 27
SURRENDER AT END OF TERM

27.1 Surrender at End of Term. Subject to the provisions of this Lease, on the Expiration Date (or earlier termination of the Term), Tenant shall surrender and deliver up to City the Premises in its then-existing condition (subject to Section 2.5.2), reasonable wear and tear excepted, and subject to Section 11.10 and/or any applicable Recognition Agreement, free and clear of all lettings, occupancies, liens and encumbrances, other than those, if any, (a) in the case of liens and encumbrances, existing as of the Commencement Date, (b) in the case of liens and encumbrances, created, or consented to, by City or (c) that by their express terms and conditions extend beyond the Expiration Date or earlier termination and to which City has

consented (which consent may be granted or withheld in City's sole and absolute discretion) may extend beyond the Expiration Date or earlier termination.

27.2 Delivery of Premises Agreements. On the Expiration Date (or on the earlier termination of the Term), Tenant shall deliver to City copies of each of the following in Tenant's possession: (a) all subleases in effect with respect to the Premises, and of any service and maintenance contracts then affecting the Premises, (b) maintenance records for the Premises, and other non-privileged books and records related to operation and maintenance of the Premises as reasonably requested by City (c) all licenses and permits then pertaining to the Premises (and, if assignable, shall assign same to City upon City's request), (d) permanent or temporary Certificates of Occupancy then in effect for each of the Buildings and (e) all warranties and guarantees then in effect which Tenant has received in connection with any work or services performed or equipment installed at the Premises or in the Improvements together, with duly executed assignments thereof to City, where applicable. Tenant shall cooperate with City to achieve an orderly transition of the Premises to City's control. City and Tenant shall, prior to the Expiration Date, (y) adjust for Impositions and all other appropriate expenses and income of the Premises, and (z) if a Memorandum of Lease has been recorded, execute a document in recordable form evidencing the termination of this Lease and all amendments thereto.

27.3 Condition of Property at Surrender. Any personal property of Tenant or of any Subtenant or other occupant of the Premises that shall remain on the Premises for thirty (30) days after the Expiration Date or the earlier termination of the Term and after the removal of Tenant or such Subtenant or other occupant from the Premises, may, at the option of City, be deemed to have been abandoned by Tenant or such Subtenant or other occupant and either may be retained by City as its property or be disposed of, without accountability, in such manner as City may see fit. City shall not be responsible for any loss or damage occurring to any such property owned by Tenant or any Subtenant or other occupant of the Premises. Tenant shall reimburse City for all costs and expenses incurred by City in connection with disposing of such property.

27.4 Survival. The provisions of this Article 27 shall survive the expiration or any termination of this Lease.

ARTICLE 28
DISPUTE RESOLUTION

28.1 Dispute Resolution Procedures.

28.1.1 Whenever a dispute arises between the Parties which dispute is an Arbitrable Claim, subject to Section 3.4, the Parties shall attempt in good faith to resolve the dispute for a period of thirty (30) days after this Section 28.1.1 is invoked by either Party by notice to the other. If the dispute remains unresolved at the end of the thirty- (30-) day period, Tenant shall have the right to refer such dispute to City Manager. If such dispute remains unresolved for an additional period of twenty-one (21) days after any such referral to City Manager, despite good faith efforts by Tenant to resolve the same through discussions with City Manager, then the Parties shall have the right to seek a resolution of the dispute under Section 28.1.2. As to any Arbitrable Claim (except with respect to the payment of money) to determine whether a matter would, with the passage of time, constitute an Event of Default, such passage of time shall not

commence to run until any such affirmative arbitrated determination. As to any Arbitrable Claim submitted to arbitration with respect to the payment of money, to determine whether a matter would, with the passage of time, constitute an Event of Default, such passage of time shall not commence to run in the event that the Party that is obligated to make the payment does in fact make the payment to the other Party. Such payment can be made "under protest", which shall occur when such payment is accompanied by a good faith notice stating the reasons that the Party has elected to make a payment under protest. Such protest will be deemed waived unless the subject matter identified in the protest is submitted to arbitration as set forth in this Article 28. Nothing in this Section 28.1.1 shall require a Party to postpone instituting any injunctive proceeding or to pursue resolution under this Section 28.1.1 if it believes in good faith that such postponement will cause irreparable harm to such Party.

28.1.2 An "**Arbitrable Claim**" means any dispute under or relating to this Lease, subject to Section 3.4, where and only where this Lease shall expressly provide that a matter is an Arbitrable Claim, or where the Parties have expressly agreed in writing that the matter is an Arbitrable Claim (which agreement either Party may enter into or refuse to enter into in its sole and absolute discretion. In the event of such a dispute, and following compliance with Section 28.1.1, either Party may submit an Arbitrable Claim to binding arbitration by giving notice thereof to the other Party (the "**Arbitration Notice**"). The following provisions shall apply to any such arbitration:

(a) Arbitrators. The arbitrator ("**Arbitrator**") of Arbitrable Claims will be selected by mutual agreement of the parties from a list of pre-approved Arbitrators attached hereto as Exhibit M (the "**Pre-Approved Arbitrators List**"). The Arbitrator will hear all Arbitrable Claims unless the Arbitrator is not available to meet the time schedule set forth herein, in which case the Parties may agree to direct the dispute to another Arbitrator on the Pre-Approved Arbitrators List. If none of the Arbitrators listed is able or willing to serve, the parties shall mutually agree on the selection of an Arbitrator to serve for the purposes of this dispute. The Arbitrator appointed must meet the Arbitrators' Qualifications. The "**Arbitrator's Qualifications**" shall be defined as at least ten (10) years' experience in a real property professional capacity in the general subject area of potential Arbitrable Claims, such as a real estate economist, real estate developer, real estate leasing broker or construction manager or other construction professional in the County of Santa Clara. The Parties shall review the Pre-Approved Arbitrators List on an annual basis, determine each Arbitrator's continued availability and willingness to serve, and may at that time or from time to time, seek to add or subtract arbiters from the Pre-Approved Arbitrator List, by notice in writing to the other Party. Any such notice will be accompanied by supporting documentation of the new proposed Arbitrator's qualifications or with the reasons for seeking to remove an Arbitrator from the Pre-Approved Arbitrators List, as applicable. The other Party shall have fifteen (15) Business Days to respond in writing to such request, and failure to respond shall be deemed consent so long as the notice shall include a statement providing that the failure to respond in such fifteen (15) Business Day period shall be deemed consent. If the other

Party objects, the Parties shall confer pursuant to Section 28.1.1 and thereafter such disputes (if still unresolved after conferring) shall be referred to arbitration pursuant to Section 28.1.2. Notwithstanding the foregoing, if based upon the annual review or at any time during the Term, the Parties become aware that an Arbitrator has become unavailable to serve in any prospective Arbitration or has expressed an unwillingness to continue to serve, the Parties shall replace that Arbitrator with a new Arbitrator mutually agreed-upon by the Parties.

(b) Election to Participate in Arbitration. The Parties shall submit the Arbitrable Claim to arbitration by notifying the Arbitrator of the dispute within ten (10) Business Days after the giving of the Arbitration Notice. Thereafter, within ten (10) Business Days, each Party to the dispute shall submit to the Arbitrator and serve on the other Party to the arbitration a short statement of the dispute and a proposed discovery and hearing schedule.

(c) Preliminary Hearing. Within twenty (20) Business Days after the giving of the Arbitration Notice, the Arbitrator shall conduct, either telephonically or in-person, a preliminary hearing. At the preliminary hearing the Arbitrator shall decide discovery and briefing issues and set dates, including a hearing date. In resolving discovery issues, the Arbitrator shall consider expediency, cost effectiveness, fairness, and the needs of the Parties for adequate information with respect to the dispute.

(d) Retention of Consultants. The Parties by mutual agreement may retain consultants to assist the Arbitrator in the course of Arbitration, if requested by the Arbitrator. In his or her request, the Arbitrator shall provide to all Parties to the dispute an explanation for the need for the consultant, the consultant's identity, hourly rate, and the estimated costs of the service. All Parties to the dispute must approve the retention of the consultant and, if retention of the consultant is approved, the Parties will share the cost of the consultant equally. The consultant's cost shall not exceed ten thousand dollars ($10,000) (increased by ten percent (10%) at the end of each period of five (5) Lease Years) without the prior written consent of the Parties to the dispute.

(e) Commencement of Arbitration. The arbitration hearing shall commence no later than sixty (60) days after the initial preliminary hearing, unless the Parties to the dispute mutually agree to extend the date or the Arbitrator extends the date.

(f) Additional Procedural Requirements. The procedural rules of the arbitration under this Section 28.1.2 shall be supplemented by any non-conflicting arbitration procedures of other alternative dispute resolution providers as may be mutually agreed upon by the Parties from

time to time, applicable to commercial arbitration, and may be modified by agreement of the Parties.

(g) Decision of Arbitrator. The Arbitrator shall make a written decision, specifying the reasons for the decision, within twenty (20) calendar days after the hearing. Each Party will give due consideration to the Arbitrator's decision prior to pursuing further legal action, which decision to pursue further legal action shall be made in each Party's sole and absolute discretion.

(h) Time Period to Complete Arbitration. The arbitration shall be completed within eighty (80) calendar days of the preliminary hearing, unless the Parties to the dispute mutually agree to extend the date or the Arbitrator extends the date.

(i) If either Party protests the determination of the Arbitrator, such Party may commence a lawsuit in the Superior Court for Santa Clara County, it being understood that the review of the Court shall be limited to the question of whether or not the Arbitrator's determination is arbitrary, capricious or without a rational basis. No evidence or information about the matter in dispute shall be introduced or relied upon in any such actions or proceedings that has not been submitted to the Arbitrator in accordance with Section 28.1.2(c).

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

(k) Submission. Unless otherwise directed by the Arbitrator or agreed by the Parties to a given dispute, the Parties involved in the dispute shall strive to make joint submissions to the Arbitrator. The Arbitrator 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).

(l) Except as expressly set forth in Section 28.1.1, it is expressly understood and agreed that the pendency of a dispute hereunder shall at no time and in no respect constitute a basis for either Party not to comply with, or otherwise fully perform in accordance with, this Lease.

ARTICLE 29
LIMITATION OF LIABILITY

29.1 Liability of City. Notwithstanding anything in this Lease to the contrary, the liability of City or of any other Person who has at any time acted as City hereunder for damages or otherwise shall be limited to City's interest in the Premises, including the rents and profits therefrom, the proceeds of any insurance policies covering or relating to the Premises, any awards payable in connection with any condemnation of the Premises or any part thereof, and any other rights, privileges, licenses, franchises, claims, causes of action or other interests, sums or receivables appurtenant to the Premises. Notwithstanding anything in this Lease to the contrary, neither City nor any such Person nor any of the members, managers, trustees, directors, officers, shareholders, owners, partners, employees, agents or servants of City or any such Person shall have any liability (personal or otherwise) hereunder beyond City's interest in the Premises, and no other property or assets of City or any such Person or any of the members, managers, trustees, directors, officers, shareholders, owners, partners, employees, agents or servants of any of them shall be subject to levy, execution or other enforcement procedure for the satisfaction of Tenant's remedies hereunder.

29.2 Liability of Tenant. The liability of Tenant, or of any Person (other than a guarantor or provider of Adequate Security) who has at any time acted as Tenant hereunder, for damages or otherwise shall be limited to Tenant's interest in the Premises, including the rents and profits therefrom, the proceeds of any insurance policies covering or relating to the Premises, any awards payable in connection with any condemnation of the Premises or any part thereof, any funds held by a Depository pursuant to any of the provisions of this Lease, and any other rights, privileges, licenses, franchises, claims, causes of action or other interests, sums or receivables appurtenant to the Premises. Neither Tenant nor any such Person nor any of the members, managers, trustees, directors, officers, employees, agents or servants of any of them shall have any liability (personal or otherwise) hereunder beyond Tenant's interest in the Premises, and no other property or assets of Tenant or any such Person or any of the members, managers, trustees, directors, officers, employees, agents or servants of either shall be subject to levy, execution or other enforcement procedure for the satisfaction of City's remedies hereunder.

ARTICLE 30

FORCE MAJEURE; EXTENSION OF TIMES OF PERFORMANCE

30.1 Force Majeure. In addition to the specific provisions of this Lease, a Party shall not be deemed to be in default under this Lease, including all Exhibits, on account of any delay in such Party's performance to the extent the delay results from Force Majeure (as defined below). "**Force Majeure**" means any delay suffered by a Party in performing an obligation or exercising a right or meeting a deadline to the extent such delay is caused by any of the following: war; acts of terrorism; insurrection; strikes or lock-outs not caused by, or outside the reasonable control of, the Party claiming an extension; riots; floods; earthquakes; fires; casualties; acts of God; acts of the public enemy; epidemics; quarantine restrictions; freight embargoes; lack of transportation not caused by, or outside the reasonable control of, the Party claiming an extension; governmental restrictions or priority; environmental conditions existing or discovered on or affecting the Premises or any portion thereof, including those resulting from

the investigation or remediation of such conditions; litigation that enjoins construction or other work on the Premises or any portion thereof, causes a lender to refuse to fund a loan or to accelerate payment on a loan, or would cause a reasonably prudent developer either to forbear from commencing construction or other work on the Premises or portion thereof or to suspend construction or other work; disruptions in the public or private financing markets that delay or materially increase the cost of public or private financing for the Project; unusually severe weather; inability to secure necessary labor, materials or tools; delays of any contractor, subcontractor or supplier; moratorium, as defined in California Government Code Section 66452.6(f); litigation, ballot measures or referenda challenging City's or another regulatory body's approval of the Project (or any part thereof) or any of the Project Documents; the inability to obtain on a timely basis other approvals required for commencement and completion of the improvements contemplated for the Project (assuming that Tenant is using commercially reasonable efforts to obtain such approvals); actions or inquiries by a Governmental Authority that results in a delay; the occurrence of Landfill or other construction cost premiums that render development of the Premises or a portion thereof commercially uneconomic.

30.2 Period of Force Majeure. The period of Force Majeure shall commence to run from the time of the commencement of the cause and, subject to Section 30.3, shall run for the duration of the event of Force Majeure. The Party claiming Force Majeure shall provide notice to the other applicable Parties of such Force Majeure within a reasonable time following the commencement of the cause. If, however, notice by the Party claiming such extension is sent to the other Parties more than sixty (60) days after the commencement of the cause, the period shall commence to run only sixty (60) days before the giving of such notice, provided that the Party claiming the extension gives notice within a reasonable time following the commencement of the cause.

30.3 Limitations. Notwithstanding anything to the contrary in this Lease, in the case of Force Majeure due to litigation, in no event shall Force Majeure extend for a period greater than three (3) months after a final settlement or non-appealable judgment is issued or affirmed, except that in the case of litigation that invalidates or voids any existing or future Authorizations or would otherwise have a material adverse effect on the ability of Tenant to undertake the performance of the act that is subject to the Force Majeure delay, for example, commencement or completion of improvements, (including, without limitation, an adverse ruling under the California Environmental Quality Act), the period of Force Majeure shall extend for such additional time as may be required by the City to prepare additional or revised Authorizations and/or environmental documents and for the City to consider the revised Authorizations for re-approval in accordance with the terms of the applicable final settlement or unappealable decision.

ARTICLE 31
MISCELLANEOUS

31.1 Entire Agreement; Amendment. This Lease and the other Project Documents contain all of the promises, agreements, conditions, inducements and understandings between City and Tenant relative to the matters set forth herein and therein. The only way to amend or otherwise modify this Lease is for the Parties that are to be bound by such amendment or

modification to sign and deliver a written instrument that expresses the intent to amend or otherwise modify this Lease.

31.2 Waiver. Any waiver of any provision of this Lease by a Party must be in writing and signed by a Person having authority to do so on behalf of such Party. Any waiver shall be only for such period and subject to such conditions as shall be specified in the written instrument effecting the same. Any waiver shall be effective only in the specific instance and for the specific purpose for which given.

31.3 Captions and Table of Contents. The titles of the Articles and Sections and names of defined terms in this Lease are for convenience of reference only and are not intended to define, limit or describe the scope or intent of this Lease or otherwise affect the interpretation of this Lease. The Table of Contents is for the purpose of convenience of reference only and is not intended to be a part of this Lease or to be used in interpreting this Lease.

31.4 Extensions of Time.

31.4.1 City or Tenant may in their sole discretion extend the time for the performance of any term, covenant or condition of this Lease 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 Lease or any other default in, or breach of, this Lease.

31.4.2 In addition to matters set forth in Section 31.4.1, the Parties may in their sole discretion extend the time for performance by any of them of any term, covenant or condition of this Lease by a written instrument signed by authorized representatives of such Parties without the execution of a formal recorded amendment to this Lease, and any such written instrument shall have the same force and effect and impart the same notice to third parties as a formal recorded amendment to this Lease. For the purposes of this Section 31.4, City's authorized representative shall be the City Manager.

31.5 Interpretation. Wherever in this Lease 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 Lease, including its Exhibits, reference is made to the Table of Contents, any Article, Section, Exhibit, Attachment or any defined term, the reference shall be deemed to refer to the Table of Contents, Article, Section, Exhibit, Attachment or defined term of this Lease. Any reference to an Article or a Section includes all subsections and subparagraphs of that Article or Section. The use in this Lease 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. The Recitals are a part of this Lease; however, in the event of a

conflict between the Recitals and the remaining provisions of this Lease, the remaining provisions shall prevail.

31.6 More than One Person. If more than one Person is named as or becomes Tenant hereunder, City may require the signatures of each such Person on any notice given by Tenant hereunder 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 Lease, each Person named as or that becomes Tenant shall be fully, and jointly and severally, liable for all of Tenant's obligations hereunder.

31.7 Time of Performance.

31.7.1 All performance (including cure) dates expire at 5:00 p.m. City of Santa Clara 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 Lease.

31.7.2 If the last day of any period to give notice, reply to a notice, meet a deadline or to 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.

31.7.3 Time is of the essence in the performance of all the terms and conditions of this Lease.

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

31.9 No Brokers. Each of the Parties warrants and represents to the other Party that neither it nor any of its Affiliates have dealt with any broker, finder or like entity or agent in connection with this Lease or the transactions contemplated hereby, or on account of introducing the Parties, the preparation or submission of brochures, the negotiation or execution of this Lease or the execution of the transactions contemplated hereby. If any Person claims to have acted or dealt with Tenant or City in connection with this Lease and claims that it is entitled to a fee of any kind, the Party through which such Person is claiming such entitlement shall indemnify and hold harmless the other Party against any such claim and shall reimburse such other Party for any costs or expenses (including reasonable attorneys' fees and disbursements) incurred in defending itself against any such claim.

31.10 Governing Law. This Lease shall be governed by and construed in accordance with the internal laws of the State of California, without regard to principles of conflicts of law. All references in this Lease to California or federal laws, regulations 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.

31.11 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 permitted successors and assigns.

31.12 Relationship of the Parties. None of the provisions in this Lease 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.

31.13 Construction. This Lease shall be construed without regard to any presumption or other rule requiring construction against the Party causing this Lease to be drafted. In the event of any action, suit, arbitration, dispute or proceeding affecting the terms of this Lease, no weight shall be given to any deletions or striking out of any of the terms of this Lease contained in any draft of this Lease 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.

31.14 Incorporation of Exhibits. Each Exhibit listed in the List of Exhibits is a part of this Lease.

31.15 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 Lease.

31.16 Numbers.

31.16.1 Generally. For purposes of calculating a number under this Lease 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.

31.16.2 Number of Days. References in this Lease to days shall be to calendar days, unless otherwise specified.

31.17 No Gift or Dedication. Except as otherwise specified in this Lease, this Lease 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. Tenant shall have the right to prevent or prohibit the use of any portion of the property leased by it, including common areas and buildings and improvements, by any Persons for any purpose inimical to the operation of a private, integrated mixed-use project as contemplated by this Lease.

31.18 Correction of Technical Errors. If by reason of inadvertence, and contrary to the intention of Tenant and City, errors are made in this Lease 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 Lease or any of its Exhibits, Tenant and City by mutual agreement may correct such error by memorandum executed by both of them and

replacing the appropriate pages of this Lease, and no such memorandum or page replacement shall be deemed an amendment of this Lease.

31.19 Severability. If any term or provision of this Lease or the application thereof to any Person or circumstances shall, to any extent, be invalid or unenforceable, the remainder of this Lease, or the application of such term or provision 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 Lease shall be valid and be enforced to the fullest extent permitted by law.

31.20 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 Lease 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 Lease, and to rely solely on the remedies provided for in this Lease with respect to any breach of this Lease by any other Party.

31.21 Consents and Approvals. Whenever a consent or approval is required or permitted to be given by any Party under this Lease, it shall not be unreasonably withheld, conditioned or delayed unless the consent or approval is explicitly stated in this Lease to be within the "sole discretion" (or words of similar import) of the Party whose consent or approval is sought. Unless explicitly stated otherwise, a consent or approval by the City shall mean the consent or approval of the City Manager. A Party that denies a consent or approval under this Lease, or that gives a conditional consent or approval, shall in giving such denial or conditional consent or approval state the reasons therefor in reasonable detail, unless such consent or approval is explicitly stated in this Lease to be within the "sole discretion" (or words of similar import) of the Party whose consent or approval is sought. It is understood and agreed that the granting of any consent or approval by a Party to another Party under this Lease to perform any act requiring such Party's consent or approval under this Lease, 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 a consent or approval (other than a consent or approval explicitly stated in this Lease to be within the "sole discretion," or words of similar import, of the City), 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. Notwithstanding the foregoing, it is specifically acknowledged by all Parties that this Section 31.22 shall not apply to any consent or approval given by a public entity in its land use or regulatory capacity. Such consents and approvals shall be governed by the standards of review generally accorded by the state courts of California.

31.22 Counterparts. This Lease 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 Lease shall become effective when the Parties have duly executed and delivered signature pages to this Lease to each other. Delivery of this Lease may be effectuated by personal 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, but the Party delivering signatures by electronic communication shall thereafter promptly deliver original signatures by personal delivery, mail or overnight courier.

31.23 Survival. Termination of this Lease shall not affect (i) the right of any Party to enforce any and all indemnifications set forth herein to the extent they relate to the period before termination and (ii) any provision of this Lease that, by its express term, is intended to survive the expiration or termination of this Lease.

31.24 Press Releases. Except as may be required by Applicable Law, no press release, publicity notice or announcement regarding or in any way directly or indirectly referring to any of the terms or provisions of this Lease or any other Project Document, or the transactions contemplated hereby or thereby, shall be made or caused to be made by Tenant or any Affiliate of Tenant without the prior consent of City, which consent may be granted or denied in City's sole and absolute discretion. Tenant shall furnish to City advance copies of any press release, publicity notice or announcement which it desires to make public with respect to this Lease and/or the transactions contemplated hereby. Notwithstanding the foregoing, City may, in response to inquiries from the press, confirm the fact that Tenant has entered into a ground lease of a portion of the Site; provided, however, whether or not in response to any such inquiry, Tenant shall not disclose or confirm any of the terms or provisions of this Lease or any other Project Document.

31.25 Recording of Memorandum. This Lease is not to be recorded. However, concurrently herewith the Parties have executed and acknowledged a memorandum of this Lease substantially in the form of Exhibit N, which is to be recorded by Tenant, at its expense, in the Official Records promptly following the execution and delivery of this Lease. In addition, the Parties will prepare and record an amended memorandum of this Lease in accordance with Section 2.2 hereof to reflect the final boundaries of the Airspace Parcel and the Landfill Parcel underlying the Airspace Parcel.

31.26 Nondiscrimination.

31.26.1 There shall be no discrimination against or segregation of any person or group of persons on any basis listed in subdivision (a) or (d) of section 12955 of the California Government Code, as those bases are defined in sections 12926, 12926.1, subdivision (m) and paragraph (1) of subdivision (p) of section 12955, and section 12955.2 of the California Government Code, or on the basis of age, race, color, creed, sex, sexual orientation, gender identity, marital or domestic partner status, disabilities (including AIDS or HIV status), religion, national origin or ancestry by Tenant or any occupant or user of the Premises in the sale, lease, rental, sublease, transfer, use, occupancy, tenure or enjoyment of the Premises, or any portion thereof. Neither Tenant itself (nor any person or entity claiming under or through it), nor any occupant or user of the Premises or any transferee, successor, assign or holder of any interest in the Premises or any person or entity claiming under or through such transferee, successor, assign or holder, shall establish or permit any such practice or practices of discrimination or segregation in connection with the Premises, including with reference to the selection, location, number, use or occupancy of buyers, tenants, vendees or others. But such person shall not be in default of its

obligations under this Section 31.26 where there is a judicial action or arbitration involving a bona fide dispute over whether such person is engaged in discriminatory practices and such person promptly acts to satisfy any judgment or award against such person.

31.26.2 Any transferee, successor, assign, or holder of any interest in the Premises, or any occupant or user thereof, whether by contract, lease, rental, sublease, license, deed, deed of trust, Mortgage or otherwise, and whether or not any written instrument or oral agreement contains the above prohibitions against discrimination, shall be bound by, and shall not violate in whole or in part, directly or indirectly, the nondiscrimination requirements set forth above. The covenants in this Section 31.26 shall be covenants running with the land and they shall be: (i) binding for the benefit and in favor of City, as beneficiary and the owner of any other land or of any interest in any land in the Project, as beneficiary, and their respective successors and assigns; and (ii) binding against Tenant, its successors and assigns to or of the Premises and any Improvements thereon or any portion thereof or any interest therein, and any party in possession or occupancy of the Premises or the Improvements thereon or any portion thereof.

31.27 Tax Benefits. To the extent permitted by law, notwithstanding City's interest in the Premises, Tenant shall have the right to all depreciation deductions, investment tax credits and other similar tax benefits attributable to any construction, demolition and Restoration performed by Tenant or attributable to the ownership of the Improvements. City, from time to time, shall execute and deliver such instruments as Tenant shall reasonably request in order to effect the provisions of this Section 31.27, and Tenant shall pay City's reasonable costs and expenses thereof. City makes no representations as to the availability of any such deductions, credits or tax benefits.

31.28 No Merger. Except as otherwise expressly provided in this Lease, there shall be no merger of this Lease or the leasehold estate created hereby with the fee estate in the Premises or any part thereof by reason of the same Person acquiring or holding, directly or indirectly, this Lease or the leasehold estate created hereby or any interest in this Lease or in such leasehold estate as well as the fee estate in the Premises or any part thereof.

31.29 Sales Tax. Tenant shall use commercially reasonable efforts to adopt sales tax reporting procedures allowable under Applicable Law that will provide City (in its capacity as a Governmental Authority) the greatest allocation of California sales tax revenues feasible, and shall use include a provision in all applicable contracts requiring its general construction contractors, vendors and Building occupants to adopt these procedures (or such other commercially reasonable procedures allowable under Applicable Law), including by designating the Premises as the place of sale and place of use of materials, goods, and services to be used in connection with the construction and operation of the Premises. Tenant shall propose to City for its approval a process that will designate the Premises as the place of sale of fixtures furnished and installed by Tenant for the Premises, and to do the same with respect to construction materials used in connection with the Improvements. Notwithstanding the foregoing, the failure of such general construction contractors, vendors and Building occupants to allocate sales tax revenues to the City shall not constitute a breach by Tenant under this Lease. Tenant shall bear all costs associated with its obligations under this Section 31.29.

31.30 Acceptance of Rent. The acceptance by City of any Rent or other payments due hereunder with knowledge of the breach of any of the terms, covenants or provisions of this Lease by Tenant shall not be construed as a waiver of any such breach. The acceptance at any time or times by City of any sum less than that which is required to be paid by Tenant shall, unless City specifically agrees otherwise in writing, be deemed to have been received only on account of the obligation for which it is paid, and shall not be deemed an accord and satisfaction notwithstanding any provisions to the contrary written on any check or contained in any writing transmitting the same. Failure by City to insist upon the strict performance by Tenant of any of the provisions of this Lease or to exercise any right, remedy or election herein contained or permitted by law shall not constitute or be construed as a waiver or relinquishment for the future of such provision, right, remedy or election, but the same shall continue and remain in full force and effect. The waiver by City of any breach of this Lease shall not be deemed a waiver of any future breach.

31.31 Independent Covenants. Each covenant, agreement, obligation or other provision of this Lease on Tenant's part to be performed, shall be deemed and construed as a separate and independent covenant of Tenant, not dependent on any other provision of this Lease.

31.32 Attorney's Fees. Should any Party institute any action or proceeding in court or other dispute resolution mechanism permitted or required under this Lease, 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 31.32 shall include attorneys' fees on any appeal. For purposes of this Lease, reasonable fees of 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.

31.33 Governmental Authority. City is entering into this Lease in its capacity as the fee owner of the Premises and not as a Governmental Authority.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

EXHIBIT G-2
FORM OF GROUND LEASE (PHASES 2-7)

IN WITNESS WHEREOF, Tenant and City have executed this Lease as of the Commencement Date.

CITY:

CITY OF SANTA CLARA, a municipal corporation

By: _____
Name:
Title: City Manager

Approved as to form:

By: _____
Name:
Title: City Attorney

Approved on _____, 20__

TENANT:

EXHIBIT G-2
FORM OF GROUND LEASE (PHASES 2-7)

ATTACHMENT 1
Public Financing and Special Tax Matters

[ADD IF APPLICABLE]

This Attachment will include relevant leasehold provisions necessary to implement public financing vehicles such as Mello-Roos Community Facilities Districts ("**CFD's**") to the extent approved by City and Master Developer under the DDA. Matters to be included in this Attachment 1 will include Tenant's acknowledgement of the formation of the Mello-Roos District, designation of Improvement Areas, the authorization to levy Special Taxes, the authorization to issue Bonds, the conditions for the issuance of Bonds, the special tax rates in the Rate and Method for each Improvement Area, the Applicable Rate and Method, the use of the proceeds of the Bonds and the Special Taxes for CFD Improvements and Services, the ability to securitize the issuance of Bonds in another Improvement Area by the Applicable Special Taxes, the boundaries of the Mello-Roos District and the Improvement Areas, and other matters related to the Mello-Roos District.

In addition, the Tenant will covenant: to cooperate in the execution of such documents (and to obtain such documents from any Mortgagee) as may be reasonably required for the formation and implementation of the CFD; not to contest, protest or otherwise challenge actions taken by City and Master Developer necessary to authorize and implement the CFD; provide such representations and warranties as are reasonably required to implement the CFD; and to take all such further actions as are reasonably required to implement the CFD, including, without limitation, formation of the CFD, payment of special taxes and issuance of bonds by the City thereunder.

The provisions of this Attachment 1 shall be consistent with the terms and conditions of a CFD as approved by the City Council and Master Developer and shall be in such form as is reasonably approved by the City Manager in consultation with the City Attorney without further approval of the form of Ground Lease by the City Council.

EXHIBIT G-2
FORM OF GROUND LEASE (PHASES 2-7)

EXHIBIT A-1
Legal Description of the Landfill Parcel

[To be attached upon Ground Lease execution]

EXHIBIT G-2
FORM OF GROUND LEASE (PHASES 2-7)

EXHIBIT A-2
Legal Description of the Phase [ ] Airspace Parcel

[To be attached upon Ground Lease execution]

EXHIBIT B

FORM OF GUARANTY

GUARANTY

THIS GUARANTY (this "Guaranty") dated as of [_____, 20__], is made by [_____], a [_____] ("Guarantor"), in favor of the CITY OF SANTA CLARA, a chartered municipal corporation (the "City").

RECITALS:

A. [_____], a [_____] ("Tenant"), and City are parties to that certain Ground Lease (City Place Santa Clara – Phase [ ]), dated as of [_____], 2[__] (the "Lease"), pursuant to which City ground-leases to Tenant certain premises (the "Premises"), as such premises is more particularly described in Exhibit A[-2] to the Lease. Terms used herein but not defined herein shall have the meanings given to such terms in the Lease.

B. Tenant desires to engage in a Consent Transfer, pursuant to which it proposes to transfer [**all**] [**a portion**] of the Lease and the Premises to [_____], a [_____] ("Transferee").

C. The Lease requires that Transferee have a Net Worth equal to or more than [[Seventy-Five Million Dollars ($75,000,000)][Twenty-Five Million Dollars ($25,000,000)], *increased by 10% on each five year anniversary of the Effective Date of the Lease, multiplied by the percentage of the total land area in the Phase that is being transferred*] (the "Net Worth Requirement"), and provides, further, that Transferee may satisfy the Net Worth Requirement either by meeting the Net Worth Requirement itself, or by providing a guaranty in the form of this Guaranty, covering all of Transferee's obligations under the Lease, as transferred (collectively, the "Obligations"), without limitation, from an entity that meets the Net Worth Requirement.

D. Because Transferee does not meet the Net Worth Requirement, Guarantor, an affiliate of Transferee that meets the Net Worth Requirement, is willing and desires to guaranty Transferee's full, prompt and complete payment and performance of the Obligations, as set forth in this Guaranty.

NOW, THEREFORE, in order to induce the City to approve the transfer to Transferee pursuant to the Lease, and in consideration thereof, Guarantor hereby agrees as follows:

AGREEMENT:

1. Guaranty.

1.1 Guarantor hereby absolutely, irrevocably and unconditionally guarantees the full, prompt and complete payment and performance when due of each and all of the Obligations.

EXHIBIT B

FORM OF GUARANTY

1.2 If the City institutes and prevails in any action or proceeding against Guarantor to enforce any of its rights or remedies under this Guaranty, then, in addition to any other recovery or relief, Guarantor shall pay to the City any and all costs, fees and expenses (including, without limitation, reasonable attorneys' fees and all out-of-pocket costs and expenses incurred by the City, including, without limitation, all court costs and other reasonable litigation expenses, such as expert witness fees, document copying expenses, exhibit preparation costs, courier expenses, postage and communication expenses) incurred by the City related thereto. The City shall be deemed to have prevailed in any such action or proceeding (without limiting the generality of the foregoing) if such action is dismissed upon the payment by the other party of the sums allegedly due or the performance of obligations allegedly not complied with, or if the City obtains substantially the relief sought by it in the action, irrespective of whether such action is prosecuted to judgment. The City shall also be entitled to its respective attorneys' fees and costs incurred in any post-judgment proceedings to collect the judgment. This provision is separate and several and shall survive the merger of this Guaranty into any judgment on this Guaranty.

2. Guaranty Absolute.

2.1 Guarantor guarantees that the Obligations will be paid and performed strictly in accordance with the terms of the Lease and any other agreement or instrument relating thereto, regardless of any law, regulation or order now or hereafter in effect in any jurisdiction affecting any of such terms or the rights of the City with respect thereto. The liability of Guarantor under this Guaranty shall be absolute and unconditional irrespective of:

(i) any lack of validity or enforceability of the Lease, the Obligations, or any other agreement or instrument relating thereto;

(ii) any change in the time, manner or place of performance of, or in any other term of, all or any of the Obligations, or any other amendment or waiver of or any consent to departure from the Lease;

(iii) any release or amendment or waiver of or consent to departure from any other guaranty, for all or any of the Obligations; or

(iv) any other circumstance which might otherwise constitute a defense available to, or a discharge of, Transferee in respect of the Obligations or Guarantor in respect of this Guaranty.

2.2 Notwithstanding any termination of this Guaranty or any other agreement evidencing the Obligations, if at any time any payment of any of the Obligations (from any source) is rescinded, set aside, recouped, or is repaid or must otherwise be returned by the City (i) due to or upon the insolvency, bankruptcy or reorganization of Transferee, or any general partner or member of Transferee, or (ii) for any other circumstance caused by Transferee, this Guaranty shall continue to be effective or be reinstated, as the case may be, all as though such payment had not been made.

EXHIBIT B

FORM OF GUARANTY

3. Waiver of Subrogation. Guarantor hereby absolutely and irrevocably waives any and all (i) rights which it may have or may now or hereafter acquire by way of subrogation, reimbursement, contribution or indemnity against Transferee by virtue of any payment made under this Guaranty or otherwise (including, without limitation, any payment made by Transferee) in connection with the Lease and/or the Premises, and (ii) other claims or rights against Transferee relating to this Guaranty or the Obligations; provided, however, that upon the full and irrevocable payment, satisfaction and performance of all the Obligations, the termination of this Guaranty or the release of Guarantor pursuant to the terms hereof, then such rights of subrogation, reimbursement, contribution or indemnity against Transferee shall be reinstated.

4. Guaranty Independent; Waivers.

4.1 Guarantor agrees that (i) the obligations hereunder are independent of and in addition to the undertakings of Transferee pursuant to the Lease, any other guaranties given in connection with the Lease and any other obligations of Guarantor to the City, (ii) a separate action may be brought to enforce the provisions hereof whether Transferee is a party in any such action or not, (iii) the City may at any time, or from time to time, in its sole discretion and without notice of any kind to Guarantor, (A) extend or change the time of payment or performance and/or the manner, place or terms of payment or performance of all or any of the Obligations; and (B) settle or compromise with Transferee, and/or any other person liable thereon, any and all of the Obligations, and/or subordinate the payment of same, or any part thereof, to the payment of any other debts or claims, which may at any time be due or owing to the City and/or any other person or corporation, and (iv) the City shall not be under any obligation to marshal any assets in favor of Guarantor or in payment of any or all of the Obligations.

4.2 Guarantor hereby waives (i) presentment, demand, protest, notice of acceptance, notice of dishonor, notice of nonperformance and any other notice with respect to any of the Obligations, and promptness in commencing suit against any party thereto or liable thereon, and/or in giving any notice to or making any claim or demand hereunder upon Guarantor, (ii) any right to require the City to (A) proceed against Transferee, (B) proceed against or exhaust any security held from Transferee or any other Person, or (C) pursue any remedy in the City's power whatsoever; (iii) any defense arising by reason of any disability or other defense of Transferee or by reason of the cessation from any cause whatsoever of the liability of Transferee other than the irrevocable payment and performance in full of the Obligations; (iv) to the fullest extent permitted by law, all rights and benefits under Section 2809 of the California Civil Code purporting to reduce a guarantor's obligations in proportion to the principal obligation; and (v) to the fullest extent permitted by law, (A) any defense arising as a result of the City's election, in any proceeding instituted under the Bankruptcy Code, of the application of Section 1111(b)(2) of the Bankruptcy Code, (B) any defense based on any borrowing or grant of a security interest under Section 364 of the Bankruptcy Code, and (C) without limiting the generality of the foregoing or any other provision hereof, all rights and benefits which might otherwise be available to the undersigned under California Civil Code Sections 2810, 2819, 2839, 2845, 2849, 2850, 2855, 2899, and 3433.

EXHIBIT B

FORM OF GUARANTY

4.3 Guarantor warrants that (i) this Guaranty is executed at Transferee's request, (ii) the City has not made any representation to Guarantor as to the creditworthiness of Transferee, and (iii) Guarantor assumes the responsibility for keeping informed of the financial condition of Transferee and of all other circumstances bearing upon the risk of nonperformance of the Obligations, and agrees that the City shall not have any duty to advise Guarantor of any information known to the City regarding any such financial condition or circumstances. Guarantor hereby irrevocably waives any defense which, absent this waiver, Guarantor would have that its obligations under this Agreement could be exonerated based upon the City's failure to inform Guarantor of the existing or ongoing financial condition of Transferee or of any other circumstances bearing upon the risk of nonperformance of the Obligations.

4.4 Guarantor warrants and agrees that each of the waivers set forth above is made with Guarantor's full knowledge of its significance and consequences and that under the circumstances the waivers are reasonable. If any said waivers are determined to be contrary to any application of law or public policy, such waivers shall nonetheless be effective to the fullest extent permitted by law.

5. Does Not Supersede Other Guaranties. The obligations of Guarantor hereunder shall be in addition to any obligations of Guarantor under any other guaranties of the Obligations and/or any obligations of Transferee or any other persons or entities heretofore given or hereafter to be given to the City, and this Guaranty shall not affect or invalidate any such other guaranties or obligations. The liability of Guarantor to the City shall at all times be deemed to be the aggregate liability of Guarantor under the terms of this Guaranty.

6. Representations and Warranties. Guarantor hereby represents and warrants as follows:

6.1 Validity of Guaranty.

(i) The execution, delivery and performance by Guarantor of this Guaranty will not violate any provision of law, any order of any court or agency of government, or any indenture, agreement or any other instrument to which Guarantor is a party or by which Guarantor or its property is bound, or be in conflict with, result in a breach of or constitute (with due notice and/or lapse of time) a default under any such indenture, agreement or other instrument, or result in the creation or imposition of any lien, charge or encumbrance of any nature whatsoever upon any of its property or assets (other than any lien, charge or encumbrance which may be created or imposed by this Guaranty).

(ii) This Guaranty, when delivered to the City, will constitute a legal, valid and binding obligation enforceable against Guarantor in accordance with its terms.

6.2 Other Information. All reports, papers and written data and information given to the City by Guarantor with respect to Guarantor are accurate and correct in all material respects and complete insofar as completeness may be necessary to give the City a true and accurate knowledge of the subject matter.

EXHIBIT B

FORM OF GUARANTY

6.3 Litigation. There is not now pending against or affecting Guarantor, nor to the knowledge of Guarantor is there threatened, any action, suit or proceeding at law or in equity or by or before any administrative agency in which there is a reasonable possibility of a determination adverse to Guarantor, which if adversely determined, could materially impair or affect the financial condition or operations of Guarantor.

6.4 Net Worth. As of the date of this Guaranty, Guarantor has a Net Worth equal to at least [***insert Minimum Net Worth amount specified above***].

7. Affirmative Covenants. Guarantor covenants and agrees that, so long as any part of the Obligations shall remain outstanding or unsatisfied, Guarantor will, unless the City shall otherwise consent in writing, maintain full and complete books of account and other records reflecting its financial condition, in commercially reasonable form, and consistent with generally accepted accounting practices, and provide to the City such information about the financial condition of Guarantor as the City shall reasonably request. The City shall have the right, upon reasonable advance notice, to inspect the books and records of Guarantor; provided, however, that, upon reasonable cause, the City shall have the right to audit the books and records of Guarantor.

8. Amendments, Etc. No amendment or waiver of any provision of this Guaranty nor consent to any departure by Guarantor therefrom shall in any event be effective unless the same shall be in writing and signed by the party sought to be charged, and then such waiver or consent shall be effective only in the specific instance and for the specific purpose for which given. No notice to or demand on Guarantor shall in any case entitle it to any other or further notice or demand in similar or other circumstances.

9. Notices. All notices, demands or requests provided for or permitted to be given pursuant to this Guaranty shall be in writing, and shall be personally delivered or sent by a nationally recognized same day or overnight courier or sent by registered or certified mail, postage prepaid, return receipt requested, or delivered or sent by telecopy or facsimile and shall be deemed received upon the earlier of (a) if personally delivered or sent by same day or overnight courier, the date of delivery to the address of the person to receive such notice, (b) if mailed, on the date of delivery as shown on the sender's registry or certification receipt, or (c) if given by telecopy or facsimile, when sent with confirmation of receipt. Any notice, request, demand, direction or other communication sent by telecopy or facsimile must be confirmed within forty-eight (48) hours by letter mailed or delivered in accordance with the foregoing, provided that failure to mail or deliver such confirmation within forty-eight (48) hours will not invalidate notice actually received by the individual to whom the telecopy or facsimile was addressed. Notices shall be addressed to the parties at their address set forth below:

If to Guarantor:

[_____]
[_____]
[_____]
[_____]
[_____]

EXHIBIT B

FORM OF GUARANTY

with a copy to:

[_____]
[_____]
[_____]
[_____]
[_____]

If to City:

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

with a copy to:

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

If to Transferee:

[_____]
[_____]
[_____]
[_____]
[_____]

with a copy to:

[_____]
[_____]
[_____]
[_____]
[_____]

If to Tenant:

[_____]
[_____]
[_____]
[_____]
[_____]

with a copy to:

EXHIBIT B

FORM OF GUARANTY

[_____]
[_____]
[_____]
[_____]
[_____]

Notice of change of address shall be given by written notice in the manner detailed in this paragraph. Rejection or other refusal to accept or the inability to deliver because of changed address of which no notice was given shall be deemed to constitute receipt of the notice, demand, request or communication sent.

10. No Waiver; Remedies. No failure on the part of the City to exercise and no delay in exercising any right or remedy hereunder shall operate as a waiver thereof; nor shall the City be estopped to exercise any such right or remedy at any future time because of any such failure or delay; nor shall any single or partial exercise of any right or remedy hereunder preclude any other or further exercise thereof or the exercise of any other right or remedy. The remedies herein provided are cumulative and not exclusive of any remedies provided by law.

11. Continuing Guaranty. This Guaranty is a continuing guaranty and a guaranty of both payment and performance and not of collectability, and shall (i) subject to the provisions of Section 2.2 hereof, remain in full force and effect until payment, performance and satisfaction in full of the Obligations and all other amounts payable under this Guaranty, (ii) be binding upon Guarantor and its permitted successors and assigns, and (iii) inure to the benefit of and be enforceable by the City and its successors, transferees and assigns. Neither this Guaranty nor any rights or obligations under this Guaranty may be assigned by Guarantor; however, notwithstanding anything to the contrary contained herein, Guarantor may from time to time provide a substitute guarantor hereunder, provided that the substitute guarantor must be reasonably approved by the City in writing and must meet the then applicable Net Worth Requirement (the "New Guarantor"). Upon the City's reasonable approval of the New Guarantor, satisfaction of the then applicable Net Worth Requirment, and the New Guarantor's assuming the obligations hereunder accruing from and after the date of such assumption, Guarantor shall be released of all further obligations and liabilities hereunder and this Guaranty shall terminate with respect to Guarantor.

12. Subordination. Any indebtedness of Transferee now or hereafter held by Guarantor which is unrelated to the Obligations guaranteed hereby is hereby subordinated to the Obligations, and such indebtedness of Transferee to Guarantor shall, after the occurrence of a default by Transferee in performance of the Obligations or under the Assignment Agreement, be collected, enforced and received by Guarantor as trustee for the City and be paid over to the City on account of the Obligations, but without reducing or limiting in any manner the liability of Guarantor under the other provisions of this Guaranty. Guarantor acknowledges that any indebtedness of Transferee now or hereafter held by Guarantor relating to the Obligations

guaranteed hereby has been irrevocably waived pursuant to Section 3 hereof, subject to the terms thereof.

13. Fraudulent Transfer Limitation. If, in any action to enforce this Guaranty, any court of competent jurisdiction determines that enforcement against Guarantor for the full amount of the Obligations is not lawful under or would be subject to avoidance under Section 548 of the United States Bankruptcy Code or any applicable provision of any comparable law of any state or other jurisdiction, the liability of Guarantor under this Guaranty shall be limited to the maximum lawful amount not subject to such avoidance.

14. Waiver of Right to Trial by Jury. Guarantor hereby waives any right to trial by jury with respect to any action or proceeding (i) brought by Guarantor, Transferee, the City relating to (A) the Assignment Agreement, and/or any understandings or prior dealings between the parties hereto, or (B) this Guaranty, or (ii) to which the City is a party. Guarantor hereby agrees that this Guaranty constitutes a written consent to waiver of trial by jury to the maximum extent allowed under California law as of the date hereof, and as California Law may hereinafter be revised or amended, and Guarantor does hereby constitute and appoint the City its true and lawful attorney-in-fact, which appointment is coupled with an interest, and Guarantor does hereby authorize and empower the City, in the name, place and stead of Guarantor, to file this Guaranty with the clerk or judge of any court of competent jurisdiction as a statutory written consent to waiver of trial by jury.

INITIALS: _____

[The remainder of this page has been intentionally left blank]

EXHIBIT B

FORM OF GUARANTY

15. Bankruptcy of Transferee. Notwithstanding any modification, discharge or extension of the Obligations or any amendment, modification, stay or cure of the City's rights which may occur in any bankruptcy or reorganization case or proceeding (state or federal) concerning Transferee whether permanent or temporary, and whether assented to by the City, Guarantor hereby agrees that it shall be obligated hereunder to pay and perform the Obligations and discharge its other obligations in accordance with the terms of the Obligations and the terms of this Guaranty in effect on the date hereof. Guarantor understands and acknowledges that by virtue of this Guaranty, it has specifically assumed any and all risks of a bankruptcy or reorganization case or proceeding with respect to Transferee. As an example and not in any way of limitation, a subsequent modification of the Obligations in any bankruptcy or reorganization case or proceeding concerning Transferee shall not affect the obligation of Guarantor to pay and perform the Obligations in accordance with their original terms.

16. Remedies. In the event that Guarantor shall fail to perform promptly after written notice given by City in the manner as herein provided, the City shall have the following remedies: (a) from time to time, without being required to exhaust any or all security, if any, held by the City, to require performance by Guarantor of any obligation on the part of Guarantor to be performed pursuant to the terms hereof, by action at law or in equity or both, and further to collect in any such action compensation for all loss, cost, damage, injury and expense sustained or incurred by the City as a consequence of such breach; and (b) any other right or remedy provided hereunder, at law or in equity. All remedies available to City are cumulative and not alternative.

17. Miscellaneous.

17.1 Time of Essence. Time is of the essence hereof.

17.2 Partial Invalidity. If any term, provision, covenant or condition hereof or any application thereof should be held by a court of competent jurisdiction to be invalid, void or unenforceable, all provisions, covenants and conditions hereof, and all applications thereof not held invalid, void or unenforceable shall continue in full force and effect and shall in no way be affected, impaired or invalidated thereby.

17.3 Headings. Section headings in this Guaranty are included for convenience of reference only and do not constitute a part of this Guaranty for any other purpose.

17.4 Governing Law. This Guaranty shall be governed by, and construed in accordance with, the internal laws of the State of California, without regard to principles of conflicts of law.

17.5 Entire Agreement. This Guaranty embodies the entire agreement and understanding between City and Guarantor pertaining to the subject matter of this Guaranty, and supersedes all prior agreements, understandings, negotiations, representations and discussions, whether verbal or written, of such parties, pertaining to that subject matter.

EXHIBIT B

FORM OF GUARANTY

17.6 Further Action. The Guarantor agrees to perform any further acts and to execute and deliver any other documents which may be necessary in the reasonable opinion of City to effectuate the provisions of this Guaranty.

[The remainder of this page has been intentionally left blank]

EXHIBIT B

FORM OF GUARANTY

IN WITNESS WHEREOF, the undersigned has duly executed and delivered this Guaranty as of the date first above written.

GUARANTOR:

[_____],
a [_____]

By: _____

Name: _____

Title: _____

EXHIBIT G-2
FORM OF GROUND LEASE (PHASES 2-7)

EXHIBIT C
Permitted Exceptions

[To be attached upon Ground Lease execution]

EXHIBIT G-2
FORM OF GROUND LEASE (PHASES 2-7)

EXHIBIT D
Additional Initial Buildings

[To be attached upon Ground Lease execution]

EXHIBIT E
PROJECT MMRP AND APPLICABLE MMRP MEASURES

[Attached hereto is the complete Project MMRP adopted by the City Council in connection with its approval of the Project. The report approved in connection with each Phase of the Project pursuant to Section 1.11 of Exhibit 2 of the Development Area Plans and Architectural Review – Submittal and Approval Procedures (the "DAP Procedures") will identify the specific mitigation measures under the Project MMRP that are applicable to such Phase. Consistent with such report, the Parties will attach to the final Lease for each Phase a modified version of the Project MMRP specifying those mitigation measures that are applicable to such Phase.]

MITIGATION MONITORING & REPORTING PROGRAM
City Place Santa Clara Project
Planning/CEQA File # PLN2014-10554/CEQ2014-01180
State Clearinghouse # 2014072078

Mitigation and Avoidance Measures	Action	Implementing Party	Monitoring Party	Timing [1]
LAND USE				
LU-1.1: Increase Residential Density in the City's General Plan. During the next General Plan Update cycle, the City shall explore permitting higher residential densities in the City as well as allowing residential land uses in existing non-residential areas. Where feasible, the City shall target strategic areas of the City, specifically those closest to major employment and transit hubs, for new residential land uses and/or increased residential density. In order to maintain projected 2035 jobs/housing ratios, the City shall explore permitting up to 11,000 units.	City to explore permitting higher residential densities in the City.	Director of Planning and Inspection	Director of Planning and Inspection	During the next General Plan Update cycle
AESTHETICS				
AES-1.1: Imported Material Storage. Soils from other parcels that are imported to Parcel 2 shall be stored in areas that are not within view of the Guadalupe River Trail. Alternatively, imported soils within view of the Guadalupe River Trail shall be distributed across Parcel 2 at a depth of 2 feet or less.	Project Developer to provide applicable provisions of construction contracts to the City incorporating requirement.	Project Developer/ Project Contractor	City Planning & Inspection Division	Prior to issuance of grading and building permits
AES-1.2: Early Implementation of Master Community Plan Landscaping Plan for Parcels 1 and 2. The existing golf course trees along the eastern edge of Parcel 2 shall be retained (leaving the view from the Guadalupe River trail unchanged) until such time as development on the eastern portion of Parcel 2 would necessitate their removal. The Project Developer shall implement the Landscaping Plan, as presented in the Master Community Plan, at the earliest feasible period, given the constraints and pacing of the development. Prior to planting and installation, the Landscaping Plan shall be submitted to the Planning Director for approval.	Project Developer to submit a landscape plan to replace removed trees to the City for review and approval.	Project Developer/ Project Contractor	City Director of Planning & Inspection	Prior to issuance of grading and building permits for Parcel 2
AES-2.1: Installation of Low-Profile Lighting. The Project Developer shall install low-profile, low-intensity lighting directed downward to minimize light and glare.	Project Developer to submit catalog cuts of the fixtures proposed to the City demonstrating compliance.	Project Developer	City Planning & Inspection Division	Concurrent with Architectural Review submittal,

[1] Where the timing of an action is specified as taking place before a permit is issued, that action must be taken with respect to the action underlying the permit, except where otherwise specifically noted.

Mitigation and Avoidance Measures	Action	Implementing Party	Monitoring Party	Timing [1]
				which may be included within Development Area Plans
AES-2.2: Installation of Shielded Fixtures. The Project Developer shall use shielded fixtures for street lighting and park lighting to minimize spill onto the public right-of-way and glare produced by the lighting on the Project site.	Project Developer to submit catalog cuts of the fixtures proposed to the City demonstrating compliance.	Project Developer	City Planning & Inspection Division	Concurrent with Architectural Review submittal, which may be included within Development Area Plans
AES-2.3: Treat Reflective Surfaces. The Project Developer shall ensure application of low-emissivity glass at exterior surfaces of the proposed structures for the purpose of reducing reflection of visible light that strikes the glass exterior and reduction in the amount of interior light being emitted through the glass.	Project Developer to provide evidence that low-emissivity glass at exterior surfaces will be used.	Project Developer	City Planning & Inspection Division	Concurrent with Architectural Review submittal, which may be included within Development Area Plans
AES-2.4: Provide Obstruction for Glare from Vehicle Headlights in the Proposed Garages. The Project Developer shall ensure that through the architectural design of the parking garages and through or in combination with landscaping or physical screening at the parking structures glare from vehicle headlights shall be screened from off-site viewers.	Project Developer to provide garage sections to City showing how vehicle headlights in the proposed garages will be obstructed.	Project Developer	City Planning & Inspection Division	Concurrent with Architectural Review submittal, which may be included within Development Area Plans
TRANSPORTATION				
TRA-1.1: Vehicle Trip Reduction with Transportation Demand Management (TDM). The Project Developer shall prepare and implement a TDM Plan approved by the Santa Clara Director of Planning and Inspection. The TDM Plan shall include trip reduction measures necessary to achieve an overall target of reducing Project office-	Project Developer to submit a TDM Plan to the City for each Development Area Plan	Project Developer / TMA	Department of Public Works Director of Planning and	Prior to the issuance of a certificate of occupancy for

Mitigation and Avoidance Measures	Action	Implementing Party	Monitoring Party	Timing [1]
generated daily traffic by a minimum of 4 percent and peak-hour traffic by a minimum of 10 percent, with an overall target of reducing Project residential-generated daily traffic by a minimum of 2 percent and peak-hour traffic by a minimum of 4 percent, compared to the traffic estimates used in this EIR. The TDM Plan shall also include and implement TDM Best Management Practices (BMPs) for the retail uses. The TDM Plan shall include measures to reduce the amount of vehicle traffic generated by City Place by shifting employees, customers, and residents from driving alone to using transit, carpooling, cycling, and walking modes through TDM measures, strategies, incentives, and policies. The TDM obligation in this measure is to apply for the lifetime of the Project. The TDM Plan may specify a phased implementation approach that provides initially for implementation of the TDM measures that are appropriate for multi-tenant offices (e.g., measures aimed at increased transit use and carpooling), which are expected to be developed during the first three phases of development, and then provide for TDM measures that are appropriate for large corporate office tenants in the remaining phases (such as shuttles). The Santa Clara Director of Planning and Inspection shall have the authority and discretion to permit modification of the measures provided that the modifications continue to achieve the overall trip reduction objective and/or the Santa Clara Director of Planning and Inspection is satisfied that all feasible TDM measures are being implemented if the overall trip reduction objective is not being met. Specific requirements as to the TDM Plan, its contents, target reductions, monitoring and remedial action are as follows: A. *Vehicle Trip Thresholds.* Vehicle trip reductions will be measured through counts of vehicles that enter and exit the site and by comparison of the results to established trip thresholds. As part of the annual TDM Plan monitoring process, as described below, vehicle trip generation estimates, based on the land uses and their sizes, will be prepared by a transportation professional funded by the Transportation Management Association described below, and working under the direction of the City, who will use the trip generation rates and internalization and public transit ridership reductions used in the EIR transportation analysis. The TDM reduction targets will be applied to create the thresholds. The estimates and thresholds will be reviewed and approved by the City's Traffic Engineer. While no thresholds are established for retail uses because it is difficult to enforce trip reductions for retail customers, this measure requires implementation of TDM BMPs for retail portions of the Project, as described below. B. *Transportation Management Association* Some TDM measures and strategies shall be incorporated into the design of the site and the buildings. A Transportation	and prior to each subsequent Development Area Plan, submit a TDM Plan reviewed by the third party. Submit an annual report documenting compliance with the TDM Plan.		Inspection	first building under each DAP for TDM Plan (or expansion of TDM Plan) associated with development under the DAP; obtain approval prior to certificate of occupancy; undertakes annual reporting, surveys and revisions to TDM Plan in accordance with mitigation measure.

Mitigation and Avoidance Measures	Action	Implementing Party	Monitoring Party	Timing [1]
Management Association (TMA) is a non-profit, organization that provides transportation services in a particular area, such as a commercial district, medical center or office park, controlled by members that are building owners or tenants in that area. A TMA shall be formed to oversee and coordinate implementation of the TDM measures to be implemented for the Project, including coordinating activities of the various employers and tenants. The TDM Plan shall identify the vehicle trip-reducing measures and strategies to be provided and implemented directly by the Project Developer, those to be implemented directly by the TMA and those to be implemented directly by individual tenants/employers, and any to be implemented directly by the City. The TDM Plan shall describe the roles and responsibilities of the TMA and its members, which shall be codified in a binding agreement with the City of Santa Clara, approved by the Director of Planning and Inspection, and recorded with the County of Santa Clara Clerk Recorder.				
C. *Office TDM Measures.* TDM measures that target office employees shall be described in detail in the TDM Plan, including information regarding the direct implementing party (e.g., Project Developer, TMA, City, and tenants and employers.), The following TDM measures shall be considered for inclusion in the TDM Plan for some or all portions of the office development, to the extent feasible and appropriate, either as part of an initial TDM Plan or as options for enhanced or remedial measures if trip reduction targets are not being met:				
• On-site Support Facilities: shuttle bus stops with shelters, bicycle paths and lanes, pedestrian paths linking buildings and transit stations, priority parking for carpools and vanpools				
• In-building Support Facilities: showers and changing rooms, bicycle storage rooms and bicycle racks, and bicycle repair stands, cafes, and fitness centers				
• Private shuttles for both long distance commute and last-mile service from nearby public transit				
• Ridesharing options for long distance commuters such as carpool and vanpool matching services				
• Guaranteed ride home services for commuters who carpool, take transit, or bicycle to work				
• Financial incentives such as pre-tax benefits for transit and bicycle expenses (e.g., Commuter Check) or subsidized transit passes (e.g., Commuter Checks, Clipper Cards or VTA EcoPass) for all employees				
• Additional support services for employees who use transit or rideshare, such as flexible work hours				
• A website and marketing program to disseminate information on commute				

Mitigation and Avoidance Measures	Action	Implementing Party	Monitoring Party	Timing [1]
options; access to TMA management services • A TDM information packet to be provided to all new City Place employees upon commencement of work at City Place and, the benefits of alternative commute methods stressed during new employee orientation programs • Incentives for employees to live in locations well served by transit or shuttles • Bike share pods to enable trips on-site and to nearby destinations to be made by bicycle • Car share services with cars on-site for use by employees (or others) who use alternative modes to travel to the site but need a car to run an errand, travel to a meeting, etc. • Multi-passenger demand responsive ride services for local employees that are competitive with drive alone including transportation network/ride-sharing services such as Uber Pool, Lyft Line and Chariot on-demand and crowd-sourced bus services • Yet-to-be developed new services, programs, strategies and emerging technologies • Congestion cordon (boundary) pricing scheme[2] • Parking management strategies such as paid parking and unbundled parking to restrict the parking supply[3] D. *Residential TDM Measures.* TDM measures that target residents shall be described in the TDM Plan, including information regarding the direct implementing party (e.g., Project Developer, TMA, City, tenants and employers). The following TDM measures shall be considered for inclusion in the TDM Plan for some or all portions of the residential development, to the extent feasible and appropriate, either as part of an initial TDM Plan or as options for enhanced or remedial measures if trip reduction targets are not being met: • Bicycle infrastructure improvements • Bicycle parking room or lockers • Bicycle riders guide • On-site bicycle repair facilities				

[2] Cordon pricing would entail charging vehicles a fee as they enter an area. The fees would be higher during congested periods. This type of strategy is most effective with limited access points and requires a high quality transit system to accommodate travel by a non-automobile mode.

[3] These parking management strategies can be paired with a residential permit parking program (RPPP) to ensure that Project residents seeking parking do not park in nearby neighborhoods.

Mitigation and Avoidance Measures	Action	Implementing Party	Monitoring Party	Timing [1]
• Financial subsidies for residents who commute by carpool, transit, walking or bicycle, such as VTA EcoPasses • A website and marketing program to disseminate information on commute options; access to TMA management services • Rideshare matching services • On-site shuttle services, shuttle bus stops with shelters, pedestrians path linking buildings and transit stations • Bus stops located near buildings • Pedestrian-oriented site design • Congestion cordon (boundary) pricing scheme • Parking management strategies such as paid parking and unbundled parking to restrict the parking supply. E. *Retail Site Design BMPs.* BMPs that target retail employees and customers shall be described in the TDM Plan, including information regarding the direct implementing party (e.g., Project Developer, TMA, City, tenants and employers). The following BMPs shall be considered for inclusion in the TDM Plan for some or all portions of the retail development, to the extent feasible and appropriate: • Bicycle infrastructure improvements • Bicycle rider encouragement program • Bicycle parking, showers and lockers • Bicycle riders guide • On-site bicycle repair facilities • Pre-tax commuter incentives • Rideshare matching services • On-site shuttle services, shuttle bus stops with shelters, pedestrians path linking buildings and transit stations • A website and marketing program to disseminate information on commute options; access to TMA management services • Bus stop locations near building entrances • Pedestrian-oriented site design • Congestion cordon (boundary) pricing scheme F. *Monitoring and Reporting.* The TDM Plan shall be monitored annually to gauge its effectiveness in meeting the thresholds; while general guidelines are provided here, the monitoring and reporting process shall be explained in detail in the				

Mitigation and Avoidance Measures	Action	Implementing Party	Monitoring Party	Timing [1]
TDM Plan. A transportation professional working at the City's direction and pursuant to a scope of work approved by the City's Traffic Engineer shall conduct traffic counts annually using mechanical counters or other devices approved by the City of Santa Clara to measure the daily and peak-hour entering and exiting vehicle volumes for a 72-hour period, Tuesday through Thursday. The counts shall include traffic counts at all City Place driveways, traffic counts at the driveways to office parking locations, and traffic counts at the driveways to residential parking locations. The counts shall be conducted when schools are in session and during non-holiday weeks with fair weather. The individual driveway volumes will be summed to provide the total site traffic volumes. The volumes at the driveways to the office and residential parking locations will be summed to provide the office- and residential-generated traffic volumes. The volumes will be compared to the trip thresholds to determine whether the reduction in vehicle trips is being met. The TMA will assist with the monitoring activities that will be conducted. In addition to monitoring driveway volumes, a survey will be developed by the transportation professional and administered in coordination with the TMA and individual office employers to determine actual mode splits for employees. The survey will also gather information on usage of individual TDM Plan components as well as gauge employee perception of the overall TDM Plan After an initial survey is conducted, subsequent surveys shall be conducted in years where the previous year's annual report has concluded that trip thresholds and trip reduction targets are not being met. The results of the annual vehicle counts and survey (if one is conducted that year) will be reported in writing by the transportation professional to the Santa Clara Director of Planning and Inspection. The report will include descriptions of the TDM measures in place, highlighting new or modified measures, summarize the results of the counts, summarize the results of the employee survey (if one is conducted that year), and conclude whether the trip thresholds and trip reduction targets are being met. The report (as well as any remedial action taken as a result) will be summarized in an annual informational report to the Planning Commission on the progress of TDM efforts throughout the City of Santa Clara. G. *Remedial Action*. If TDM Plan monitoring results show that the trip reduction targets are not being met, the TDM Plan shall be updated to identify replacement and/or additional feasible TDM measures to be implemented. The updated TDM Plan shall be submitted to the City and approved by the Santa Clara Director of Planning and Inspection. The updated TDM Plan shall also identify other TDM measures that were considered but determined to be infeasible or ineffective.				

Mitigation and Avoidance Measures	Action	Implementing Party	Monitoring Party	Timing [1]
The TMA shall oversee and coordinate the implementation of the feasible additional TDM measures and continue to explore methods of making other potential TDM measures feasible.				
TRA-1.2: Intersection Improvements. The intersection improvements and off-setting mitigation measures summarized in Table 3.3-20 shall be implemented, and Project Developer shall pay the fair-share contributions for the mitigation measures summarized in Table 3.3-20. The intent of the table is to identify, based on a preliminary feasibility determination, physically feasible intersection mitigation measures (e.g., lane additions) that increase the intersection's vehicle carrying capacity and reduce vehicle delay while fully mitigating the impacts. As described below, feasible mitigation measures that fully mitigate the impacts were identified at some locations. However, at other locations, measures that provide only partial mitigation were identified because of physical constraints. Although these mitigation measures do not fully address the impact, they do help reduce the severity of the impact. For intersections where there are no feasible physical improvements, off-setting mitigation measures were investigated. These measures would provide improvements to other modes of travel, thereby increasing the capacity of the transportation system. At some intersections no feasible improvement or off-setting mitigation measures were identified. The four potential entries are: • Full Mitigation: At the affected intersection, a physical modification to the intersection that would fully mitigate the impact was identified. This could be accomplished by adding vehicle lanes or upgrading an intersection to an interchange or "fly-over." These improvements would reduce vehicle delays and fully mitigate Project impacts at several intersections by allowing the intersections to operate at acceptable levels, with delays that would be lower than they would be under no-project conditions, or with less than a 4-second increase in critical delay at intersections that operate at unacceptable levels. • Partial Mitigation: At the affected intersection, a physical modification to the intersection that would partially mitigate the impact was identified. The proposed measure mitigates the impact during one peak hour but not the other or reduces the delay but not enough to mitigate the impact. • Off-setting Mitigation: In the North San José Deficiency Plan area, off-setting local street network, transit, bicycle, or pedestrian improvements were identified to accommodate future travel growth but not directly mitigate the intersection with the identified impact. • No Feasible Mitigation: No physical improvements or off-setting mitigation	Implement intersection improvements included in Table 3.3-20 of the Draft EIR and pay fair share contribution in accordance with Exhibit MMRP-1.	Project Developer (as noted in Table 3.3-20 of Draft EIR)	Department of Public Works	In accordance with Exhibit MMRP-1

Mitigation and Avoidance Measures	Action	Implementing Party	Monitoring Party	Timing [1]
measures were identified, typically because of physical limitations, costs, and/or right-of-way constraints. Some of the intersection improvements would require right-of-way (ROW) acquisition. A preliminary review of ROW constraints was done by viewing aerial photography as a part of the mitigation measure feasibility assessment. An intersection was identified as having ROW constraints if the mitigation measure would include widening the roadway or relocating aboveground utilities. (Use of the center median and "pork-chop" islands was not considered as roadway widening.) If the removal of bicycle facilities was required, the ROW required was defined as "possible." If the City makes a final determination that a portion or all of an improvement is not feasible because ROW cannot be acquired or for other reasons, the improvement, or infeasible portion, shall not be implemented and, if none of the improvement is feasible, and no off-setting mitigation measure is identified, that intersection shall be considered to have "no feasible mitigation." The Project Developer's responsibility is included in Table 3-3.20, which indicates if the Project Developer would be wholly or partially responsible for the mitigation measure. • As seen in the table, "100 percent" indicates that the cost and construction of the proposed mitigation measure is the full responsibility of the Project Developer. These are discrete mitigation measures that either fully or partially mitigate significant Project impacts. • "Percent of total traffic" indicates that the Project Developer shall pay a fair-share contribution to the proposed mitigation measure, which is typically a larger transportation improvement, such as an expressway interchange, that has been identified in an adopted plan. Twelve of the intersections are on the County expressway system and are identified in the County's Expressway Plan to be upgraded to an interchange or "fly-over." The Project Developer shall pay its fair share toward these interchange upgrades per agreements between Santa Clara County and the City of Santa Clara. • "Pay the North San José fee or fair-share contribution of alternative or off-setting mitigation" is identified for affected intersections in the North San José area. There are two options for these locations. The Project Developer can pay the North San José fee or a fair-share contribution for the mitigation measure or off-setting mitigation measure based on the Project's percent contribution of added traffic at the intersection. • Where there is no feasible mitigation measure, no fair share is identified (0 percent).				

Mitigation and Avoidance Measures	Action	Implementing Party	Monitoring Party	Timing [1]
The City-preferred mitigation measure is identified where there is more than one mitigation option.				
TRA-1.3: Prepare and Implement a Multimodal Improvement Plan. The Project Developer shall fund the preparation of (including CEQA review for) a Multimodal Improvement Plan (MIP) addressing at least the Congestion Management Program (CMP) intersections within the City of Santa Clara that are forecasted to operate at Level of Service F with the Project, either on a project level or cumulative basis. City shall reimburse the Project Developer for any cost of preparation of the MIP that exceeds the Project Developer's fair share of such cost. Such MIP shall be prepared in accordance with the guidelines and regulations of the Valley Transportation Authority (VTA) and shall be adopted by the City Council for submission to the VTA for consideration and approval no later than one year after approval of the Project. Once the MIP is adopted by the VTA, it shall be implemented in accordance with its terms and commensurate with the phasing of the development that its measures are intended to offset.	Provide requisite funding for City preparation of the MIP as City Costs under Development Agreement. City to prepare and approve MIP for submission to VTA, and implement MIP once it is approved.	Project Developer/ City	Department of Public Works and Division of Planning and Inspection	City to submit approved MIP to VTA within 1 year of project approval, and implement MIP according with its terms.
TRA-2.1: Traffic Signal Installation. Install a traffic signal at Intersection 109, Liberty Street/Taylor Street once the traffic volumes meet the warrant requirements. The intersection of Liberty Street/Taylor Street is located in San José; the installation of a traffic signal would need to be approved by the City of San José.	Project Developer shall provide funding for traffic signal installation at Liberty Street/Taylor Street in the City of San José and submit evidence of compliance to City.	Project Developer	Department of Public Works	Prior to issuance of building permits for the building that triggers improvement in accordance with Exhibit MMRP-1.
TRA-2.2: Traffic Signal Installation. Install a traffic signal at Intersection 114, Calle Del Sol/Calle De Luna, once the traffic volumes meet the warrant requirements.	Project Developer to install a traffic signal at Intersection 114, Calle Del Sol/Calle De Luna.	Project Developer	Department of Public Works	Prior to issuance of certificate of occupancy for the building that triggers improvement in accordance with Exhibit MMRP-1.

Mitigation and Avoidance Measures	Action	Implementing Party	Monitoring Party	Timing [1]
TRA-3.1: Freeway Segment Improvements. The Project Developer will make a voluntary contribution toward the VTP's 2040 Express Lane Projects (VTP 2040 project numbers H2, H3, H4, H5, H6, H7, and H15) and Countywide Freeway Traffic Operation System and Ramp Metering Improvements (VTP 2040 project number S83). These VTP 2040 projects (H2, H3, H4, H5, H6, H7, H15, and S83), once fully funded and constructed, will enhance travel choices for Project travelers and make more efficient use of the transportation network.	Project Developer shall pay per trip fee to the City in accordance with Exhibit MMRP-1.	Project Developer	Department of Public Works	Prior to issuance of certificate of occupancy for a new or expanded structure.
TRA-1a.1: Intersection Improvements for Existing with Project Phases 1, 2, and 3. The intersection improvements and off-setting mitigation measures summarized in Table 3.3-26 shall be implemented, and Project Developer shall pay the fair-share contributions for the mitigation measures summarized in Table 3.3-26. (This table also includes impacts and mitigation measures for the full Project for comparison purposes.) These improvements will reduce vehicle delays and fully mitigate Project impacts at several intersections by allowing the intersections to operate at acceptable levels, with delays that would be lower than they would be under no-project conditions, or with less than a 4-second increase in critical delay at intersections that operate at unacceptable levels. Table 3.3-26 also contains physical improvements for select intersections that will reduce the delay, but not to a level that mitigates the impact. Some of the intersection improvements would require ROW acquisition. A preliminary review of ROW constraints was done by viewing aerial photography as a part of the mitigation measure feasibility assessment. An intersection was identified as having ROW constraints if the mitigation measure would include widening the roadway or relocating aboveground utilities. (Use of the center median and "pork-chop" islands was not considered as roadway widening.) If the removal of bicycle facilities was required, the ROW required was defined as "possible." If the City makes a final determination that a portion or all of an improvement is not feasible because ROW cannot be acquired or for other reasons, the improvement, or infeasible portion, shall not be implemented and, if none of the improvement is feasible, and no off-setting mitigation measure is identified, that intersection shall be considered to have "no feasible mitigation."	See TRA-1.2	Project Developer	Department of Public Works	In accordance with Exhibit MMRP-1
TRA-5.1: Transportation Design Review. The site plans for Parcels 1 and 2 will undergo a design review by the City to ensure that City design standards are adhered to prior to construction. This review shall include an on-site intersection analysis prior to development plan approval. The on-site analysis shall include an intersection operations analysis to develop intersection traffic controls and lane geometries that	Project Developer to prepare site plans for Parcels 1 and 2 to be submitted to the City to ensure that City street	Project Developer	Department of Public Works	Concurrent with Development Area Plan submittal for

Mitigation and Avoidance Measures	Action	Implementing Party	Monitoring Party	Timing [1]
meet City of Santa Clara traffic standards. These parcels shall also be reviewed for: • Inbound queuing at parking facilities to ensure that queues do not block public streets and local streets • Emergency vehicle access and circulation • Vehicular circulation • Parking layout and circulation within the site • Bicycle access and circulation • Pedestrian access and circulation • Pedestrian access to and from transit stops • Truck circulation and loading dock access for commercial parcels	design and traffic standards are accommodated in each Development Area Plan.			each phase to the extent that data is available and with Architectural Review to the extent minor details are not known at DAP
TRA-6.1: Intersection Improvements With Access Variant Scheme. The intersection improvements summarized in Table 3.3-35 shall be implemented. These improvements will reduce vehicle delays and fully mitigate Project impacts at several intersections by allowing them to operate at acceptable levels, with delays that would be lower than they would be under no-project conditions, or with less than a 4-second increase in critical delay for intersections that operate at unacceptable levels. Table 3.3-35 also contains physical improvements for select intersections that will reduce the delay, but not to a level that fully mitigates the impact. Some of the intersection improvements would require ROW acquisition. A preliminary review of ROW constraints was done by viewing aerial photography as a part of the mitigation measure feasibility assessment. An intersection was identified as having ROW constraints if the mitigation measure would include widening the roadway or relocating aboveground utilities. (Use of the center median and "pork-chop" islands was not considered as roadway widening.) If the removal of bicycle facilities was required, the ROW required was defined as "possible." If the City makes a final determination that a portion or all of an improvement is not feasible because ROW cannot be acquired or for other reasons, the improvement, or infeasible portion, shall not be implemented and, if none of the improvement is feasible, that intersection shall be considered to have "no feasible mitigation."	Implement intersection improvements summarized in Table 3.3-35 of the Draft EIR and pay fair share contribution in accordance with Exhibit MMRP-1.	Project Developer	Department of Public Works	In accordance with Exhibit MMRP-1
TRA-6.2: Intersection Improvements for Phases 1, 2 and 3. The intersection improvements summarized in Table 3.3-36 shall be implemented. These improvements will reduce vehicle delays and fully mitigate Project impacts at several intersections by allowing the intersections to operate at acceptable levels, with delays that would be lower than they would be under no-project conditions, or with less than a 4-second increase in critical delay for intersections that operate at	Implement the intersection improvements for Phases 1, 2, and 3, as summarized in Table 3.3-36 of the Draft EIR	Project Developer	Department of Public Works	In accordance with Exhibit MMRP-1

Mitigation and Avoidance Measures	Action	Implementing Party	Monitoring Party	Timing [1]
unacceptable levels. Table 3.3-36 also contains physical improvements for select intersections that will reduce the delay, but not to a level that mitigates the impact. Some of the intersection improvements would require ROW acquisition. A preliminary review of ROW constraints was done by viewing aerial photography as a part of the mitigation measure feasibility assessment. An intersection was identified as having ROW constraints if the mitigation measure would include widening the roadway or relocating aboveground utilities. (Use of the center median and "pork-chop" islands was not considered as roadway widening.) If the removal of bicycle facilities was required, the ROW required was defined as "possible." If the City makes a final determination that a portion or all of an improvement is not feasible because ROW cannot be acquired or for other reasons, the improvement, or infeasible portion, shall not be implemented and, if none of the improvement is feasible, that intersection shall be considered to have "no feasible mitigation."	and pay fair share contribution in accordance with Exhibit MMRP-1.			
TRA-7.1: Sidewalk Gap Closure on Tasman Drive on the Lafayette Street overcrossing extending east to Calle Del Sol. The Project Developer shall construct a sidewalk on the north side of Tasman Drive on the Lafayette Street overcrossing and extending east to Calle Del Sol. The Project Developer shall fully fund the construction of this sidewalk segment between the Project frontage on Tasman Drive and Calle Del Sol.	Project Developer to construct a sidewalk on the north side of Tasman Drive on the Lafayette Street overcrossing, extending east to Calle Del Sol.	Project Developer	Department of Public Works	Prior to the issuance of certificate of occupancy for first building within Phase 1
TRA-14.1: Signalized Intersection Improvements. The intersection improvements and off-setting mitigation measures summarized in Table 3.3-20 shall be implemented and Project Developer shall pay the fair-share contributions for the mitigation measures summarized in Table 3.3-20, The Project Developer shall also pay the fair-share contribution for the additional intersections or off-setting mitigation measure identified in Table 3.3-50. The improvements will reduce vehicle delays and fully mitigate cumulative impacts at several intersections by allowing the intersections to operate at acceptable levels, with delays that would be less than they would be under no-project conditions, or with less than a 4-second increase in critical delay for intersections that operate at unacceptable levels. Table 3.3-50 also contains physical improvements for select intersections that will reduce the delay, but not to less than no-project conditions such that the Project's effects would remain cumulatively considerable. Some of the intersection improvements would require ROW acquisition. A preliminary review of ROW constraints was done by viewing aerial photography as a part of the mitigation measure feasibility assessment. An intersection was identified	Project Developer to implement intersection improvements mitigation measures summarized in Table 3.3-20 of the Draft EIR and pay the fair-share contributions for the mitigation measures in accordance with Exhibit MMRP-1.	Project Developer	Department of Public Works	In accordance with Exhibit MMRP-1

Mitigation and Avoidance Measures	Action	Implementing Party	Monitoring Party	Timing [1]
as having ROW constraints if the mitigation measure would include widening the roadway or relocating aboveground utilities. (Use of the center median and "pork-chop" islands was not considered as roadway widening.) If the removal of bicycle facilities was required, the ROW required was defined as "possible." If the City makes a final determination that a portion or all of an improvement or mitigation is not feasible because ROW cannot be acquired or for other reasons, the improvement, or infeasible portion, shall not be implemented and, if none of the improvement is feasible, that intersection shall be considered to have "no feasible mitigation."				
TRA-16.1: Intersection Improvements for Cumulative with-Project Access Variants. The intersection improvements summarized in Table 3.3-54 shall be implemented. Some of the intersection improvements would require ROW acquisition. A preliminary review of ROW constraints was done by viewing aerial photography as a part of the mitigation measure feasibility assessment. An intersection was identified as having ROW constraints if the mitigation measure would include widening the roadway or relocating aboveground utilities. (Use of the center median and "pork-chop" islands was not considered as roadway widening.) If the removal of bicycle facilities was required, the ROW required was defined as "possible." If the City makes a final determination that a portion or all of an improvement or mitigation is not feasible because ROW cannot be acquired or for other reasons, the improvement, or infeasible portion, shall not be implemented and, if none of the improvement is feasible, that intersection shall be considered to have "no feasible mitigation."	Project Developer to implement the intersection improvements summarized in Table 3.3-54 of the Draft EIR and pay the fair-share contributions for the mitigation measures in accordance with Exhibit MMRP-1.	Project Developer	Department of Public Works	In accordance with Exhibit MMRP-1
TRA-18.1: Construction Management. Prior to the issuance of each building permit, the Project Developer and construction contractor shall meet with the Public Works Department to determine traffic management strategies to reduce, to the maximum extent feasible, traffic congestion during construction of the Project and develop acceptable detour routes for emergency vehicles and for shuttles to the Great America ACE/Capitol Corridor station. The City will coordinate with appropriate transit agencies. The Project Developer shall prepare a Construction Management Plan for review and approval by the Public Works Department, which shall share the plan with interested the Capitol Corridor Joint Power Authority, the VTA, and ACE for review and comment. The plan, which shall be implemented during construction, shall include at least the following items and requirements: • A set of comprehensive traffic control measures, including detour signs if required, lane closure procedures, sidewalk closure procedures, signs, cones for drivers, and designated construction access routes. • Notification procedures for adjacent property owners, the public, transit operators,	Project Developer to prepare and submit a Construction Management Plan for the purpose of managing traffic and reducing traffic congestion during construction. City to review and approve Plan.	Project Developer/ Project Contractor	Department of Public Works	Prior to issuance of each building permit

Mitigation and Avoidance Measures	Action	Implementing Party	Monitoring Party	Timing [1]
and public safety personnel regarding when detours and lane closures will occur. • Location of construction staging areas for materials, equipment, and vehicles (must be located on the Project site). • Identification of haul routes for movement of construction vehicles that would minimize impacts on vehicular, pedestrian, and transit vehicle traffic, circulation and safety; and provision for monitoring surface streets used for haul routes so that any damage and debris attributable to the haul trucks can be identified and corrected. Construction vehicles shall be required to use designated truck/haul routes. • Provisions for removal of trash generated by Project construction activity. • A process for responding to and tracking complaints pertaining to construction activity. • Construction vehicles and construction workers shall not be allowed to park in adjacent residential neighborhoods. Construction vehicles will be required to park either in the construction zone or in the temporary parking lots.				
TRA-19.1: Modified City's Traffic Management and Operations Plan (TMOP) and Prepare a Project-Specific Traffic and Parking Management Plan. Modify the City's TMOP to include plans to direct stadium traffic to the new parking locations on the site. (Some of the office parking areas will be used during special events.) A separate traffic and parking management plan shall be developed for the Project by the Project Developer and approved by the Director of Planning and Inspection and/or the Director of Public works. This plan would address: • Parking areas to be used by office employees (versus stadium parking); • Project customer/employee parking (versus stadium parking); • Access and egress routes for vehicles to the site, taking into consideration the lane and roadway segment closures used to direct stadium traffic; • A communications plan to inform customers and employees of game-day operations; and • Operational improvements such as signal timing and coordination to maximize efficiency of the streets during peak periods. Performance goals that reflect a successful traffic and parking management plan would be contained in the plan and may include items such as: • Maintaining vehicular access to the Project with acceptable increases in travel times compared to non-game day conditions; • Limited vehicle queuing within the Project site such that no internal circulation roadways are blocked; and	Project Developer to modify the City's TMOP to include plans to direct stadium traffic to the new parking locations on the site, and a site traffic and parking management plan for review and approval by City.	Project Developer	Director of Planning and Inspection and/or Director of Public Works	Prior to the issuance of first certificate of occupancy within each DAP area

Mitigation and Avoidance Measures	Action	Implementing Party	Monitoring Party	Timing [1]
• Limited vehicle queuing extending from parking facilities within the Project onto external public roadways. Even with mitigation, the local streets near the Project site would operate at an unacceptable LOS due to vehicle demand exceeding capacity. Widening roadways or intersections to increase capacity was considered as mitigation but rejected due to utility and secondary impacts. Street widening would provide capacity that would be needed only on game days and not at other times. The City of Santa Clara General Plan has policies to discourage the widening of existing roadways without first considering operational improvements such as the items included in the existing TMOP and items that will be included in the TDM Plan.				
AIR QUALITY				
AQ-2.1: Utilize Clean Diesel-Powered Equipment during Construction to Control Construction-Related Reactive Organic Gas (ROG) and Oxides of Nitrogen (NO_X) Emissions. The Project Developer shall ensure that all off-road diesel-powered equipment used during construction between 2017 and 2022 is equipped with the U.S. Environmental Protection Agency (EPA) Tier 3 or cleaner engines, except for specialized construction equipment for which an EPA Tier 3 engine is not available. Consistent with advancements of the statewide fleet average, the Project Developer shall ensure that all off-road diesel-powered equipment used during construction between 2023 and 2030 is equipped with EPA Tier 4 engines, except for specialized construction equipment for which an EPA Tier 4 engine is not available. This requirement will ensure construction equipment remains cleaner than the fleet-wide average.[4]	Project Developer to provide to City applicable provisions of construction contracts requiring that all off-road diesel-powered equipment used for construction between 2017 and 2022 is equipped with the U.S. EPA Tier 3 or cleaner engines and that all off-road diesel-powered equipment used for construction between 2023 and 2030 is equipped with EPA Tier 4 engines.	Project Developer/ Project Contractor	City Planning & Inspection Division	Prior to grading or building permit issuance
AQ-2.2: Use Modern Fleet for On-Road Material Delivery and Haul Trucks during Construction. The Project Developer shall ensure that all on-road heavy-duty diesel trucks with a gross vehicle weight rating of 19,500 pounds or greater used at	Project Developer to provide to City applicable provisions of	Project Developer/ Project	City Planning & Inspection Division	Prior to grading or building permit issuance

[4] As explained in MM AQ-6.1, below, as necessary to reduce cancer risk to on-site sensitive receptors related to construction diesel particulate matter emissions to a level below the BAAQMD, the Project Developer may need to use Tier 4 equipment after occupancy of on-site residences or daycare centers, or may use other appropriate measures (see AQ-6.1). If Tier 4 equipment is used earlier than 2023, this may reduce the amount of mitigation required in MM AQ-2.4.

Mitigation and Avoidance Measures	Action	Implementing Party	Monitoring Party	Timing [1]
the Project site comply with EPA 2007 on-road emissions standards for PM10 and NO_X (0.01 grams per brake horsepower-hour [g/bhp-hr] and 0.20 g/bhp-hr, respectively).	construction contracts requiring the use of modern fleet for on-road material delivery and that haul trucks comply with EPA 2007 on-road emissions standards for PM10 and NOX.	Contractor		
AQ-2.3: Implement Bay Area Air Quality Management District (BAAQMD) Additional Construction Mitigation Measures to Reduce Construction-Related Dust and Exhaust Emissions. The Project Developer shall require all construction contractors to implement the specific construction mitigation measures below to reduce fugitive dust and equipment exhaust emissions. Emission reduction measures shall include, at a minimum, the following measures. Alternative measures may be identified by the Project Developer or its contractor, as appropriate, provided that they are as effective as the measures below. Alternative measures shall be submitted to the City of Santa Clara for approval. • All exposed surfaces shall be watered at a frequency adequate to maintain minimum soil moisture of 12 percent. Moisture content can be verified by lab samples or moisture probe. If water infiltration into landfill refuse layers is a concern, non-toxic soil stabilizers may be used instead. • All excavation, grading, and/or demolition activities shall be suspended when average wind speeds exceed 20 miles per hour (mph) for a period of 2 hours or more. • Windbreaks (e.g., fences) shall be installed on the windward side(s) of actively disturbed areas of construction. Windbreaks shall have at maximum 50 percent air porosity. • Exposed ground areas that are to be reworked more than 1 month after initial grading should be sown with fast-germinating native grass seed and watered appropriately until vegetation is established. If grass seeding is not feasible, then non-toxic soil stabilizers may be used. • All construction trucks and equipment, including tires, involved in ground disturbance or transit through loose soil areas shall be washed off prior to leaving the site. • Site accesses to a distance of 25 feet from the paved road shall be treated with a 6- to 12-inch compacted layer of wood chips, mulch, or gravel. Alternatively, a rumble plate may be used in place of chips, mulch, or gravel.	Project Developer to provide to City applicable provisions of construction contracts requiring the use of BAAQMD additional construction mitigation measures to reduce construction-related dust and exhaust emissions.	Project Developer/ Project Contractor	City Planning & Inspection Division	Prior to grading and building permit issuance

Mitigation and Avoidance Measures	Action	Implementing Party	Monitoring Party	Timing [1]
• Sandbags or other erosion control measures shall be installed to prevent silt runoff to public roadways from sites with a slope greater than 1 percent. • Idling time of diesel powered construction equipment shall be limited to 2 minutes. • All construction equipment, diesel trucks, and generators shall be equipped with Best Available Control Technology for emission reductions of PM and NOX. • All contractors shall use equipment that meets the California Air Resources Board's (ARB's) most recent certification standard for off-road heavy-duty diesel engines.				
AQ-2.4: Offset NO_X Emissions Generated during Construction that Are above BAAQMD NOX Average Daily Emission Threshold. The Project Developer shall track construction activity, estimate emissions, and enter into a construction mitigation contract with BAAQMD to offset NO_X emissions that exceed BAAQMD NOX average daily threshold of 54 pounds per day. The average daily emissions shall be calculated on an annual basis by determining total construction-related NO_X emissions in each calendar year and dividing by the number of actual workdays in that calendar year. BAAQMD will use the mitigation fees provided by the Project Developer to implement emissions reduction efforts that offset Project NO_X emissions that exceed BAAQMD threshold. Implementation of this mitigation measure shall apply only to Phase 1 through Phase 4 construction on Parcels 4 and 5 because only construction on Parcels 4 and 5 has the potential to exceed the BAAQMD average daily NO_X threshold on an annual basis, depending on construction sequencing and overlapping activity. This mitigation includes the following specific requirements: • The Project Developer shall require construction contractors to provide annual construction activity monitoring data for Phases 1 through 4 to estimate actual construction emissions, including the effect of equipment emissions reduction measures. The Project Developer shall submit the annual construction activity monitoring data and an estimate of actual annual construction emissions to the City and BAAQMD for review by February 1 of each year for the prior construction year. The City shall examine the construction activity monitoring to ensure it is representative, and BAAQMD shall examine the emissions estimate to ensure it is calculated properly. • After acceptance of the emissions estimates by BAAQMD for the prior year, the Project Developer shall submit mitigation fees to BAAQMD to fund offsets for the portion of annual emissions that exceed the average daily NOX threshold. The mitigation fees shall be based on the mitigation contract with BAAQMD (see discussion below) but shall not exceed the emissions-reduction project cost-effectiveness limit set for the Carl Moyer Memorial Air Quality Standards	City construction mitigation contracts with BAAQMD. Project Developer to provide to City annual construction activity monitoring data for City verification that the data is representative.	Project Developer/ Project Contractor	City Planning & Inspection Division	Approval of agreement prior to grading and building permit issuance, annual submittal of evidence documenting compliance and of construction activity monitoring data during construction of Phases 1 through 4 on Parcels 4 and 5..

Mitigation and Avoidance Measures	Action	Implementing Party	Monitoring Party	Timing [1]
Attainment Program (Carl Moyer Program) for the year in which mitigation fees are paid. The current Carl Moyer Program cost-effectiveness limit is $18,030 per weighted ton of criteria pollutants (NOX + ROG + [20*PM]). An administrative fee of 5 percent shall be paid by the Project Developer to BAAQMD to implement the program. • The mitigation fees shall be used by BAAQMD to fund projects that are eligible for funding under the Carl Moyer Program guidelines or other BAAQMD emissions-reduction incentive programs that meet the Carl Moyer Program cost-effectiveness threshold and are real, surplus, quantifiable, and enforceable. • The Project Developer shall enter into a mitigation contract with BAAQMD for the emissions-reduction incentive program. The mitigation contract shall include the following: o Identification of appropriate off-site mitigation fees required for the Project. o Timing for submission of mitigation fees. o Processing of mitigation fees paid by the Project Developer. o Verification of emissions estimates submitted by the Project Developer. o Verification that off-site fees are applied to appropriate mitigation programs within the SFBAAB. The mitigation fees shall be submitted within 4 weeks after BAAQMD accepts an emissions estimate provided by the Project Developer showing that the average daily NOX threshold was exceeded (when measured on an annual basis).				
AQ-6.1: Assess Construction Diesel Particulate Matter (DPM) Emissions Potential Prior to Construction, Utilize Clean Diesel-Powered Equipment, Filtration Systems, and/or other Measures as Necessary to Reduce Cancer Risks Associated with DPM during Construction. The Project Developer shall implement the following measures, as necessary, to reduce cancer risks associated with DPM during construction to a level less than BAAQMD incremental cancer risk threshold of 10 in 1 million: • Revised Health Risk Assessment (HRA): The Project Developer may choose to assess the potential construction DPM emissions later in the design phase, but prior to construction, and to prepare a revised HRA using updated construction equipment activity data and submit to the City for review. If the revised HRA demonstrates, to the satisfaction of the City, that the cancer risk for construction of the entire Project at all potentially exposed on-site and off-site sensitive receptors will be less than BAAQMD threshold cited, then no additional mitigation is necessary. If the revised HRA demonstrates, to the satisfaction of the City, that the cancer risk for construction of the entire Project at some of the on-site or off-site	Project Developer to provide revised HRA (optional) or provide updated modeling and applicable provisions of construction contracts and/or building plans including measures to reduce cancer risks. City to review and approve revised HRA (optional to project Developer) or approve applicable provisions of construction contracts and building plans if no	Project Developer/ Project Contractor	City Planning & Inspection Division	Prior to construction that is planned to occur after the first occupancy of on-site residences or daycare centers and/or prior to residential or day care building permit issuance if Project Developer

Mitigation and Avoidance Measures	Action	Implementing Party	Monitoring Party	Timing [1]
sensitive receptors will be less than presented in the EIR but still over the BAAQMD threshold, then some of the mitigation below may not be necessary. • As necessary to reduce cancer risks below the BAAQMD threshold in light of projected DPM emissions and exposure and other mitigation (MM AQ-2.1 through MM AQ-2.3 and MM GHG-1.1), one or more of the following measures shall be implemented and the Project Developer will provide updated modeling to the City demonstrating that all on-site risks are reduced to below the BAAQMD threshold level: o Tier 4 Construction Equipment. If on-site and residences and daycare centers are occupied, the Project Developer shall ensure that all off-road diesel-powered equipment used during construction after occupancy of on-site residences or on-site daycare centers is equipped with EPA Tier 4 or cleaner engines, except for specialized construction equipment for which an EPA Tier 4 engine is not available. This requirement would be in addition to the clean diesel requirements in Mitigation Measure AQ-2.1. o Install Filtration Systems on Ventilation and Recirculation Systems. Filtration systems shall be installed on ventilation and recirculation systems within on-site residences and for the heating, cooling, or ventilation systems serving daycare centers. All filters must be rated MERV-13 or higher. The Project Developer shall submit a plan for installation and maintenance of all filters in accordance with the manufacturer's recommendations to the City prior to approval of the first building permits. o If on-site and residences and daycare centers are occupied, the Project Developer shall employ other reduction measures, such as High Performance Renewable (HPR) Diesel Fuel, that would reduce DPM. Proposals for alternative reduction measures shall be submitted to the City for review and approval, including evidence of the particulate reduction and/or risk reduction effectiveness of the proposed alternative measures.	HRA is prepared or if revised HRA shows that cancer risks would not be below regulatory thresholds.			desires to incorporate measures into structure
GREENHOUSE GAS EMISSIONS				
GHG-1.1: Utilize Alternative Fuels during Construction. Require construction contractors to use alternative fuels in at least 30 percent of the construction equipment that uses diesel fuel. Alternative fuels may include electricity, compressed natural gas (CNG), biodiesel (B-20), or renewable diesel, such as diesel high-performance renewable (HPR).	Developer to provide to City applicable provisions of construction contracts requiring adequate use of alternative fuels.	Project Developer/ Project Contractor	City Planning & Inspection Division	Prior to grading and building permits.

Mitigation and Avoidance Measures	Action	Implementing Party	Monitoring Party	Timing [1]
GHG-1.2: Operational GHG Emissions Reduction Measures. The Project Developer shall implement the operational GHG emissions reduction strategies described below: 1. Energy Efficiency: The Project's energy efficiency shall be 15 percent better than the base case energy model developed pursuant to the 2013 Title 24 requirements or shall meet the Title 24 requirements that are applicable at the time of issuance of the building permits for individual phases, whichever is more stringent (Climate Action Plan [CAP] Measure 2.1).[5] 2. On-site Solar Energy: The Project already includes on-site photovoltaics (PV) solar to meet 10 percent of electricity demand. The Project shall obtain renewable energy electricity corresponding to 50 percent[6] of on-site electricity demand by 2030 through a combination of on-site solar, purchase of renewable energy or other measures (CAP Measure 2.4). This requirement may be phased in as follows: 2020 – 15%; 2025 – 29%; 2030 – 50%. If the Project Developer can demonstrate, to the City's satisfaction, that through Project design, adopted State or federal regulations, or other assured actions that the Project's emissions overall will meet the 2030 metric identified in this document without the implementation of this particular measure of its full implementation, then this measure (or its full implementation) may be waived by the City. 3. Food Waste: All retail restaurants shall be required to participate 100 percent in any extant City food waste and composting programs and any that may be developed in the future (CAP Measure 4.1). 4. Electrical Landscaping Equipment: The Project shall include installation of electrical outlets near all maintained landscaping areas to allow for the use of electrical landscaping equipment (CAP Measure 5.1). In the landscaped City Center, only electrical landscape equipment shall be used. Use of electrical landscaping equipment shall not be required for the extensive natural landscaping contemplated at the edges of the City Center and at Parcels 1, 2, and 3. 5. Electrical Vehicle Charging/Preferential Parking (CAP Measure 6.3). The Project shall provide preferential parking in all parking lots for electric vehicles and shall also provide charging equipment, as follows:	#1, 4, 5, 6, 7, 11, 12: Building and landscape plans. #2: Annual reporting unless Project Developer demonstrates at building permit issuance that goal will be met. #10, 13: Ground leases to require implementation of measures and incorporation of operational measures into subleases.	Project Developer	City Planning & Inspection Division	#1, 4, 5 6, 7, 11, 12: Prior to building permit issuance #2: Prior to building permit issuance unless the developer wishes to demonstrate that emissions will meet the 2030 metric. #3, 8, 9, 10: Prior to execution of ground leases; provisions must be included in each applicable ground lease.

[5] The CEC intends for residential buildings in 2020 and later to be zero net energy (ZNE) and commercial buildings in 2030 or later to be ZNE, but because pending regulations are not yet adopted, this cannot be assumed in this analysis.

[6] CAP measure 1.1 requires the City's utility (SVP) to replace coal power within its portfolio with natural gas by 2020 and includes a stretch goal to replace the coal power with a combination of 50% natural gas and 50% renewable energy by 2035. Thus the CAP stretch goal is to increase renewable energy within its portfolio from 2020 to 2035. The 29 percent value for the mitigation above was calculated as the difference between the CAP Measure 1.1 reduction amount for the stretch goal for 2035 (71%) and the CAP Measure 1.1 reduction amount for 2020 (42%). As discussed in text, the Project has less than significant impact in comparison to the BAAQMD service population efficiency threshold based on the AB 32 target for 2020. Since the EIR finds that the project's emissions are significant for the period after 2020, the use of the difference in the CAP Measure 1.1 between 2020 and 2035 is appropriate to the impact identified for the Project.

Mitigation and Avoidance Measures	Action	Implementing Party	Monitoring Party	Timing [1]
a. Residential Use: A total of 10 percent of the required parking spaces shall be provided with a listed cabinet, box, or enclosure and connected to a conduit that links the parking spaces to the electrical service in a manner approved by the building and safety official. Of the listed cabinets, boxes, or enclosures provided, 50 percent shall have the necessary electric vehicle supply equipment installed to provide active charging stations that are ready for use by residents. The remainder shall be installed at such time as they are needed for use by residents. Electrical vehicle batteries and charging technology may change substantially over the next 15 years. As such, the City shall have the discretion to modify the specific requirements for this measure over time, provided that 10 percent of the spaces have electrical service and 5 percent have active charging, depending on what the technology at the time requires.				
b. Commercial Use: New commercial uses shall provide the electrical service capacity necessary as well as all conduits and related equipment necessary to serve 2 percent of the parking spaces with charging stations in a manner approved by the City's Building Official. Of these parking spaces, 50 percent shall initially be provided with the equipment necessary to function as online charging stations upon completion of the Project. The remainder shall be installed at such time as they are needed for use by customers, employees, or other users. Electrical vehicle batteries and charging technology may change substantially over the next 15 years. As such, the City shall have the discretion to modify the specific requirements for this measure over time, provided that two percent of the spaces have electrical service and one percent have active charging, depending on what the technology at the time requires.				
6. Shade Trees: Where surface parking lots are not covered by PV solar, shade trees shall be planted to reduce urban heat island effects on adjacent buildings (CAP Measure 7.1).				
7. Urban Cooling: Any uncovered parking lots or spaces shall use light-colored pavement (CAP Measure 7.2).				
8. Leases for businesses that base a diesel truck fleet within the Project site: Ensure those fleets meet the highest CARB engine-tier standard in place at the time of issuance of the building permits for the building that such businesses occupy, or the execution of a lease, whichever comes first.				
9. Electrical hook-ups at loading docks for businesses that will receive deliveries from refrigerated diesel trucks: Stipulate in the lease agreement for such businesses a requirement to use the hook-ups if the trucks will be idling for more than two minutes.				

Mitigation and Avoidance Measures	Action	Implementing Party	Monitoring Party	Timing [1]
10. Leases for business receiving deliveries: Prohibit all diesel-powered trucks from idling for more than 2 minutes. 11. Solar hot water heating systems: Incorporate for appropriate applications, including any swimming pools and buildings with swimming pools. 12. Electric heat pumps, or other energy-efficiency techniques, including radiant systems: Include for space heating and cooling, under appropriate circumstances.				
NOISE				
NOI-1.1: Prepare and Implement a Construction Noise Control Plan to Reduce Construction Noise at Adjacent Land Uses. The Project Developer shall develop a noise control plan that requires that the Project construction activities comply with the City Code noise limits. The requirements and limitations specified in the plan shall be determined by phase and/or parcel and/or subsections of a parcel or phase. The construction noise control plan shall require the following: • The Project Developer shall appoint a Project noise coordinator who will serve as the point of contact for noise-related complaints during Project construction. The Project noise coordinator shall transmit all construction noise-related complaints to the construction contractor, and the construction contractor shall enhance or refine the noise best management practices discussed herein to address the received noise complaints to the extent feasible. The contact information for the Project noise coordinator shall be sent to residents in the greater vicinity of the Project site that could be affected by Project noise and municipalities affected by Project construction noise. • Construction activities that have the potential to generate noise that is detectable at adjacent residential land uses or within 300 feet of a residentially zoned property shall occur only during the times listed below. Activities that would result in no detectable noise at adjacent land uses, such as interior painting, would not be limited by the hours below. o Between 7:00 a.m. and 6:00 p.m. Monday through Friday. o Between 9:00 a.m. and 6:00 p.m. on Saturdays. o No duration in time on holidays or Sundays. • Construction contractors shall specify noise-reducing construction practices that will be employed to reduce construction noise for construction activities that would occur outside of the prohibited hours specified in the City Code and that would have the potential to exceed the receiving zone noise limits specified in the City Code. The measures determined by the Project Developer shall be reviewed and approved by the City prior to the issuance of building permits. Measures that can be used to limit noise include, but are not limited to, those listed below.	Project Developer to provide noise control plan for City review and approval.	Project Developer/ Project Contractor	City Planning & Inspection Division	Prior to issuance of the first building permit within each Development Area Plan area

Mitigation and Avoidance Measures	Action	Implementing Party	Monitoring Party	Timing [1]
o Locating construction equipment as far as feasible from noise-sensitive uses. o Requiring that all construction equipment powered by gasoline or diesel engines have sound-control devices that are at least as effective as those originally provided by the manufacturer and that all equipment be operated and maintained to minimize noise generation. o Not idling inactive construction equipment for prolonged periods (i.e., more than 2 minutes). o Prohibiting gasoline or diesel engines from having unmuffled exhaust systems. o Using noise-reducing enclosures around noise-generating equipment that has the potential to disturb nearby off-site land uses, or where otherwise necessary, to comply with the City Code noise limits for receiving zones.				
NOI-1.2: Implement Off-Site Traffic Noise Reduction Measures. The Project Developer shall implement off-site traffic noise reduction measures along the east side of Lafayette Drive between Tasman Drive and Hogan Drive such that the Project-related increase in traffic noise for noise receptors is less than 3 dBA. The Project Developer shall construct a solid barrier between the roadway and adjacent residential uses along Lafayette Drive between Tasman Drive and Hogan Drive unless deemed infeasible for any reason including unavailability of sufficient right of way or inability to secure design review/architectural approval. The Project Developer shall implement off-site traffic noise reduction measures along the south side of Tasman Drive between Lafayette and Calle del Sol such that cumulative with project-related increase in traffic noise for noise receptors is less than 3 dBA or the project contribution to traffic noise is less than 1 dBA. The Project Developer shall construct a solid barrier between the roadway and adjacent residential uses along Tasman Drive between Lafayette and Calle del Sol unless deemed infeasible for any reason including unavailability of sufficient right of way or inability to secure design review/architectural approval. The barriers shall be designed to provide shielding between areas of frequent human use (i.e., residence backyards) and the roadway. This would result in approximately 1,000 feet of noise barriers along this the Lafayette segment (between Tasman Drive and Hogan Drive) and up to 800 feet along the Tasman segment (between Lafayette and Calle del Sol). One effective approach would be to replace the existing privacy fences at single family residences with a solid barrier that is at least 6 feet high. The Project Developer shall prepare an off-site noise control plan that identifies the location, design, and effectiveness of the specific treatments to be implemented. This plan shall be submitted to the City for review and approval prior to the issuance of building permits. The off-site noise improvements shall be completed before Project	Qualified professional to determine which Phase of the Project triggers the need for the reduction measures. Project Developer to provide noise control plan for City review, determination of feasibility and approval.	Project Developer	City Planning & Inspection Division	Qualified professional to determine which phase triggers noise barrier during Phase 1 of DAP approval. City to determine feasibility of noise barriers, and approve design if feasible, as part of DAP approval. If feasible, barriers to be constructed as part of construction for the Phase triggering the need for the barrier.

Mitigation and Avoidance Measures	Action	Implementing Party	Monitoring Party	Timing [1]
operations commence.				
NOI-2.1: Restrict Pile Driving. Pile driving occurring 175 feet or less from new residential or commercial buildings shall be conducted prior to those buildings being occupied by future occupants.	City will not approve building permits that include pile driving within 175 feet of occupied residential.	Project Developer/ Project Contractor	City Planning & Inspection Division	Prior to issuance of building permits if driven pile foundations are planned and prior to occupancy of proximate residential or commercial buildings
NOI-5.1: Prepare and Implement a Noise Control Plan to Reduce Interior Noise at Sensitive Land Uses. The Project Developer shall conduct a design-level acoustic study that identifies exterior noise levels for residential and commercial uses on the Project site. This study shall take into account existing airport noise, Project, and reasonably foreseeable future noise sources (such as proposed increases in passenger rail service along the Lafayette Street corridor). Where this study finds that the exterior noise level would exceed the residential compatibility standard of 55 dBA Ldn or the commercial incompatibility standard of 65 dBA Ldn, the Project Developer shall prepare a design-level operational noise control plan to provide acceptable interior noise levels. This plan shall identify all Project features and treatments that will be implemented to ensure that the Project is in compliance with the interior noise standards listed in the City's General Plan and City Code as well as the standards specified for new construction within the CLUP for SJC. The study and plan shall be developed by an acoustical design professional. Design features and treatments will be identified to ensure that interior noise levels at new proposed uses are in compliance with the noise standards. The report shall be submitted to the City for review and approval prior to the issuance of building permits for the Project. Depending on the noise exposure for a particular site, such treatments may include, but are not limited to, those listed below, as recommended by the acoustical design professional. • Construction of enclosures around noise-generating mechanical equipment at commercial uses. • Use of setbacks from noise sources to maximum attenuation of noise over distance.	Project Developer to provide design-level acoustic study for City review and approval and to incorporate necessary measures into building design when exterior noise levels exceed residential and commercial incompatibility standards.	Project Developer/ Acoustical Design Professional	City Planning & Inspection Division	Prior to issuance of building permits for residential and commercial buildings

Mitigation and Avoidance Measures	Action	Implementing Party	Monitoring Party	Timing [1]
• Installation of noise-reducing treatments in new buildings, including: o High-performance, sound-rated double-glazed windows, o Sound-rated doors, o Sound-rated exterior wall construction, o Special acoustical details for vents, o Acoustical caulking at all exterior façade penetrations, o Sound-rated roof and ceiling constructions, and o Adequate mechanical ventilation so that windows and doors may be kept closed at the discretion of the building occupants to control environmental noise intrusion.				
CULTURAL RESOURCES				
CR-1.1: Conduct Extended Phase I (XPI) Archaeological Investigations within the Project Site near Recorded Resources and within an Area of Archaeological Sensitivity. Prior to construction, if it is determined that Project-related ground-disturbing activities may extend into native soil within 100 feet of a previously recorded archaeological site, the Project Developer shall retain the services of a qualified archaeologist to conduct XPI investigations within the Project site. The XPI investigations shall consist of subsurface trench excavations to determine the presence or absence of buried features associated with the known archaeological site. If feasible, at least two trenches shall be placed in recorded location P-43-000025/CA-SCL-5, which is recorded as partially in the Project site, to ensure adequate investigations in this area. If the XPI investigations reveal resources, additional trenches or testing may be necessary. Mitigation Measure CR-1.3, described below, shall be followed.	Project Developer to submit XPI Archaeological Investigation(s) to City.	Project Developer/ Qualified Archaeologist	City Planning & Inspection Division	Prior to issuance of grading permits that would disturb native soils within 100 feet of a previously recorded archaeological site
CR-1.2: Provide Archaeological Monitoring of the Project Site When in Native Soil. Prior to construction, if it is determined that Project-related ground-disturbing activities may extend into native soil, within 100 feet of a previously recorded archaeological site, the Project Developer shall retain the services of a qualified archaeologist to monitor earthmoving activities within the Project site. Monitoring shall consist of coordinating subsurface work to allow for the careful examination of vertical and horizontal soil relationships for the purpose of seeking positive archaeological finds (prehistoric and/or historic). The monitor shall maintain a field log of their presence and observations, carefully noting soil conditions. The archaeological monitor shall be pre-approved by the Director of Planning and Inspection. After written approval, the Planning Division shall be notified at least 48 hours prior to any grading or other subsurface work on the site, and the Project	City to approve monitor, ensure monitor is in place, and approve monitoring protocol, which shall include requirements of CR-1.3.	Project Developer/ Qualified Archaeologist	City Planning & Inspection Division	Monitoring protocol prior to the issuance of grading and building permits that would disturb native soils within 100 feet of a previously recorded archaeological

Mitigation and Avoidance Measures	Action	Implementing Party	Monitoring Party	Timing [1]
Developer shall provide a written protocol for the City's review and approval that stipulates the manner in which the Project Developer shall comply with the monitoring requirements. In the event that cultural resources are encountered, Mitigation Measure CR-1.3, described below, shall be followed.				site; monitoring shall occur during earthmoving activities
CR-1.3: Stop Work if Cultural Resources Are Encountered during Ground-Disturbing Activities. In the event that cultural resources are encountered during ground disturbing activities, all work within proximity of the find shall temporarily halt so that the archaeological monitor can examine the find and document its provenience and nature (drawings, photographs, written description). The archaeological monitor shall then direct the work to either proceed if the find is deemed to be insignificant, or instruct the work to continue elsewhere or cease until adequate mitigation measures are adopted. If the find is determined to be potentially significant, the archaeologist, in consultation with the Planning Division, shall develop a Treatment Plan that could include site avoidance, capping, or data recovery. If data recovery is determined to be appropriate, excavation shall target recovery of an appropriate amount of information from archaeological deposits to determine the potential of the resource to address specific research questions. If it occurs, data recovery shall emphasize the understanding of the archaeological deposit's structure, including features and stratification, horizontal and vertical extent, and content, including the nature and quantity of artifacts.	Archaeological monitor (retained by the Project Developer), as necessary, and in consultation with the City, develop a Treatment Plan. See also CR-1.2.	Project Developer/ Qualified Archaeologist	City Planning & Inspection Division	During construction if cultural resources are encountered
CR-2.1: Paleontological Resource Mitigation Plan. Prior to any deep excavations below an elevation of -30 feet (North American Vertical Datum of 1988 [NAVD] 88) at the Project site on areas not underlain by landfill refuse, the Planning Division shall be notified at least 48 hours prior to the excavation, and a qualified professional paleontologist shall prepare a Paleontological Resource Mitigation Plan (PRMP) in consultation with the Planning Division. The PRMP shall describe the tasks necessary to monitor, assess, and recover (if present) significant paleontological resources during Project excavation activities. The PRMP shall be implemented by the qualified paleontologist during the deep Project excavations below an elevation of -30 feet (NAVD 88).	Project Developer to submit to City PRMP prepared by paleontologist (retained by the Project Developer).	Project Developer/ Qualified Professional Paleontologist	City Planning & Inspection Division	Prior to issuance of grading permits for excavations below an elevation of -30 feet at Parcel 5 and areas of Parcel 4 not underlain by landfill.
CR-2.2: Paleontological Resource Monitoring. In accordance with the PRMP, a qualified paleontologist shall monitor for fossils in Pleistocene deposits during Project excavations below an elevation of -30 feet (NAVD 88) on areas not underlain	Project Developer to provide to City contract with paleontologist for	Project Developer/ Qualified	City Planning & Inspection Division	Prior to issuance of grading

Mitigation and Avoidance Measures	Action	Implementing Party	Monitoring Party	Timing [1]
by landfill refuse or below other elevations confirmed in the field by the qualified paleontologist. The qualified paleontologist shall be present initially for 100 percent of the excavation activities within the Pleistocene deposits. After 50 percent of the excavation is completed within the rock unit and if no fossils of any kind have been discovered, then the level of monitoring can be reduced or suspended entirely at the Project paleontologist's discretion. If the paleontologist discovers potential paleontological resources, all ground disturbance within 50 feet of the find shall stop immediately until the qualified professional paleontologist can assess the nature and importance of the find and recommend appropriate salvage, treatment, and future monitoring and mitigation actions.	implementing PRMP, which shall include requirements of CR-2.3.	Professional Paleontologist		permits for excavation below an elevation of -30 feet at Parcel 5 And areas of Parcel 4 not underlain by landfill
CR-2.3: Paleontological Resource Reporting. If significant paleontological resources are identified, the Project qualified paleontologist shall prepare a report summarizing the field and laboratory methods, site geology and stratigraphy, faunal/floral list(s), and a brief statement of the significance and relationship of the fossils discovered to similar fossils found elsewhere. The final report should emphasize the discovery of any new or rare taxa, or paleoecological or taphonomic significance. A complete set of field notes, geologic maps, stratigraphic sections, and a list of identified specimens must be included in or accompany the final report. This report should be finalized only after all aspects of the PRMP are completed, including preparation, identification, cataloging, and curatorial inventory. Full copies of the final report shall be deposited with both the Lead Agency and the repository institution with the request that all locality data remain confidential and not made available to the general public.	Paleontologist to prepare final report for submission to City. See also CR-2.2.	Project Developer/ Qualified Professional Paleontologist	City Planning & Inspection Division	After a significant paleontological resource is identified during construction
CR-3.1: Stop work if human remains are encountered during ground-disturbing activities. When human remains are discovered (in either an archaeological or construction context), all work within proximity of the remains shall stop so that the archaeological monitor can examine the remains. The County Coroner shall be notified, who shall make a determination as to whether the remains are of Native American origin. If the remains are determined to be Native American, the Coroner shall notify the Native American Heritage Commission (NAHC) immediately. The NAHC shall notify those persons it believes are most likely descended from the deceased Native American. Once the 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 State CEQA Guidelines.	Project Developer to submit to City applicable provisions of construction contracts including applicable requirements.	Project Developer/ Project Contractor	County Coroner/ NAHC	Prior to issuance of grading and building permits

Mitigation and Avoidance Measures	Action	Implementing Party	Monitoring Party	Timing [1]
BIOLOGICAL RESOURCES				
BIO-1.1: Protect Nesting Birds. The Project Developer and its contractors shall avoid conducting vegetation removal during the migratory bird nesting season (February 1–August 31). If Project-related activities must commence during the migratory bird nesting season, the Project Developer shall retain a qualified wildlife biologist to conduct a survey for nests of migratory birds. Surveys for nesting migratory birds shall occur within 3 days prior to the commencement of ground disturbance and vegetation removal in areas that will be affected by Project construction activities. Multiple nest surveys shall be required if construction is phased or when construction work stops for more than 2 weeks at a portion of the site where suitable nesting habitat remains. If construction is ongoing for multiple years, these surveys shall be conducted each year prior to construction in areas that have not yet been disturbed and are scheduled to be disturbed during the nesting season. In addition to nesting-season surveys, surveys shall be conducted during the non-nesting season (September 1–January 31) for overwintering burrowing owls in areas scheduled for initial disturbance during the upcoming season. The surveys shall also be conducted as described above, with a goal of identifying overwintering owls so they can be appropriately avoided during construction. If an active nest is discovered, a no-disturbance buffer zone around the nest tree or shrub (or, for ground-nesting species, the nest itself) shall be established. The no-disturbance zone shall be marked with flagging or fencing that is easily identified by the construction crew and shall not affect the nesting bird or attract predators to the nest location. In general, the minimum buffer zone widths shall be as follows: 50 feet (radius) for non-raptor ground-nesting species, 50 feet (radius) for non-raptor shrub- and tree-nesting species, and 300 feet (radius) for raptor species. Buffer widths may be modified based on discussion with DFW. Buffers shall remain in place as long as the nest is active or young remain in the area and are dependent on the nest. If a burrowing owl nest is identified during pre-construction surveys, no-activity buffers will adhere to the recommendations in the 2012 California Department of Fish and Game Staff Report on Burrowing Owl Mitigation.[7] Most Project activities would result in a high level of disturbance, constituting a 1,640-foot (500-meter) required buffer around occupied nests during any time of year.[8]	Project Developer to provide to City applicable provisions of construction contracts including pertinent requirements. If construction will occurs in the nesting season, Project Developer to submit to City agreement with qualified wildlife biologist requiring surveys and protective measures under BIO-1.1 and requirement that wildlife biologist report to City if conditions triggering BIO-2.2 exist.	Project Developer/ Project Contractor/ Qualified wildlife biologist	City Planning & Inspection Division	Prior to the issuance of grading and building permits for construction contracts; prior to commencement of grading for biologist agreements; and prior to ground disturbance for surveys

[7] California Department of Fish and Game. 2012. Staff Report on Burrowing Owl Mitigation. State of California Natural Resources Agency. March 7. Available: http://www.dfg.ca.gov/wildlife/nongame/survey_monitor.html#Mammals.

[8] Scobie, D., and C. Faminow. 2000. Development of Standardized Guidelines for Petroleum Industry Activities that Affect COSEWIC Prairie and Northern Region Vertebrate Species at Risk. Environment Canada, Prairie and Northern Region, Edmonton, Alberta, Canada.

Mitigation and Avoidance Measures	Action	Implementing Party	Monitoring Party	Timing [1]
BIO-1.2: Implement Bird-Safe Design Standards into Project Buildings and Lighting Design. Each Development Area Plan (DAP) approved by the City shall include a set of specific standards for minimizing hazards to birds, to be implemented by the Project Developer. The development of the specific bird safety standards for each Development Area Plan shall be tailored to the specific potential hazards to birds in that development area, taking into account the specific locations, types and heights of buildings, lighting, and landscaping. In addition, the DAP shall require enhanced protective measures for buildings within 300 feet of the retention pond, the Guadalupe River, and San Tomas Aquino Creek, such as siting buildings in relation to existing landscape features to reduce conflicts with existing features that may serve as attractive bird habitat; minimizing the reflection of existing vegetation on building facades; or using soil berms, furniture, landscaping, or architectural features to prevent reflection of water in glazed building facades. The specific bird safety standards in each DAP shall be based on the following bird-friendly building principles, to the extent applicable to the particular development area: • Reduce mirrors and large areas of reflective glass. • Avoid transparent glass skyways, walkways, or entryways, free-standing glass walls, and minimize transparent building corners, or utilize glazing treatments to mitigate the hazard. • Minimize funneling of open space toward a building façade. • Strategically place landscaping to reduce reflection and views of foliage inside or through glass. • Reduce potential light and glare by implementing Mitigation Measures AES-2.1 (requiring low-profile, low-intensity lighting directed downward), AES-2.2 (requiring shielded fixtures for outdoor lighting), and AES-2.3 (requiring low-emissivity reflective coating on exterior glass surfaces). • To the extent consistent with the normal and expected operations of the uses planned for the particular development area, take appropriate measures to avoid use of unnecessary lighting at night, especially during bird migration season (February-May and August-November) through the installation of motion sensor lighting, automatic lighting shut-off mechanisms, or other effective measures to the extent feasible. The specific bird safety standards shall also provide for a monitoring program, and placing signs around the buildings with phone numbers for authorized bird conservation organizations.	City review and approve each Development Area Plan to ensure adequate measures are included.	Project Developer	City Planning & Inspection Division	Approval of each Development Area Plan

Mitigation and Avoidance Measures	Action	Implementing Party	Monitoring Party	Timing [1]
BIO-2.1: Detection of Burrowing Owls. The Project Developer shall allow access to the Project site or off-site areas for biologists who participate in the annual burrowing owl nest survey coordinated by the Santa Clara Valley HCP/NCCP. Burrowing owl surveys are conducted between March and August of each year. As many as four surveys may be conducted each year, in accordance with the Staff Report on Burrowing Owl Mitigation[9] to determine whether burrowing owls are nesting and whether nests are successful. Access to the site for burrowing owl surveys shall be granted until the Project site or off-site area is completely built out. The Project Developer shall not, however, be required to postpone planned development activities to provide such access, except to the extent such postponement is necessary to meet regulatory requirements.	The ground lessee shall allow such access until certificate of completion for the phase.	Project Developer/City	City Planning & Inspection Division	Concurrent with execution of each phase ground lease
BIO-2.2: Mitigation for Loss of Burrowing Owl Habitat during Construction. Should burrowing owls begin nesting on developable portions of the Project site or off-site areas that remain undeveloped as phases of the Project are constructed, or suitable habitat within 600 meters of an active nest is removed from the Project site, then lost burrowing owl habitat shall be replaced at a ratio of at least 1:1 prior to ground-disturbing activities in the area of the Project site or off-site area with an active nest. Affected habitat shall be defined as suitable habitat (based on the habitat mapping completed for this EIR) within a 600 meter radius of an active burrowing owl nest. Suitable land cover types include annual grassland, ruderal, or barren areas. Mitigation sites shall have documented nesting occurrences from at least 1 year within the previous 3 years. If burrowing owls move onto undeveloped portions of the Project Site or off-site area, including the Retention Basin, once the site is fully constructed, there shall be no requirement to provide replacement habitat, unless that undeveloped habitat is developed in the future.	If required, Project Developer to submit certification to the City that habitat has been replaced at the specified ratio. City to review and approve certification.	Project Developer	City Planning & Inspection Division	Prior to ground-disturbing activities until the Project site or off-site areas are completely built-out in the event that wildlife biologist detects circumstance triggering BIO-2.2
BIO-3.1: Protect Western Pond Turtles. Prior to the start of construction activities in or within 50 feet of aquatic habitats, the Project Developer shall retain a qualified biologist to conduct preconstruction surveys for western pond turtles in all suitable habitats (aquatic and upland) in the vicinity of the work site. Surveys shall take place no more than 72 hours prior to the onset of site preparation and construction activities with the potential to disturb turtles or their habitat. If preconstruction surveys identify active nests on the Project site, the biologist shall establish no-disturbance buffer zones around each nest using temporary orange construction fencing. The demarcation shall be permeable to allow young turtles to move away	Project Developer to submit to City agreement with qualified biologist and applicable provisions of construction contracts, including requirement that biologist submit to City certification that	Project Developer/ Qualified Biologist	City Planning & Inspection Division	Prior to the issuance of grading or building permits for biologist and construction agreements; and 72 hours

[9] CDFW 2012. Staff Report on Burrowing Owl Mitigation. State of California Natural Resources Agency.

Mitigation and Avoidance Measures	Action	Implementing Party	Monitoring Party	Timing [1]
from the nest following hatching. The radius of the buffer zone and the duration of exclusion shall be determined in consultation with DFW. The buffer zones and fencing shall remain in place until the young have left the nest, as determined by the qualified biologist. If western pond turtles are found on the Project site, the Project Developer shall still retain a qualified biologist to monitor construction activities in the vicinity of suitable habitat and implement appropriate measures to protect the western pond turtle. Such measures may include removal and relocation of western pond turtles in proposed construction areas to suitable habitats outside the Project limits, consistent with DFW protocols and permits. Relocation sites shall be subject to DFW approval.	preconstruction surveys have been conducted and protective measures taken.			prior to site construction activities in or within 50 feet of aquatic habitats
BIO-4.1: Protect Central California Coast Steelhead, Critical Habitat, and Chinook Salmon. Construction, operations, and maintenance on the riverbank, as well as areas within 200 feet of the Guadalupe River, that could result in disturbed sediment depositing within the banks of the channel shall be limited to the summer low-precipitation period (June 1 to October 15), unless otherwise approved by appropriate resource agencies. Limiting riverbank disturbance during these months would reduce the likelihood of adverse effects on adult and juvenile salmonid migration.	Project Developer to provide to City applicable provisions of construction contract ensuring work on the riverbank as well as within 200 feet of the Guadalupe River that could result in disturbed sediment depositing within the banks of the channel is limited to summer low precipitation periods.	Project Developer/ Project Contractor	City Planning & Inspection Division	Prior to issuance of grading and building permits
BIO-5.1: Protect Retention Pond and Eastside Retention Drainage Swale, and San Tomas Aquino Creek and the Guadalupe River Aquatic Habitat during Construction. For construction activities within 50 feet of the aquatic habitat associated with the retention pond and drainage swale, San Tomas Aquino Creek, and Guadalupe River, protective measures shall be put in place to ensure that impacts on those aquatic features shall be avoided and minimized. The following measures shall be deployed during construction: • A qualified biologist shall determine the locations where orange construction barrier fencing shall be installed around aquatic resources (USACE and the Regional Water Board jurisdictional wetlands/waters and DFW jurisdictional lakes and streams) that are to be avoided prior to initiation of construction activities. • Designate the protected area an Environmentally Sensitive Area and clearly identify the area in the construction specifications. • Maintain jurisdictional wetlands/water protection fencing throughout the grading	Project Developer to provide to City applicable provisions of construction contract and agreement with qualified biologist that include the specified protective measures.	Project Developer/ Qualified Biologist	City Planning & Inspection Division	Prior to issuance of grading and building permits for construction activities within 50 feet of the pertinent aquatic habitat

Mitigation and Avoidance Measures	Action	Implementing Party	Monitoring Party	Timing [1]
and construction period. • Prohibit grading, construction activity, traffic, equipment, or materials in fenced wetland areas.				
BIO-5.2: Compensate for Loss of Waters of the U.S. and State (including Wetlands). If impacts to jurisdictional waters of the U.S. or State cannot be avoided, the Project Developer shall obtain permits or approvals to develop from the USACE, the Regional Water Board, and DFW, as appropriate and required. Both the Guadalupe River and San Tomas Aquino Creek are subject to both State and federal jurisdiction because of their connection to the Bay. To ensure that the Project results in no net loss of wetland habitat functions and values, the Project Developer shall compensate for the loss of jurisdictional wetlands/waters through one of the following options. • Purchase of agency-approved mitigation credits from a suitably located mitigation bank prior to construction (ground disturbance that impacts wetlands/waters); • On-site wetland/waters restoration (re-establishment or rehabilitation) establishment (creation) prior to or concurrent with construction impacts; • Off-site wetland/waters restoration (re-establishment or rehabilitation)/establishment (creation) prior to or concurrent with construction; or • A combination of two or more of the above. The amount of agency approved mitigation credits required from a suitably located mitigation bank and/or size and location(s) of the area(s) to be restored (re-established)/established (created) shall be based on appropriate mitigation ratios, as derived in consultation with DFW, USACE, and the Regional Water Board. The Project Developer shall prepare and implement a mitigation and management plan (MMP) as part of the permitting process in conformance with the USEPA/USACE 2008 Mitigation Rule. The mitigation ratios shown in the initial draft MMP submitted to the permitting agencies during Project permitting shall be a minimum of 2:1, as determined through the CEQA process. The MMP, if other than sole purchase of mitigation bank credits, shall include the requirements listed below: • Mitigation implementation plan; • Performance (success) standards or criteria to be met in order to determine that the mitigation has successfully replaced the impacted wetlands/waters in terms of "no net loss" of the impacted functions and values; • 5-year monitoring plan for determining that performance criteria have been successfully met through the collection of wetlands/waters vegetation survival and cover field data; hydrology flooding, ponding, and/or soil saturation field data; and	Project Developer to provide to City wetland delineation, copies of permits obtained as and if required from USACE, the Regional Water Board and DFW, and the MMP, all satisfying the requirements of BIO-5.2 Project Developer to provide to City annual monitoring reports.	Project Developer/ Qualified Wetland Biologist	DFW, USACE, Regional Water Board, City Planning & Inspection Division	Prepare wetland delineation prior to first grading or building permit for the Project. Obtain requisite agency permits and prepare MMP prior to issuance of grading or building permits for construction activities that will impact jurisdictional wetlands. Monitor plan for a minimum of 5 years.

Mitigation and Avoidance Measures	Action	Implementing Party	Monitoring Party	Timing [1]
habitat area data; • Adaptive management plan to be implemented if mitigation performance is found through annual monitoring not to be progressing towards success within the 5-year monitoring period; • Conservation plan to ensure in-perpetuity land use protection of the mitigation site; • Long-term (in-perpetuity) conservation management plan; and • Funding plan for mitigation implementation, 5-year mitigation performance monitoring and maintenance, and an endowment (non-wasting fund) for long-term conservation management. The final MMP shall be determined in consultation with DFW, USACE, and the Regional Water Board. The mitigation plan shall include measure to avoid and minimize the effects of construction on surrounding native habitats. The required performance standard is no net loss of wetland and waters habitat function and values. Monitoring shall occur for a minimum of 5 years, at which time, if the success criteria are met, wetland compensation shall be deemed complete.				
BIO-C.1: Make a Fair-Share Nitrogen Deposition Fee Contribution to the Santa Clara Habitat Agency's Voluntary Fee Payment Program. Consistent with its voluntary commitment to contribute a nitrogen deposition fee through the fee program of the Santa Clara Habitat Agency, the Project Developer shall make a pro-rated per-vehicle-trip nitrogen deposition fee contribution, which will be based on the amount charged by the Santa Clara Valley Habitat Agency under its Voluntary Fee Payments Policy (http://scv-habitatagency.org/DocumentCenter/View/345). Specifically, the per-vehicle trip fee shall be adjusted as set forth below to take into account the different dispersion characteristics of the Project vs. the average dispersion characteristics for development in the HCP/NCCP area. The Project is located farther from serpentine grassland habitat than average development within the Santa Clara Valley HCP/NCCP area. Thus, the required fair-share contribution shall be figured as 38 percent (based on the ICF analysis) of the established fee of the habitat agency for the year in which the building permits are issued for the Project. The fee may be paid up front or in installments in proportion to mitigated vehicle trip generation for the phase of the Project for which the building permits are issued. For fiscal year 2015–2016, the adopted HCP/NCCP nitrogen deposition fee was $4.20 per new vehicle trip. Using Scheme B's estimated trip generation (140,730 trips/day), taking into account the trip reduction effect of Mitigation Measure TRA-1.1 (reduction to 137,910 trips/day), and the 38 percent adjustment factor, if all fees were paid in 2015, the estimated total would be $220,104.	Project Developer to provide to City proof of payment.	Project Developer	City Planning and Inspection Division	Prior to issuance of building permits: to be paid up front or in installments in proportion to mitigated vehicle trip generation for the phase of Project for which the building permits are issued.

Mitigation and Avoidance Measures	Action	Implementing Party	Monitoring Party	Timing [1]
GEOLOGY AND SOILS				
GEO-1.1: Detailed Grading and Erosion Control Plan. A detailed grading and erosion control plan shall be prepared and submitted to the City Building Department. The plan shall cover all Project parcels (not just the landfill portions) and off-site areas and include all information required to demonstrate that earthwork activities will be in compliance with CCR 21190 et seq. and incorporate by reference the Project's Storm Water Pollution Prevention Plan, as required by the Construction General Permit.	Project Developer to provide detailed grading and erosion control plan for review and approval by City.	Project Developer	City Planning and Inspection Division	Prior to the issuance of demolition and grading, permits
GEO-2.1: Design-Level Geotechnical Investigation. Prior to the issuance of demolition, grading, or construction permits at the Project site, a design-level geotechnical investigation shall be conducted by a qualified professional (the qualified professional shall be retained by the Project Developer). The investigation shall include further field exploration (e.g., borings, cone penetration tests, test pits and/or geophysical surveys) to develop design-level recommendations to address erosion and other geotechnical concerns for the Project. The design-level geotechnical investigation shall include: • Evaluation of anticipated settlement. Additional soil borings shall be installed to determine the depth to the refuse layer for aid in preparing grading plans. Additional samples shall be analyzed to determine potential settlement and determine the likely final post-settlement surface elevation. The potential magnitude of differential settlements between improvements supported by a combination of structural slab and deep foundations and those that are supported by other foundation systems shall be fully analyzed and detailed in the design-level geotechnical report. • Evaluation of liquefaction potential. Additional borings shall be drilled at the Project site and off-site areas to fully characterize the liquefaction hazard associated with the Project. • Evaluation of slope instability. A detailed slope stability analysis for all existing slopes that would remain under the Project, including the perimeter landfill slopes, and all proposed new slopes shall be prepared. • Evaluation of expansive soils. Additional borings shall be drilled at the Project site and off-site areas to fully characterize the expansive soil hazard associated with the Project. • Evaluation of corrosive soils. Project site and off-site soils and, in those areas where foundation components would come into contact with landfill materials, refuse shall be evaluated for corrosion potential.	Project Developer to provide design-level geotechnical investigation for review and approval by City. City and Developer to submit such investigation to regulatory agencies per GEO-2.6 with respect to areas underlain by landfill and secure approval as required. Project Developer to incorporate resulting measures into project plans.	Project Developer/ City	City Planning and Inspection Division	Prior to the issuance of demolition, grading, and building permits

Mitigation and Avoidance Measures	Action	Implementing Party	Monitoring Party	Timing [1]
The design-level geotechnical investigation work plan shall be submitted for review and approval in accordance with Mitigation Measure GEO-2.6.				
GEO-2.2: Final Geotechnical Report Review. A final geotechnical report shall be prepared by a qualified professional based on the findings of the design-level geotechnical investigation (the qualified professional shall be retained by the Project Developer). The final report shall be submitted for review and approval in accordance with Mitigation Measure GEO-2.6. The final geotechnical report shall include: Measures to address anticipated settlement: • Specifications of methods to address differential settlement between improvements supported by a combination of structural slab foundations and those that are supported by other deep foundation systems or unsupported areas. • Exterior slabs and ramps attached to buildings shall be hinged to allow the end of the slab or ramp not attached to the building to move downward as settlement occurs. The design shall not allow building entrance slabs to exceed a 5 percent grade, in compliance with ADA access requirements, and vehicular entrances shall not be allowed to exceed an 11 percent grade to prevent vehicles from scraping during entry or exit. • Settlement vaults and flexible connections shall be required at locations where utilities transfer from a pile-supported building to a non-supported area for all phases of construction. • Roadway and other paving at the Project site not located above an area-wide structural slab shall be constructed with flexible materials, such as asphalt or interlocking pavers. The use of concrete and other non-flexible materials shall be minimized. Where non-flexible material is used, expansion and spacing joints that allow rigid materials to shift without breaking shall be used to allow for anticipated settlement. Measures to address liquefaction: • In those areas not supported by the structural slab foundation (which would effectively mitigate the liquefaction hazard), other measures shall be developed to mitigate the hazard, such as shallow footings constructed over ground improvement. Foundations for structures shall be designed to completely mitigate settlement hazards associated with liquefaction (i.e., no liquefaction-induced settlement damage shall be accepted for the final design). Measures to address slope instability: • Measures (e.g., reducing slope steepness, providing structural support, or ground improvement) to ensure that an appropriate factor of safety (both static and	Project Developer to provide final geotechnical report for review and approval by City. City and Developer to submit such report to regulatory agencies per GEO-2.6 and secure approval as required. Project Developer to incorporate resulting measures into project plans.	Project Developer/ City	City Planning and Inspection Division	Prior to the issuance of grading and building permits

Mitigation and Avoidance Measures	Action	Implementing Party	Monitoring Party	Timing [1]
seismic) is achieved for each slope. Measures to address expansive soils: • In those areas not supported by the structural slab foundation (which would effectively mitigate the hazard), other measures shall be developed to mitigate the hazard, such as removal of the problematic soils, treatment of the soils, or specification of appropriate foundation design. If any soils characterized as highly or moderately expansive (linear extensibility of 3.0 percent or more) are to remain at the surface or be used as fill in the upper 5.0 feet, these soils shall be treated (using calcium-based treatment or similar approach) such that the soils are reduced to a low expansion potential (linear extensibility of less than 3.0 percent). Measures to address corrosive soils: • A corrosion consultant shall be retained to provide specific recommendations regarding the long-term corrosion protection of pile elements and other subsurface materials. The recommendations of the corrosion consultant, which may include use of specific corrosion-resistant materials and/or treatment of corrosive soils, shall be implemented during construction.				
GEO-2.3: Construction Quality Assurance Plan. A Construction Quality Assurance (CQA) Plan that covers both the Project site and off-site areas shall be prepared by the Project Developer for review and approval by the Director of Public Works. The CQA Plan shall establish procedures for testing final cover materials, detail the responsibilities of construction monitoring personnel, and provide procedures for addressing unexpected geologic conditions during grading activities.	Project Developer to provide a CQA Plan that covers both the Project site and off-site areas for review and approval by City. City and Developer to submit CQA to regulatory agencies per GEO-2.6 with respect to areas underlain by landfill and secure approval as required. Project Developer to submit to City applicable provisions of construction contracts incorporating requirements of CQA.	Project Developer	Director of Public Works	Prior to the issuance of grading, and building construction permits
GEO-2.4: Final Project Design Review. Final Project design plans that cover both Project site and off-site areas shall be prepared by the Project Developer and submitted for review and approval in accordance with Mitigation Measure GEO-2.6.	Project Developer to provide final Project design plans meeting	Project Developer/ City	City Planning and Inspection Division	Prior to issuance of grading and

Mitigation and Avoidance Measures	Action	Implementing Party	Monitoring Party	Timing [1]
Project site structures shall be designed to accommodate predicted ground settlement, as determined in the design-level geotechnical investigation for the Project improvements (see Mitigation Measure GEO-1.1). For the portion of the Project overlying the Landfill, the Post-Closure Land Use Plan shall demonstrate that Project design will be protective of public health and safety and the environment, as required by 27 CCR 21190. Because of the potential for encountering buried obstructions, contingencies for relocating Auger Cast-in Place Piles and Drilled Displacement Columns during construction shall be included in the foundation design. The Project design plans shall be subject to review and approval by the City Building Department prior to initiation of field activities.	criteria of GEO-2.4 for review and approval by City. City and Developer to submit such Project design plans to regulatory agencies per GEO-2.6 with respect to areas underlain by landfill and secure approvals as required.			building permits
GEO-2.5: Site Operation, Monitoring, and Maintenance Plan. A Site Operation, Monitoring, and Maintenance Plan that covers both the Project site and off-site areas shall be prepared by the Project Developer and submitted for review and approval in accordance with Mitigation Measure GEO-2.6. The Site Operation, Monitoring, and Maintenance Plan shall establish procedures for inspecting structures and improvements as well as evaluating the effects of settlement. It will also establish a mechanism for funding and implementing the Plan's activities throughout the life of the Project. Inspections that focus on documenting settlement, particularly at locations where different support systems meet, shall take place at least quarterly during the first 2 years following the completion of each phase of Project construction. Documentation of each inspection shall be submitted to for review and approval in accordance with Mitigation Measure GEO-2.6 within 30 days of inspection completion. After 2 years, the frequency of inspections may be adjusted with written consent from each agency that approved the Site Operation, Monitoring, and Maintenance Plan Site Operation, Monitoring, and Maintenance Plan. The Site Operation, Monitoring, and Maintenance Plan shall detail the qualifications and responsibilities of monitoring personnel, including immediate notification of the City Building Department of any settlement that could affect the structural integrity of a building and/or structure or settlement that could create a hazard for the public (e.g., separations that create trip hazards for pedestrians). If the types of settlements are observed that could compromise structural integrity or cause hazards for the public, based on the judgment of the qualified inspector, remedial action shall be promptly completed. The Plan shall designate financial responsibility for remedial actions should the effects of settlement be identified and provide timetables for any required remedial action. All remedial action shall be overseen by the qualified geotechnical consultant designated by the Plan and approved by each agency that approved the Site Operation, Monitoring, and	Project Developer to provide Site Operation, Monitoring, and Maintenance Plan for review and approval by City. City and Developer to submit Site Operation, Monitoring, and Maintenance Plan to regulatory agencies per GEO-2.6 for areas underlain by landfill and secure approvals as required. Project Developer to submit inspections to City for review and approval, and to regulatory agencies as specified in GEO02.6 for areas underlain by landfill, within 30 days or inspections.	Project Developer/ City	City Planning & Inspection Division	Plan approval prior to issuance of grading and building permits. Inspections at least quarterly during the first 2 years following the completion of each phase of construction. Documentation of each inspection shall be submitted within 30 days of inspection.

Mitigation and Avoidance Measures	Action	Implementing Party	Monitoring Party	Timing [1]
Maintenance Plan. Quarterly reports detailing inspection and remedial activities shall be submitted to each agency that approved the Site Operation, Monitoring, and Maintenance Plan following each inspection for review and approval.				
GEO-2.6: Review and Approval by Relevant Regulatory Agencies. To the extent reports and plans required by Mitigation Measures GEO-2.1, -2.2, -2.3, -2.4 or -2.5 address the portion of the Project site overlying the Landfill, they shall be submitted jointly by the City (as owner and operator of the landfill) and the Project Developer for review and approval to the following: (i) the Local Enforcement Agency as principal landfill regulator; (ii) the Regional Water Board for approval of the issues related to the low permeability layer of the final landfill cover pursuant to 27 CCR 21990 (d) and pilings installed in or through the bottom liner of the landfill liner pursuant to 27 CCR 21990 (e)(6), and for review but not approval of other aspects of the plans and reports; (iii) to Cal Recycle for review, but not approval; and (iv) any other agency which is specifically required by applicable law to approve a particular report, plan or component thereof. To the extent reports and plans required by this mitigation measure relate to other portions of the site not overlying the Landfill, they shall be submitted by the Developer to the City, and to any agency which is specifically required by applicable law to approve a particular report, plan or component thereof, for review and approval.	Refer to GEO-2.1 through GEO-2.5	Refer to GEO-2.1 through GEO-2.5	Refer to GEO-2.1 through GEO-2.5	Refer to GEO-2.1 through GEO-2.5
HYDROLOGY AND WATER QUALITY				
WQ-1.1: Design and Implement Stormwater Control Measures. In compliance with Provision C.3 of the San Francisco Bay MS4 Permit and the Santa Clara Valley Water District's 100-year peak flood requirements, post-construction stormwater controls shall be implemented to reduce total runoff rates and associated pollutant discharges. According to the Santa Clara Valley Urban Runoff Pollution Prevention Program's C.3. Stormwater Handbook, the three methods for hydraulically sizing flow-based stormwater treatment control measures are (1) volume-based, (2) flow-based, or (3) a combination of volume-/flow-based hydraulic sizing criteria. The simplified method for sizing bioretention areas and flow-through planters, known as the "4 percent method," is based on a runoff inflow of 0.2 inch per hour, with an infiltration rate through biotreatment soil of 5 inches per hour. The 4 percent method requires the treatment measure to be 4 percent of the impervious area that drains to it. The design of the stormwater treatment measures is currently at the conceptual level and further details will be addressed as part of the planning, construction, and operation of the development. The treatment measures shall be designed to remove	Project Developer to provide to City Stormwater Management Report.	Project Developer	Department of Public Works	Prior to issuance of building permits

Mitigation and Avoidance Measures	Action	Implementing Party	Monitoring Party	Timing [1]
pollutants from stormwater using filtration, infiltration, and sedimentation. Because infiltration is not feasible due to the landfill, the treatment measures must be built into the structure of the development above the landfill itself. The stormwater treatment measures that provide infiltration shall be lined with an impermeable liner on the bottom and sides. Just above the liner there must be a layer of clean gravel and a network of perforated piping (underdrains). These underdrains must connect to solid drain piping at the exit of the treatment area and ultimately be connected to the storm drainage infrastructure. All of these components shall exist above the podium structure. The impermeable liner would prevent any leaks or ruptures into the landfill and structures. There shall also be perforated underdrain piping connected to solid piping at the exit of the treatment measure/planter solid piping that will connect to the storm drain infrastructure at manholes where leak monitoring can be performed. More information on the potential hazards of a leak or rupture of the stormwater treatment measures causing flooding of the landfill gas venting lines is provided in Section 3.11, *Hazards and Hazardous Materials*. The following stormwater treatment (or Low Impact Development [LID]) measures are examples that will be considered and carefully selected as part of the final design process for the different sections of the proposed development: • Bioretention Areas (impermeable liner with underdrain—no infiltration into landfill) • Flow-through Planters • Tree Well and Media Filters • Infiltration Trenches (impermeable liner with underdrain—no infiltration into landfill) • Rainwater Harvesting and Reuse • Green Roofs • Green Streets (with bioretention, impermeable liner, and underdrain) • Pervious Pavements (impermeable liner with underdrain—no infiltration into landfill) As noted above, a minimum of 4 percent of the site area shall be used for the stormwater treatment measures. As part of final design, these treatment measures for the Project site shall be incorporated into the aesthetics of the landscape. Some attenuation of the peak flows can be recognized, depending on the measures selected. The measures shall include an overflow to safely convey the more intense, less frequent rainfall events. The stormwater treatment measures shall capture sufficient flows so that 100-year peak flood elevations or existing design flows within San Tomas Aquino Creek and the				

Mitigation and Avoidance Measures	Action	Implementing Party	Monitoring Party	Timing [1]
Guadalupe River will not increase as part of the Project. The exact reduction in 100-year peak runoff volumes and flows that the stormwater management measures will need to accommodate will be determined during the design process for the stormwater management measures and will be provided in the detailed Project Stormwater Management Plan. Due to construction phasing, construction of interim treatment measures may be required once the 40-acre concrete pad has been constructed and before the surface of the pad is developed with new structures with their own associated post-construction stormwater treatment features. These interim measures will be reported to the San Francisco Bay Water Board. The stormwater management measures for each parcel shall be modeled during final design for buildings, parking garages, site landscaping, etc. Dynamic hydraulic modeling shall be used. Dynamic hydraulic modeling tracks the quantity and quality of runoff generated within each subcatchment as well as the flow rate, flow depth, and quality of water in each pipe and channel during a simulation period with multiple time steps. The results of the modeling shall be used to compare the proposed "permanent" stormwater peak flows and volumes for the Project with the existing peak flows and show compliance with the jurisdictional regulations. The dynamic hydraulic modeling shall consider the potential runoff volumes and rates coming from the top of the landfill. The resulting design of stormwater management measures shall be required to be sufficient to protect water quality and habitat resources along receiving waterways. A Stormwater Management Report, including detailed hydrologic and hydraulic calculations, analysis, and conclusions, shall be prepared to document the final design of the stormwater management and storm drain system and obtain the requisite approvals.				
WQ-3.1: Design New Bridge and Outfall Structures to Avoid Increase in 100-year Flow and Channel Erosion. In compliance with the Santa Clara Valley Water District's (SCVWD's) 100-year peak flood requirements, any new bridge and new outfalls in San Tomas Aquino Creek shall be designed to avoid increases in the 100-year flow and to avoid creek bed/channel erosion. The design shall also consider erosive action or redirection of flow during more frequent flood events in compliance with the City of Santa Clara's storm drainage design criteria[10] and consistent with SCVWD's	Project Developer to provide design for any new bridge or outfalls in San Tomas Aquino Creek or the eastside drainage channel for review and approval by City and	Project Developer	Department of Public Works	Prior to the issuance of the building permit for the development that triggers the need for the

[10] City of Santa Clara. 2015. Design Criteria for Improvements in Public Right-of-Ways and City Easements. Public Works Department. April. Available: http://santaclaraca.gov/home/showdocument?id=14345. Accessed: 12/29/15.

Mitigation and Avoidance Measures	Action	Implementing Party	Monitoring Party	Timing [1]
guidance.[11] The outfalls will be set at elevations high enough to ensure the location of outfalls are above sediment levels within the bottom of the creek.[12] The design shall be provided to the City of Santa Clara and the SCVWD for review and approval for the Project. Construction would be done in phases. For example, the new bridge over the San Tomas Creek would not be needed until Phase 2 and outfalls to the eastside drainage ditch would not be needed until later phases. The design review approval of outfalls shall occur prior to the issuance of the building permit for the development that triggers the need for the outfall or associated construction activity, and on a schedule similar to the phases of construction.	submit to City evidence of approval from SCVWD.			outfall or associated construction activity
WQ-3.2: Vegetation Removal from the Retention Basin Drainage Swale. In accordance with the Retention Basin Drainage Swale Vegetation Clearing Project, and prior to the placement of new impervious surfaces on Parcels 1 or 2, overgrown tule and cattails shall be removed from the entire length of the drainage swale to restore the swale's flood protection capacity and protect residents and businesses. Vegetation in the drainage swale shall be mowed by hand using rotary mowers, and tule and cattails shall be cut down to 3 to 4 inches above the ground surface. The clippings shall be loaded by hand and hauled from the drainage swale to the Retention Basin where the vegetation will dry out. Once dry, the vegetation shall be transported to the Newby Island Landfill. It is estimated that initial removal of overgrown vegetation will generate approximately 300 cubic yards of debris. Prior to performance of this work, all necessary permits shall be obtained from environmental regulatory agencies for this vegetation removal, including any required compensation for loss of wetland/riparian vegetation.	City and Project Developer to execute an agreement to reimburse City for the one-time costs of removing vegetation from the swale (including compliance with any permit conditions requiring onsite actions to do so) as needed to restore flood protection capacity suitable to support the Project. City to be responsible for obtaining any necessary permits and for any maintenance of the swale thereafter.	Project Developer	Department of Public Works	Agreement executed prior to issuance of grading and building permits on Parcels 1 or 2. Vegetation removal complete prior to issuance of a certificate of occupancy for the first building on Parcels 1 or 2.
HAZARDS AND HAZARDOUS MATERIALS				
HAZ-2.1: Finalize Waste Management Plan for Construction. Prior to Project construction, a final Waste Management Plan shall be prepared and implemented. This plan shall be submitted to the LEA, CalRecycle, Regional Water Board, and	Project Developer to provide to City final, approved Waste	Project Developer	Department of Public Works	Plan approved by pertinent agencies must

[11] Santa Clara Valley Water District. 2006. *User Manual: Guidelines & Standards for Land Use Near Streams.* A Manual of Tools, Standards, and Procedures to Protect Streams and Streamside Resources in Santa Clara County. Prepared by the Santa Clara Valley Water Resources Protection Collaborative. Originally adopted in August 2005. Revised: July 2006.

[12] Outfalls and work within the SCVWD right-of-way are subject to approval and issuance of permits by the SCVWD.

Mitigation and Avoidance Measures	Action	Implementing Party	Monitoring Party	Timing [1]
BAAQMD for review and approval. Specifically, the final Waste Management Plan shall contain, at a minimum, the following requirements, which are included in the draft Waste Management Plan: • Waste excavation shall be performed in accordance with a Health and Safety Plan (HASP) designed to minimize impacts from dust, odor, and other nuisances, and assure waste is handled in a safe and environmentally responsible manner. • During waste excavation and relocation, the worksite shall be monitored for dust, odor, or other nuisances in accordance with general landfill construction practices and the HASP. • At the end of the working day, any exposed waste shall be covered with soil or an alternative material, such as a geosynthetic blanket, (i.e., interim cover). • Odors, should they occur, shall be controlled by application of a deodorant, masking agent, neutralizing agent, or lime, and an interim landfill cover at the end of each working day. • A "Project Contact" shall be designated who will be responsible for responding to any local complaints about dust, odors, or other nuisances associated with the waste excavation and regrading operations. • During excavation activities, excavation areas shall be monitored using a hand-held instrument calibrated to measure combustible gases (including methane), hydrogen sulfide, oxygen, and VOCs. • No hot work (e.g., welding) shall be allowed in the vicinity of excavation activities unless methane concentrations are sufficiently below the lower explosive limit of 8 percent. If methane concentrations approach 5 percent, excavation activities shall be stopped until the landfill gas collection system can be modified to reduce the methane concentrations in the excavation area. If methane levels are persistent in areas where earthwork and/or hot work activities are necessary, inert gases (e.g., nitrogen) can be introduced into affected subsurface materials to lower oxygen and methane concentrations. By introducing an inert gas into the affected area, methane and oxygen can be displaced to create insufficient oxygen concentrations to support combustion.	Management Plan. City to verify that final Waste Management Plan includes all required components and all necessary approvals.			be submitted to City prior to issuance of demolition, grading, and building permits
HAZ-4.1: Landfill Closure, Monitoring, and Maintenance Plans.[13] Prior to issuance of building permits for structures within the area of the Landfill (Parcels 1, 2, 3, and 4), a revised Closure Plan and Post-Closure Maintenance Plan (PCMP) shall be prepared in accordance with the regulatory requirements described in 27 CCR	Project Developer to provide to City for its review and approval revised Closure Plan,	Project Developer/City	Department of Public Works	Prior to issuance of grading or building

[13] To the extent the implementation of this mitigation measure at Parcel 3 is made necessary by, or altered by, the City's park development activities, the City shall be responsible for implementation.

Mitigation and Avoidance Measures	Action	Implementing Party	Monitoring Party	Timing [1]
21790–21840 and submitted to the LEA, CalRecycle, and Regional Water Board (as required) for review and approval. In addition, a PCLUP shall be prepared in accordance with the regulatory requirements described in 27 CCR 21190 and submitted to the LEA and Regional Water Board (as required) for review and approval. Collectively, these plans shall incorporate the requirements of Mitigation Measures HAZ-4.2 through 4.6, below. In addition, the Project Developer shall continue to work with the regulatory agencies (Regional Water Board, LEA, or CalRecycle) and ensure the implementation of all elements and measures necessary to mitigate Project-related health risks to residents and commercial workers to a level below the Regional Water Board's cumulative incremental cancer risk threshold of 1E-06 and hazard index (HI) (i.e., adverse non-cancer risk) of 1.0 established for the Project are implemented.	Post-Closure Maintenance Plan and Post Closure Land Use Plan that include evidence that health risks can be mitigated to identified levels and contain all elements of HAZ 4.2 through 4.6. City to submit these Plans to the Regional Water Board, LEA, and CalRecycle for their approval. City and Project Developer/Master Owner Association to implement the actions required by these Plans in accordance with the allocation of responsibilities set forth in the Landfill O&M Agreement attached to the DDA.			permits within the area of the Landfill (Parcels 1, 2, 3, and 4)
HAZ-4.2: Landfill Gas Collection and Removal System.[14] During Project construction, the existing landfill gas collection and removal system (i.e., wells and conveyance lines) shall be systematically abandoned and replaced in conjunction with the phased Project site development while complying with applicable regulatory requirements that govern the performance of these systems. The new system shall be designed to effectively draw landfill gases (e.g., methane, hydrogen sulfide, and volatile COPCs) away from building sub-slab areas. The system design shall be submitted to the City for review and approval, taking into account an evaluation of the following criteria: effective vacuum influence (based on	Project Developer to submit to City system design for review and approval . City to submit system design to the Regional Water Board, LEA, and/or CalRecycle for their approval, as required by the relevant	Project Developer/City	Department of Public Works	Prior to the issuance of grading or building permits within the area of the Landfill (Parcels 1, 2, 3, and 4)

[14] To the extent the implementation of this mitigation measure at Parcel 3 is made necessary by, or altered by, the City's park development activities, the City shall be responsible for implementation.

Mitigation and Avoidance Measures	Action	Implementing Party	Monitoring Party	Timing [1]
pilot testing and pneumatic modeling), vacuum distribution control, oxygen management (for subsurface fire prevention), ease of maintenance, well location, effect of landfill settlement, mitigation of vapor intrusion risk, and the proposed development on the Project site. The system design shall incorporate temperature- and corrosion-resistant materials. The landfill gas collection and removal system shall be designed, operated, and maintained to control excessive gas concentrations as specified in 27 CCR 20939. The monitoring of landfill gases is described under Mitigation Measures HAZ-4.4, below.	regulations and approved plans. City to operate and maintain the system in accordance with the allocation of responsibilities set forth in the Landfill O&M Agreement attached to the DDA.			
HAZ-4.3: Landfill Gas Protection Systems.[15] During Project construction, landfill gas protection systems shall be constructed beneath the sub-slabs of structures located on Parcels 1, 2, 3, and 4 to remove landfill gases (e.g., methane, hydrogen sulfide, and volatile COPCs) that could otherwise accumulate and/or migrate through the sub-slab. The systems may include active gas collection or passive ventilation mechanisms and shall meet the minimum design requirements described in 27 CCR 21190. The landfill gas protection systems shall be designed, operated, and maintained to control excessive gas concentrations as specified in 27 CCR 20939. The monitoring of landfill gases is described under Mitigation Measures HAZ-4.4, below.	Project Developer to provide plans to City for review and approval and "as built" drawings to City once work is complete. System will be operated by Project Developer until a Master Owners Association is formed, after with system will be operated by Master Owners Association..	Project Developer/Master Owner Association	Department of Public Works	Prior to issuance of building permits for Parcels 1, 2, 3, and 4, with "as built" drawings submitted prior to any certificates of occupancy on such sites
HAZ-4.4: Landfill Gas Monitoring and Control System Maintenance.[16] During Project construction and operation on Parcels 1-4, a landfill gas monitoring and control program shall be implemented in accordance with 27 CCR 20921-20939. The gas monitoring network shall be designed by a registered civil engineer or a certified engineering geologist and shall ensure detection of the presence of landfill gas migrating beyond the disposal site permitted facility boundary and also into on-site structures. The monitoring network design shall include provisions for monitoring all structures on the Project site, including but not limited to, buildings, large subsurface vaults, or any other areas where potential landfill gas buildup may cause adverse	Project Developer to provide landfill gas monitoring network plans and Operations and Maintenance Plan to City for review and approval. City to submit these Plans to the Regional Water Board,	Project Developer/ Master Owners Association / City	Department of Public Works	Prior to issuance of grading and building permits for Parcels 1, 2, 3, and 4

[15] To the extent the implementation of this mitigation measure at Parcel 3 is made necessary by, or altered by, the City's park development activities, the City shall be responsible for implementation.

[16] To the extent the implementation of this mitigation measure at Parcel 3 is made necessary by, or altered by, the City's park development activities, the City shall be responsible for implementation.

Mitigation and Avoidance Measures	Action	Implementing Party	Monitoring Party	Timing [1]
impacts on the public health or safety or the environment. Methods for monitoring on-site structures may include, but are not limited to: periodic monitoring, utilizing either permanently installed monitoring probes or gas surveys, and continuous monitoring systems. A methane monitoring system shall be installed inside all buildings on the Project site. If methane gas concentrations exceed a threshold of 1.25 percent by volume in air, as described under 27 CCR 20921, the methane monitoring system shall automatically alert the Santa Clara Fire Department, who shall assess the methane conditions and, if necessary, trigger an audible fire alarm to initiate a building evacuation. In the event of an evacuation, the building shall not be reoccupied until the Santa Clara Fire Department has confirmed and approved by that: (1) concentrations of methane meet the applicable compliance requirements and (2) the landfill gas monitoring and control system is operating in a manner that ensures adequate control of methane/vapor intrusion. The landfill gas control system shall be operated and maintained to control excessive gas concentrations as specified in 27 CCR 20939. This includes operating the landfill gas control system in such a manner as to satisfy the following requirements specified in 27 CCR 20921(a): • The concentration of methane gas must not exceed 1.25 percent by volume in air within any portion of any on-site structures; • The concentration of methane gas migrating from the disposal site must not exceed 5 percent by volume in air at the disposal site permitted facility boundary or an alternative boundary approved in accordance with Section 20925; and • Trace gases shall be controlled to prevent adverse acute and chronic exposure to toxic and/or carcinogenic compounds that could result in a health risk exceedance of the Regional Water Board's cumulative incremental cancer risk threshold of 1E-06 and HI (i.e., adverse non-cancer risk) of 1.0 established for the Project. In the event of an earthquake or other event that could cause a rupture or leak from overlying stormwater treatment measures (i.e., planters, vegetated areas), the landfill gas venting pipes shall be inspected at access ports within 24 hours of the event for leaks, ruptures, or any other conditions. Access ports shall be installed at select locations, to provide full coverage of the system based on system design and access constraints, within the venting layer to monitor for the presence of, and removal of, water that might flood the system in the event that water leaks from collection systems above the landfill gas mitigation system. This system would help prevent the water from further migrating into the underlying landfill gas mitigation system. The access ports will allow for use of portable moisture sensing devises to periodically monitor for moisture in the event that a leak is suspected. The access ports shall also be designed to allow for pumping of water from the interstitial space in the event that	LEA, and/or CalRecycle for their approval, as required by relevant regulations and approved plans. City and Project Developer/ Master Owners Association to implement the actions required by these Plans in accordance with the allocation of responsibilities set forth in the Landfill O&M Agreement attached to the DDA.			

Mitigation and Avoidance Measures	Action	Implementing Party	Monitoring Party	Timing [1]
water is detected. In addition to the monitoring and control of excessive gas concentrations to protect public health and safety and the environment, as specified in 27 CCR 20939, the landfill gas monitoring and control program shall incorporate the monitoring and control requirements for preventing subsurface fires that are described under Mitigation Measure HAZ-9.1, below.				
HAZ-4.5: Building Restrictions. The Project shall prohibit the construction of enclosed basements located over refuse on Parcels 1, 2, 3, and 4 to minimize the risk of landfill gas accumulation. Over the landfill area, the Project shall also limit residential construction to only Parcel 4 areas located over open-air podium level garages or over at least one level of enclosed commercial space to mitigate vapor intrusion effects by increasing the free flow and exchange of air beneath the residences.	Project Developer to submit final detailed design plans for review and approval by City.	Project Developer	Department of Public Works	Concurrent with building permit application
HAZ-4.6: Landfill Hazards Disclosure. Information about the existing subsurface hazardous materials conditions and the ongoing mitigation and monitoring requirements described in the PCLUP shall be included in all ground leases and space leases for space located over the Landfill. The text to be inserted shall be subject to review and approval by City.	Project Developer and City to include language in ground and tenant leases for space located over the landfill.	Project Developer/City	Department of Public Works	Prior to execution of ground or tenant leases
HAZ-5.1: Phase II Site Investigation. Prior to Project construction, a Phase II Site Investigation shall be performed on Parcel 5 and the tennis courts located in the southwest portion of Parcel 4 to (1) delineate the extent of soil, soil gas, and potential groundwater contamination on the site and (2) assess potential health risks posed to construction workers and future site users. The Phase II Site Investigation shall be conducted and evaluated by a licensed professional prior to construction and earthwork activities. The findings of the Phase II Site Investigation shall be submitted to the appropriate regulatory agency to the extent required by applicable law. The Project Developer shall conduct any additional investigation and/or risk assessment and/or implement any remedial or risk mitigation measures required by the regulatory agency.	If additional remedial or risk mitigation measures are needed, Project Developer to submit plans to City for review and approval.	Project Developer	Department of Public Works	Prior to issuance of grading and building permits for Parcel 5 and the portion of Parcel 4 beneath the existing tennis courts.
HAZ-5.2: Soil and Groundwater Management Plan. Construction on Parcel 5 and the tennis courts located in the southwest portion of Parcel 4 shall be conducted under a site-specific Soil and Groundwater Management Plan (SGMP) to protect construction workers, the general public, and the environment from hazardous materials identified in the Phase II Site Investigation (see Mitigation Measure HAZ-5.1) and potential undocumented sources of such materials. The SGMP shall delineate specific soil and groundwater management and disposal procedures,	City to review and approve a Soil and Groundwater Management Plan pertaining to Parcel 5 and the portion of Parcel 4 beneath the existing	Project Developer	Department of Public Works	Prior to issuance of grading and building permits for Parcel 5 and the portion of

Mitigation and Avoidance Measures	Action	Implementing Party	Monitoring Party	Timing [1]
construction worker health and safety requirements, and contingency measures in case unknown contamination is encountered during construction. The SGMP shall incorporate the soil and groundwater analytical data from the Phase II Site Investigation to ensure that soil and groundwater are stored, managed, and disposed of in a manner protective of human health and the environment, and in accordance with applicable laws and regulations. The SGMP shall specifically include the following: • Procedures for evaluating, handling, storing, testing, and disposing of known soil and groundwater contamination identified during the Phase II Site Investigation during Project excavation and dewatering activities, respectively; • Procedures for identifying, testing, and managing soil and groundwater suspected of containing hazardous materials (if any) that have not previously been identified at the site; • Descriptions of required worker health and safety provisions for all workers potentially exposed to hazardous materials in accordance with State and federal worker safety regulations; and • Identification of personnel responsible for implementation of the SGMP.	tennis courts.			Parcel 4 beneath the existing tennis courts
HAZ-5.3: Implement Measures Included in CCR Title 27, Section 21190(g). Consistent with the Project Developer's voluntary commitment, in order to mitigate gas migration into structures located within 1,000 feet of landfill, the City (as owner and operator of the landfill) and the Project Developer shall implement the following measures identified in Title 27, Section 21190(g), with respect to development on Parcel 5 and the southwest portion of Parcel 4: (1) a geomembrane or equivalent system with low permeability to landfill gas shall be installed between the concrete floor slab of the building and subgrade; (2) a permeable layer of open graded material of clean aggregate with a minimum thickness of 12 inches shall be installed between the geomembrane and the subgrade or slab; (3) a geotextile filter shall be utilized to prevent the introduction of fines into the permeable layer; (4) perforated venting pipes shall be installed within the permeable layer, and shall be designed to operate without clogging; (5) the venting pipe shall be constructed with the ability to be connected to an induced draft exhaust system; (6) automatic methane gas sensors shall be installed within the permeable gas layer, and inside the building to trigger an audible alarm when methane gas	City to review and approve detailed construction plans including these measures for Parcel 5 and the areas of Parcel 4 beneath the existing tennis courts. Project Developer shall submit quarterly reports that report methane gas levels for review by City.	Project Developer	Department of Public Works	Prior to issuance of building permits for Parcel 5 and the areas of Parcel 4 beneath the existing tennis courts; quarterly monitoring

Mitigation and Avoidance Measures	Action	Implementing Party	Monitoring Party	Timing [1]
concentrations are detected; and (7) periodic methane gas monitoring shall be conducted inside all buildings and underground utilities in accordance with Article 6, of Subchapter 4 of this chapter (section 20920 et seq.). At a minimum, quarterly monitoring is required, but more frequent monitoring may be required by LEA (Subchapter 4, section 20933(a)).				
HAZ-6.1: Finalize Draft Technical Memorandum: Leachate Collection and Removal System.[17] Prior to Project construction, a final Technical Memorandum: Leachate Collection and Removal System shall be prepared and implemented as part of the PCLUP. The technical memorandum shall be submitted to the LEA for review and approval and to CalRecycle and the Regional Water Board for review and comment. Specifically, the final technical memorandum shall contain, at a minimum, the following requirements: • During the construction phase of Parcel 3, the existing leachate collection and removal system (LCRS) risers LR-1 and LR-4 shall be protected and preserved during construction by flagging the well head locations, extending the risers, and installing a bollard around each riser. • If LR-1 or LR-4 are damaged during construction, repairs and modifications shall be completed promptly. • LR-1 and LR-4 shall be supported and anchored to prevent potential settlement over time and finished to grade at the end of excavation and/or completion of construction. • Ongoing operation and maintenance of the leachate recovery system shall continue during and after Project construction. The LCRS monitoring shall continue in accordance with the Regional Water Board's WDR Order No. R2-2002-0008 for the site, which shall be revised to consider the proposed development and modifications to the landfill systems.	Project Developer to submit to City for its review and approval a Leachate Collection and Removal System Technical Memorandum. City to submit to LEA for review and approval and to CalRecycle and the Regional Water Board for review and comment. As part of the PCLUPCity to operate and maintain the leachate recovery system in accordance with the allocation of responsibilities set forth in the Landfill O&M Agreement attached to the DDA.	Project Developer/City	Department of Public Works	Submittal of Memo: Prior to issuance of grading or construction permits for Parcels 1 and 3.
HAZ-9.1: Subsurface Fire Prevention, Detection, and Response Plan.[18] Prior to construction, a Subsurface Fire Prevention, Detection, and Response Plan shall be prepared that describes how subsurface heating conditions above the landfill will be monitored, prevented, and suppressed. The plan, which may be included as part of a	Project Developer to submit to City a Subsurface Fire Prevention, Detection,	Project Developer	Department of Public Works	Submittal of Plan prior to issuance of grading or

[17] To the extent the implementation of this mitigation measure at Parcel 3 is made necessary by, or altered by, the City's park development activities, the City shall be responsible for implementation.

[18] To the extent the implementation of this mitigation measure at Parcel 3 is made necessary by, or altered by, the City's park development activities, the City shall be responsible for implementation.

Mitigation and Avoidance Measures	Action	Implementing Party	Monitoring Party	Timing [1]
larger planning document, shall identify responsible parties and schedules for implementing the measures described in the plan. The Project Developer shall submit the plan to the LEA, CalRecycle, and the Santa Clara Fire Department (SCFD) for review and comment. Responses to comments shall be incorporated into a final Subsurface Fire Prevention, Detection, and Response Plan from the regulatory agencies. The plan shall also incorporate the prevention, detection, and response actions described under Mitigations HAZ-9.2 and HAZ-9.3, below, unless alternative actions are approved by LEA, CalRecycle, and SCFD. The final plan shall be implemented during Project construction and operation.	and Response Plan that has been reviewed and commented on by relevant agencies. The Plan shall be implemented consistent with the Landfill Operations and Maintenance Agreement.			construction permits for Parcels 1, 2, 3, and 4. Implementation during Project construction and operation
HAZ-9.2: Subsurface Fire Prevention and Detection Measures.[19] The following measures may be included in whole, or in part, in the Subsurface Fire Prevention, Detection, and Response Plan, as required by the LEA, CalRecycle, and SCFD. In addition, these agencies may require additional measures. The landfill gas collection system shall be monitored and maintained to minimize the intrusion of oxygen (i.e., air) into the landfill and prevent the overheating of waste due to aerobic decomposition. In accordance with BAAQMD monitoring requirements (Regulation 8-34), the gauge pressure, nitrogen or oxygen concentration, and temperature of landfill gas within each extraction wellhead shall be monitored once a month and evaluated to ensure the system is not overdrawing air into the landfill. The nitrogen and oxygen concentrations may be measured using a calibrated portable instrument. The landfill gas measured at each extraction well head must meet the following monitoring threshold requirements: • Nitrogen concentrations less than 20 percent or oxygen levels less than 5 percent; and • Maximum temperature of 140 degrees Fahrenheit. The nitrogen and oxygen thresholds shall be used to indicate if the gas collection system is overdrawing and causing excessive ambient air infiltration into the landfill through its surface and sides. An exceedance of the maximum temperature threshold shall indicate that a subsurface fire may exist. Other evidence of a potential subsurface fire shall include the following: • Observations of rapid settlement over a short period of time; • Smoke or smoldering odor emanating from the gas extraction system or landfill; or • Combustion residue in extraction wells and/or headers.	Project Developer to integrate these measures into the Subsurface Fire Prevention, Detection, and Response Plan as requested by relevant agencies.	Project Developer	Department of Public Works	Submittal of Plan: Prior to issuance of grading or construction permits for Parcels 1, 2, 3, and 4. Implementation during Project construction and operation

[19] To the extent the implementation of this mitigation measure at Parcel 3 is made necessary by, or altered by, the City's park development activities, the City shall be responsible for implementation.

Mitigation and Avoidance Measures	Action	Implementing Party	Monitoring Party	Timing [1]
The landfill gas collection system shall be adjusted to reduce well extraction rates (if necessary) to ensure the monitoring thresholds for nitrogen/oxygen and temperature are not exceeded, while continuing to ensure the control of other excessive gas concentrations in the landfill (e.g., methane and trace gases) as specified in 27 CCR 20939. In the event that one or both of the monitoring thresholds are exceeded or other evidence of a potential subsurface fire is observed, then gas samples shall be collected from the extraction wells in the affected area and submitted to a certified laboratory for analysis of nitrogen, oxygen, and carbon monoxide. Analytical results for nitrogen and oxygen that exceed the monitoring thresholds shall be used as confirmation that an aerobic environment is present. Analytical results for carbon monoxide that exceed 1,000 parts per million shall be used as confirmation that a subsurface fire exists.				
HAZ-9.3: Subsurface Fire Suppression. If a subsurface fire condition has been confirmed (i.e., carbon monoxide level exceed 1,000 parts per million), the LEA, CalRecycle, and SCFD shall be notified immediately. The extraction wells surrounding the subsurface fire shall be shut down temporarily to reduce oxygen levels. The extraction wells shall then be returned to active use in stages in conjunction with monitoring to determine if the subsurface fire has been suppressed. If shutting down the extraction wells does not suppress the fire and/or results in the excess accumulation of methane and other trace gases beneath structures, then the LEA, CalRecycle, and SCFD shall consider injecting a Class A foam or wetting agent or liquid carbon dioxide (which also has the added benefit of rapidly cooling the refuse/fill) into the affected area. Large amounts of water shall not be used, because water can exacerbate the fire potential, generate contaminated runoff, increase leachate, and cause slope failure.	City to ensure that SCFD is aware of and trained on protocols. Project Developer and/or City to notify agencies if a subsurface fire condition is confirmed and to implement subsurface fire suppression measures.	Project Developer / City	City Planning & Inspection; SCFD	Prior to operation of Project over landfill areas for SCFD protocols. After confirmation of a subsurface fire condition as to agency notification
UTILITIES AND SERVICE SYSTEMS				
UT-3.1: Make a Fair-Share Contribution to Upgrading the Rabello and Northside Pump Station System's Capacity. The City will conduct detailed engineering study and analysis to determine the precise size and timing needed for the required pump station capacity upgrades to address overcapacity due to projected cumulative development. The City will implement the required capacity upgrades and the Developer will fund its fair share of such upgrades. The City shall determine the fair-share cost contribution for the Project based on the Project's percent of wastewater flow cumulative capacity needs above the current pump capacity (based on conceptual planning to date, that fair share is estimated as 27 percent of 2035 cumulative overcapacity amount). The City may require the Developer to fund the design and construction of the conveyance capacity upgrades to the Rabello and	Conduct a detailed engineering study and analysis to determine the precise size and timing needed for the required pump station capacity upgrades to address overcapacity due to projected cumulative development. Project	Department of Public Works	City Planning & Inspection	Conduct study prior to construction of Phase 2 of the Project, fund prior to issuance of first building permit for Phase 2 of the Project or later as

Mitigation and Avoidance Measures	Action	Implementing Party	Monitoring Party	Timing [1]
Northside Sanitary Sewer Pump Stations concurrent with construction of Phase 2 of the Project; the pump station upgrades would be designed to address overcapacity due to projected cumulative development. If the Developer is required to fund pump station upgrade costs, with the exception of costs attributable to the Project's fair share contribution to the upgrade, the City would reimburse the Developer for the design and construction costs through first (a) refunding the Project's Sanitary Sewer Conveyance Fees already paid by Developer or crediting those fees when due and (b) providing to Developer Sanitary Sewer Conveyance Fees collected from developers of projects that would use the Rabello and Northside Sanitary Sewer Pump Stations.	Developer to contribute fair-share, and potentially front costs of full upgrade.			otherwise determined necessary by City; if Developer to fund full pump station upgrade costs, Developer and City enter funding and reimbursement agreement prior to upgrade

Mitigation and Avoidance Measures	Action	Implementing Party	Monitoring Party	Timing
TRANSPORTATION				
IM-TRA-1: Prepare and Implement a Construction Traffic Control Plan. Prior to issuance of grading permits, the construction contractor will develop the traffic control plan in accordance with the appropriate jurisdiction's policies and submit for approval. The plan will be implemented throughout the course of construction and may include, but will not be limited to, the following elements. • Limit truck access to the intersection during peak commute times (7:00 a.m. to 9:00 a.m. and 4:00 p.m. to 6:00 pm.). • Require that written notification be provided to contractors regarding appropriate routes to and from the intersection, and the weight and speed limits on local roads used to access the intersection. • Provide access for emergency vehicles at all times. • Provide adequate parking for construction employees, site visitors, and inspectors as feasible. • Maintain bicycle and pedestrian access and circulation during Project construction where safe to do so. If construction encroaches on a bike lane, warning signs will be posted that indicate bicycles and vehicles are sharing the roadway. If construction encroaches on a sidewalk, a safe detour will be provided for pedestrians at the nearest crosswalk. • Require traffic controls in the vicinity of the intersection, including flagpersons with bright orange or red vests and using a "Stop/Slow" paddle to control oncoming traffic. • Post standard construction warning signs in advance of the construction area and at any intersection that provides access to the construction area. • Repair or restore the road right-of-way to its original condition or better upon completion of the work.	Project Developer to prepare and submit a Construction Traffic Control Plan for the purpose of managing traffic and reducing traffic congestion during construction. City to review and approve Plan.	Project Developer/ Project Contractor	Department of Public Works	Prior to issuance of grading and building permits
AIR QUALITY				
IM-AQ-1: Implement Measures to Reduce Construction-Related Dust Emissions. The Project Developer shall require all construction contractors to implement the specific construction mitigation measures below to reduce fugitive dust. Emissions reduction measures shall include, at a minimum, the measures below. Alternative	Project Developer to provide to City applicable provisions of construction contracts	Project Developer/ Project Contractor	City Planning & Inspection Division	Prior to issuance of grading and building

Mitigation and Avoidance Measures	Action	Implementing Party	Monitoring Party	Timing
measures may be identified by the Project Developer or its contractor, as appropriate, provided that they are as effective as the measures below. Alternative measures shall be submitted to the City for approval. • All exposed surfaces shall be watered at a frequency adequate to maintain minimum soil moisture of 12 percent. Moisture content can be verified by lab samples or moisture probe. If water infiltration into landfill refuse layers is a concern, non-toxic soil stabilizers may be used instead. • All excavation, grading, and/or demolition activities shall be suspended when average wind speeds exceed 20 mph for a period of 2 hours or more. • Windbreaks (e.g., fences) shall be installed on the windward side(s) of actively disturbed areas of construction. Windbreaks shall have at maximum 50 percent air porosity. • Exposed ground areas that are to be reworked more than 1 month after initial grading should be sown with fast-germinating native grass seed and watered appropriately until vegetation is established. If grass seeding is not feasible, then non-toxic soil stabilizers may be used. • All construction trucks and equipment, including tires, involved in ground disturbance or transit through loose soil areas shall be washed off prior to leaving the site. • Site accesses to a distance of 25 feet from the paved road shall be treated with a 6- to 12-inch compacted layer of wood chips, mulch, or gravel. Alternatively, a rumble plate may be used in place of chips, mulch, or gravel. • Sandbags or other erosion control measures shall be installed to prevent silt runoff to public roadways from sites with a slope greater than 1 percent.	specifying construction mitigation measures to reduce construction-related dust emissions.			permits
IM-AQ-2: Implement Measures to Reduce Construction-Related Exhaust Emissions. The Project Developer shall require all construction contractors to implement the specific construction mitigation measures below to reduce equipment exhaust emissions. Emission reduction measures shall include, at a minimum, the measures below. Alternative measures may be identified by the Project Developer or its contractor, as appropriate, provided that they are as effective as the measures below. Alternative measures shall be submitted to the City for approval. • Idling time of diesel powered construction equipment shall be limited to 2 minutes. • Ensure that all off-road diesel-powered equipment used during construction between 2017 and 2022 is equipped with U.S. Environmental Protection Agency (EPA) Tier 3 or cleaner engines, except for specialized construction equipment for which an EPA Tier 3 engine is not available. Consistent with advancements of the statewide fleet average, the Project Developer shall ensure that all off-road diesel-	Project Developer to provide to City applicable provisions of construction contracts construction mitigation measures to reduce construction-related exhaust emissions.	Project Developer/ Project Contractor	City Planning & Inspection Division	Prior to issuance of grading and building permits

Mitigation and Avoidance Measures	Action	Implementing Party	Monitoring Party	Timing
powered equipment used during construction between 2023 and 2030 is equipped with EPA Tier 4 engines. This requirement will ensure construction equipment remains cleaner than the fleet-wide average. • Ensure that all on-road heavy-duty diesel trucks with a gross vehicle weight rating (GVWR) of 19,500 pounds or greater used at the Project site comply with EPA 2007 on-road emissions standards for particulate matter of 10 micrometers or less (PM10) and nitrogen oxides (NO_X) (0.01 grams per brake horsepower-hour [g/bhp-hr] and 0.20 g/bhp-hr, respectively). • Notwithstanding the above requirements, all construction equipment, diesel trucks, and generators shall meet the California Air Resources Board's most recent certification standard for off-road heavy-duty diesel engines and shall employ Best Available Control Technology for reductions in NO_X and particulate matter (PM) emissions if more stringent than the requirements above.				
GREENHOUSE GAS EMISSIONS				
IM-GHG-1: Utilize Alternative Fuels during Construction. Require construction contractors to use alternative fuels in at least 30 percent of the construction equipment that uses diesel fuel. Alternative fuels may include electricity, compressed natural gas (CNG), biodiesel (B-20), or renewable diesel, such as diesel high-performance renewable (HPR).	Project Developer to provide to City applicable provisions of construction contracts requiring adequate use of alternative fuels.	Project Developer/ Project Contractor	City Planning & Inspection Division	Prior to issuance of grading and building permits
CULTURAL RESOURCES				
IM-CR-1: Conduct Cultural Resource Investigations and Protect and Recover Significant Resources. The Lead Agency shall conduct a cultural resource investigation that includes a background records search (including a search of records from Sonoma State and historical societies, contact with Native American representatives identified by the Native American Heritage Commission (NAHC), and site pedestrian surveys) for the areas of ground disturbance from each roadway improvement. If significant known or suspected sites are discovered within the Project footprint and would be disturbed by the Project, then a cultural resource treatment plan shall be prepared, defining Project monitoring and resource recovery and curation requirements concerning any encountered cultural resources.	Lead Agency to conduct a cultural resource investigation that includes a background records search during ground disturbance. If necessary, Lead Agency to prepare and execute cultural resource treatment plan.	City Planning & Inspection Division	City Planning & Inspection Division	Prior to issuance of grading and building permits
IM-CR-2: Stop Work if Cultural Resources Are Encountered during Ground-Disturbing Activities. In the event that cultural resources are encountered during ground-disturbing activities, all work within proximity of the find shall temporarily halt so that the archaeological monitor can examine the find and document its provenience and nature (e.g., with drawings, photographs, written descriptions). The	Archaeological monitor (retained by the Project Developer), as necessary, and in consultation with the	Project Developer/ Qualified Archaeologist	City Planning & Inspection Division	During construction if cultural resources are

Mitigation and Avoidance Measures	Action	Implementing Party	Monitoring Party	Timing
archaeological monitor shall then direct that the work proceed if the find is deemed to be insignificant, continue elsewhere, or cease until adequate mitigation measures are adopted. If the find is determined to be potentially significant, the archaeologist, in consultation with the appropriate jurisdiction, shall develop a treatment plan, which could include site avoidance, capping, or data recovery. If data recovery is determined to be appropriate, excavation shall target recovery of an appropriate amount of information from archaeological deposits to determine the potential of the resource to address specific research questions. If it occurs, data recovery shall emphasize the understanding of the archaeological deposit's structure, including features and stratification, horizontal and vertical extent, and content, including the nature and quantity of artifacts.	City, develop a Treatment Plan.			encountered
IM-CR-3: Stop Work if Human Remains Are Encountered during Ground-Disturbing Activities. If human remains are discovered (in either an archaeological or construction context), all work within proximity of the remains shall stop so that the archaeological monitor can examine the remains. The County Coroner shall be notified to make a determination as to whether the remains are of Native American origin. If the remains are determined to be Native American, the coroner shall notify the NAHC immediately. The NAHC shall notify those persons it believes are most likely descended from the deceased Native American. Once the 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 State CEQA Guidelines.	Project Developer to submit to City applicable provisions of construction contracts including applicable requirements.	Project Developer/ Project Contractor	County Coroner/ NAHC	Prior to issuance of grading and building permits.
BIOLOGICAL RESOURCES				
IM-BIO-1: Replace Removed Trees. The Project Developer shall replace all trees removed as part of the intersection improvements in accordance with the tree preservation policies or ordinances of the jurisdiction in which the improvements are constructed.	Project Developer to provide to City report documenting plans to replace all trees removed as part of the intersection improvements.	Project Developer	City Planning & Inspection Division	Prior to issuance of grading and building permits
IM-BIO-2: Preconstruction Surveys. For all intersections that have trees within the intersection footprint or that will remove trees, the Project Developer and its contractors shall avoid conducting vegetation removal during the migratory bird nesting season (February 1–August 31), if feasible. If construction activities must commence during the migratory bird nesting season, the Project Developer shall retain a qualified wildlife biologist to conduct a survey for nests of migratory birds.	Project Developer to provide to City provisions of construction contracts including pertinent requirements. If	Project Developer/ Project Contractor/ Qualified wildlife	City Planning & Inspection Division	Prior to issuance of grading and building permits for biologist and

Mitigation and Avoidance Measures	Action	Implementing Party	Monitoring Party	Timing
Surveys for nesting migratory birds shall occur within 3 days prior to the commencement of ground disturbance and vegetation removal. If an active nest is discovered, a no-disturbance buffer zone around the nest tree or shrub (or, for ground-nesting species, the nest itself) shall be established. The no-disturbance zone shall be marked with flagging or fencing that is easily identified by the construction crew and shall not affect the nesting bird or attract predators to the nest location. In general, the minimum buffer zone widths shall be as follows: 50 feet (radius) for non-raptor ground-nesting species, 50 feet (radius) for non-raptor shrub- and tree-nesting species, and 300 feet (radius) for raptor species. Buffer widths may be modified based on discussion with the California Department of Fish and Wildlife (CDFW). Buffers shall remain in place as long as the nest is active or young remain in the area and are dependent on the nest. If a burrowing owl nest is identified during preconstruction surveys, no-activity buffers will adhere to the recommendations in the 2012 California Department of Fish and Game Staff Report on Burrowing Owl Mitigation.	construction occurs in the nesting season, Project Developer to submit to City agreement with qualified wildlife biologist requiring surveys and protective measures.	biologist		construction contracts; prior to commencement of grading for biologist agreements; and prior to ground disturbance for surveys
IM-BIO-3: Site-Specific Surveys and Species/Habitat Avoidance, Minimization, and Compensation Measures. For intersections with the potential to have sensitive habitats, the Project Developer, in consultation with a qualified biologist, shall conduct site-specific surveys for special-status species, sensitive habitats, wetlands and waters of the United States, and nesting birds. If found, the Project Developer and its contractor shall implement avoidance and minimization measures, where feasible. Where avoidance is not possible, the Project Developer shall compensate for lost habitat at a minimum 1:1 basis. Compensation for lost habitat will be determined in consultation with CDFW/U.S. Fish and Wildlife Service (USFWS), as appropriate. The Project Developer shall obtain all required permits from the U.S. Army Corps of Engineers (USACE), the Regional Water Quality Control Board, and CDFW, and USFWS, as appropriate. The Project Developer shall provide buffer fencing and species relocation, as necessary, if permitted by CDFW/USFWS. Additionally, if special-status species or habitats are identified during the site-specific surveys, a Worker Environmental Awareness Training Program for construction personnel will be conducted by a qualified biologist retained by the Project Developer. The program will provide workers with information on their responsibilities with regard to the special-status species. The training will provide a physical description of the special-status species that have potential to occur and be affected by construction activities to each construction crew prior to the initiation of the crew's construction activities. The worker awareness training will also detail each species' habitat and legal protections, a photo of relevant species, and contact information for the primary biologist.	Project Developer to conduct site-specific surveys for special-status species, sensitive habitats, wetlands and waters of the United States, and nesting birds and provide to City for review and approval. If special status species are found, Project Developer to submit documentation to City detailing protective measures for review and approval.	Project Developer/ Qualified biologist	City Planning & Inspection Division	Prior to issuance of grading and building permits

Mitigation and Avoidance Measures	Action	Implementing Party	Monitoring Party	Timing
GEOLOGY AND SOILS				
IM-GEO-1: Prepare a Geotechnical Investigation. Prior to construction of any intersection improvement that requires retaining walls (or disturbance of existing retaining wall), disturbance or placement of fill, substantial excavation below grade, establishment of new slopes, and/or placement of new structures above or below grade, the Project Developer shall prepare a geotechnical investigation to evaluate the potential for geologic, seismic, and soil risks. The geotechnical investigation shall include recommendations to abate any potential risks. If risks are identified, the Project Developer shall implement the recommendations included in the geotechnical investigation.	Project Developer to provide to City geotechnical investigation for review and approval. City and Developer to submit such report to regulatory agencies and secure approval as required. Project Developer to incorporate resulting measures into project plans.	Project Developer/City	City Planning and Inspection Division	Prior to issuance of grading and building permits
HYDROLOGY AND WATER QUALITY				
IM-WQ-1: Prepare a Hydrology and Water Quality Technical Report. Prior to construction of any intersection improvement, the Project Developer shall prepare a hydrology and water quality technical report to evaluate the existing drainage and stormwater conditions at the subject intersections. The technical report shall include recommendations for drainage and stormwater controls to minimize impacts related to changes in drainage patterns that would result from the intersection improvements. The Project Developer shall be required to implement the report's recommendations.	Project Developer to provide to City a hydrology and water quality technical report to evaluate the existing drainage and stormwater conditions at the subject intersections for review and approval.	Project Developer	City Planning & Inspection Division	Prior to issuance of grading and building permits

Mitigation and Avoidance Measures	Action	Implementing Party	Monitoring Party	Timing
HAZARDS AND HAZARDOUS MATERIALS				
IM-HAZ-1: Prepare a Phase I Environmental Site Assessment. Prior to construction of any intersection improvement involving ground disturbance of acquired property, the Project Developer shall conduct a Phase I Environmental Site Assessment. Where the potential to encounter hazardous materials or waste is identified, the Project Developer shall prepare and implement a soil/groundwater handing plan that identifies measures to properly dispose of contaminated materials. Measures could include worker education and training, as appropriate, and site-specific controls to avoid risks to workers and adjacent residents or others.	Project Developer to submit Phase I Environmental Site Assessment to City for review and approval. Project Developer to implement soil/ groundwater handling plan to City for review and approval.	Project Developer	Department of Public Works	Prior to issuance of grading and building permits

Mitigation and Avoidance Measures	Action	Implementing Party	Monitoring Party	Timing
TRANSPORTATION				
SW-TRA-1: Prepare and Implement a Construction Traffic Control Plan. Prior to issuance of grading permits, the construction contractor will develop the traffic control plan in accordance with the City's policies and submit for approval. The plan will be implemented throughout the course of construction and may include, but will not be limited to, the following elements: • Limit truck access to the soundwall site during peak commute times (7:00 a.m. to 9:00 a.m. and 4:00 p.m. to 6:00 p.m.). • Require that written notification be provided to contractors regarding appropriate routes to and from the soundwall and the weight and speed limits on local roads that would be used to access the soundwall site. • Provide access for emergency vehicles at all times. • Provide adequate parking for construction workers, site visitors, and inspectors as feasible. • Maintain bicycle and pedestrian access and circulation during Project construction where safe to do so. If construction encroaches on a bike lane, warning signs will be posted that indicate that bicycles and vehicles are sharing the roadway. If construction encroaches on a sidewalk, a safe detour will be provided for pedestrians at the nearest crosswalk. • Require traffic controls in the vicinity of the soundwall, including flagpersons with bright orange or red vests and using a "Stop/Slow" paddle to control oncoming traffic. • Post standard construction warning signs in advance of the construction area and at any soundwall that provides access to the construction area. • Repair or restore the road right-of-way to its original condition or better upon completion of the work.	Project Developer to prepare and submit a Construction Traffic Control Plan for the purpose of managing traffic and reducing traffic congestion during construction. City to review and approve Plan.	Project Developer/ Project Contractor	Department of Public Works	Prior to grading and building permit issuance.
AIR QUALITY				
SW-AQ-1: Implement Measures to Reduce Construction-Related Dust Emissions. The Project Developer shall require all construction contractors to implement the specific construction mitigation measures below to reduce fugitive dust. Emission reduction measures shall include, at a minimum, the measures below. Alternative	Project Developer to City applicable provisions of construction contracts specifying construction	Project Developer/ Project Contractor	City Planning & Inspection Division	Prior to issuance of grading and building

Mitigation and Avoidance Measures	Action	Implementing Party	Monitoring Party	Timing
measures may be identified by the Project Developer or its contractor, as appropriate, provided that they are as effective as the measures below. Alternative measures shall be submitted to the City for approval. • All exposed surfaces shall be watered at a frequency adequate to maintain minimum soil moisture of 12 percent. Moisture content can be verified by lab samples or moisture probe. If water infiltration into landfill refuse layers is a concern, non-toxic soil stabilizers may be used instead. • All excavation, grading, and/or demolition activities shall be suspended when average wind speeds exceed 20 mph for a period of 2 hours or more. • Windbreaks (e.g., fences) shall be installed on the windward side(s) of actively disturbed areas of construction. Windbreaks shall have at maximum 50 percent air porosity. • Exposed ground areas that are to be reworked more than 1 month after initial grading should be sown with fast-germinating native grass seed and watered appropriately until vegetation is established. If grass seeding is not feasible, then non-toxic soil stabilizers may be used. • All construction trucks and equipment, including tires, involved in ground disturbance or transit through loose soil areas shall be washed off prior to leaving the site. • Site accesses to a distance of 25 feet from the paved road shall be treated with a 6- to 12-inch compacted layer of wood chips, mulch, or gravel. Alternatively, a rumble plate may be used in place of chips, mulch, or gravel. • Sandbags or other erosion control measures shall be installed to prevent silt runoff to public roadways from sites with a slope greater than 1 percent.	mitigation measures to reduce construction-related dust emissions.			permits
SW-AQ-2: Implement Measures to Reduce Construction-Related Exhaust Emissions. The Project Developer shall require all construction contractors to implement the specific construction mitigation measures below to reduce equipment exhaust emissions. Emission reduction measures shall include, at a minimum, the measures below. Alternative measures may be identified by the Project Developer or its contractor, as appropriate, provided that they are as effective as the measures below. Alternative measures shall be submitted to the City for approval. • Idling time of diesel powered construction equipment shall be limited to 2 minutes. • The Project Developer shall ensure that all off-road diesel-powered equipment used during construction between 2017 and 2022 is equipped with U.S. Environmental Protection Agency (EPA) Tier 3 or cleaner engines, except for specialized construction equipment for which an EPA Tier 3 engine is not available. Consistent with advancements of the statewide fleet average, the Project Developer	Project Developer to provide to City applicant provisions of construction contracts specifying construction mitigation measures to reduce construction-relate exhaust emissions.	Project Developer/ Project Contractor	City Planning & Inspection Division	Prior to issuance of grading and building permits

Mitigation and Avoidance Measures	Action	Implementing Party	Monitoring Party	Timing
shall ensure that all off-road diesel-powered equipment used during construction between 2023 and 2030 is equipped with EPA Tier 4 engines. This requirement will ensure that construction equipment remains cleaner than the fleet-wide average. • The Project Developer shall ensure that all on-road heavy-duty diesel trucks with a gross vehicle weight rating (GVWR) of 19,500 pounds or greater used at the Project site comply with EPA 2007 on-road emissions standards for particulate matter of 10 micrometers or less (PM10) and nitrogen oxides (NO_X) (0.01 grams per brake horsepower-hour [g/bhp-hr] and 0.20 g/bhp-hr, respectively). • Notwithstanding the above requirements, all construction equipment, diesel trucks, and generators shall meet the California Air Resources Board's most recent certification standard for off-road heavy-duty diesel engines and shall employ Best Available Control Technology for emission reductions of NO_X and particulate matter (PM) if more stringent than the requirements above.				
CULTURAL RESOURCES				
SW-CR-1: Conduct Cultural Resource Investigations and Protect and Recover Significant Resources. The improvement Lead Agency shall conduct a cultural resource investigation of the areas of ground disturbance associated with the soundwall that includes a background records search (including a search of records from Sonoma State and historical societies, contact with Native American representatives identified by the Native American Heritage Commission [NAHC], and site pedestrian surveys) for the areas of ground disturbance from each roadway improvement. If significant known or suspected sites are discovered within the Project footprint and would be disturbed by the Project, then a cultural resource treatment plan shall be prepared, defining Project monitoring and resource recovery and curation requirements concerning any encountered cultural resources.	City to conduct a cultural resource investigation that includes a background records search during ground disturbance. If necessary, City to prepare and execute cultural resource treatment plan.	City Planning & Inspection Division	City Planning & Inspection Division	Prior to issuance of grading and building permits
SW-CR-2: Stop Work if Cultural Resources Are Encountered during Ground-Disturbing Activities. In the event that cultural resources are encountered during ground-disturbing activities, all work within proximity of the find shall temporarily halt so that the archaeological monitor can examine the find and document its provenience and nature (e.g., withdrawings, photographs, written descriptions). The archaeological monitor shall then direct that the work proceed if the find is deemed to be insignificant, continue elsewhere, or cease until adequate mitigation measures are adopted. If the find is determined to be potentially significant, the archaeologist, in consultation with the appropriate jurisdiction, shall develop a treatment plan, which could include site avoidance, capping, or data recovery. If data recovery is determined to be appropriate, excavation shall target recovery of an appropriate amount of information from archaeological deposits to determine the potential of the resource	Archaeological monitor (retained by the Project Developer), as necessary, and in consultation with the City, develop a Treatment Plan.	Project Developer/ Qualified Archaeologist	City Planning & Inspection Division	During construction if cultural resources are encountered

Mitigation and Avoidance Measures	Action	Implementing Party	Monitoring Party	Timing
to address specific research questions. If it occurs, data recovery shall emphasize the understanding of the archaeological deposit's structure, including features and stratification, horizontal and vertical extent, and content, including the nature and quantity of artifacts.				
SW-CR-3: Stop Work if Human Remains Are Encountered during Ground-Disturbing Activities. If human remains are discovered (in either an archaeological or construction context), all work within proximity of the remains shall stop so that the archaeological monitor can examine the remains. The County Coroner shall be notified to make a determination as to whether the remains are of Native American origin. If the remains are determined to be Native American, the coroner shall notify the NAHC immediately. The NAHC shall notify those persons it believes are most likely descended from the deceased Native American. Once the 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 State CEQA Guidelines.	Project Developer to submit to City applicable provisions of construction contracts including applicable requirements.	Project Developer/ Project Contractor	County Coroner/ NAHC	Prior to issuance of grading and building permits
BIOLOGICAL RESOURCES				
SW-BIO-1: Replace Removed Trees on a 2:1 Basis. The Project Developer shall replace all trees removed as part of soundwall construction at a minimum of 2:1, or more, as required by the local tree ordinance.	Project Developer to provide to City report documenting plans to replace all trees removed at a 2:1 ratio for review and approval.	Project Developer	City Planning & Inspection Division	Prior to issuance of grading and building permits
SW-BIO-2: Preconstruction Surveys. The Project Developer and its contractors shall avoid conducting vegetation removal during the migratory bird nesting season (February 1–August 31) if feasible. If construction activities must commence during the migratory bird nesting season, the Project Developer shall retain a qualified wildlife biologist to conduct a survey for nests of migratory birds. Surveys for nesting migratory birds shall occur within 3 days prior to the commencement of ground disturbance and vegetation removal. If an active nest is discovered, a no-disturbance buffer zone around the nest tree or shrub (or, for ground-nesting species, the nest itself) shall be established. The no-disturbance zone shall be marked with flagging or fencing that is easily identified by the construction crew and shall not affect the nesting bird or attract predators to the nest location. In general, the minimum buffer zone widths shall be as follows: 50 feet (radius) for non-raptor ground-nesting species, 50 feet (radius) for non-raptor shrub- and tree-nesting species, and 300 feet (radius) for raptor species. Buffer widths may	Project Developer to provide to City provisions of construction contracts including pertinent requirements. If construction occurs in the nesting season, Project Developer to submit to City agreement with qualified wildlife biologist requiring surveys and protective	Project Developer/ Project Contractor/ Qualified wildlife biologist	City Planning & Inspection Division	Prior to issuance of grading and building permits for biologist and construction contracts; prior to commence-ment of grading for biologist agreements;

Mitigation and Avoidance Measures	Action	Implementing Party	Monitoring Party	Timing
be modified based on discussion with the California Department of Fish and Wildlife (CDFW). Buffers shall remain in place as long as the nest is active or young remain in the area and are dependent on the nest. If a burrowing owl nest is identified during pre-construction surveys, no-activity buffers will adhere to the recommendations in the 2012 California Department of Fish and Game Staff Report on Burrowing Owl Mitigation.	measures.			and prior to ground disturbance for surveys
SW-BIO-3: Site-Specific Surveys and Species/Habitat Avoidance, Minimization, and Compensation Measures. The Project Developer, in consultation with a qualified biologist, shall conduct a site-specific surveys for special-status species, sensitive habitats, wetlands and waters of the United States, and nesting birds. If found, the Project Developer and its contractor shall implement avoidance and minimization measures, where feasible. Where avoidance is not possible, the Project Developer shall compensate for lost habitat on a minimum 1:1 basis. Compensation for lost habitat will be determined in consultation with CDFW/U.S. Fish and Wildlife Service (USFWS), as appropriate. The Project Developer shall obtain all required permits from the U.S. Army Corps of Engineers (USACE), the Regional Water Quality Control Board, and CDFW and USFWS as appropriate. The Project Developer shall provide buffer fencing and species relocation, as necessary, if permitted by CDFW/USFWS. Additionally, if special-status species or habitats are identified during the site-specific surveys, a Worker Environmental Awareness Training Program for construction personnel will be conducted by a qualified biologist retained by the Project Developer. The program will provide workers with information on their responsibilities with regard to the special-status species. The training will provide a physical description of the special-status species that have potential to occur and be affected by construction activities to each construction crew prior to the initiation of the crew's construction activities. The worker awareness training will also provide details regarding each species' habitat and legal protections, a photo of relevant species, and contact information for the primary biologist.	Project Developer to conduct site-specific surveys for special-status species, sensitive habitats, wetlands and waters of the United States, and nesting birds and provide to City for review and approval. If special status species are found, Project Developer to submit documentation to City detailing protective measures for review and approval.	Project Developer/ Qualified biologist	City Planning & Inspection Division	Prior to issuance of grading and building permits
GEOLOGY AND SOILS				
SW-GEO-1: Prepare a Geotechnical Investigation. Prior to construction of the soundwall, the Project Developer shall prepare a geotechnical investigation to evaluate the potential for geologic, seismic, and soil risks. The geotechnical investigation shall include recommendations to abate any potential risks. If risks are identified, the Project Developer shall implement the recommendations included in the geotechnical investigation.	Project Developer to provide to City geotechnical investigation for review and approval. City and Developer to submit such report to regulatory agencies and	Project Developer/City	City Planning and Inspection Division	Prior to issuance of grading and building permits

Mitigation and Avoidance Measures	Action	Implementing Party	Monitoring Party	Timing
	secure approval as required. Project Developer to incorporate resulting measures into project plans.			
HYDROLOGY AND WATER QUALITY				
SW-WQ-1: Prepare a Hydrology and Water Quality Technical Report. Prior to construction of the soundwall, the Project Developer shall prepare a hydrology and water quality technical report to evaluate the existing drainage and stormwater conditions at the soundwall site. The technical report shall include recommendations for drainage and stormwater controls to minimize impacts related to changes in drainage patterns that would result from the soundwall. The Project Developer shall be required to implement the report's recommendations.	Project Developer to provide to City a hydrology and water quality technical report to evaluate the existing drainage and stormwater conditions at the soundwall site for review and approval.	Project Developer	City Planning & Inspection Division	Prior to issuance of grading and building permits
HAZARDS AND HAZARDOUS MATERIALS				
SW-HAZ-1: Prepare a Phase I Environmental Site Assessment. Prior to construction of the soundwall, the Project Developer shall conduct a Phase I Environmental Site Assessment. Where the potential to encounter hazardous materials or waste is identified, the Project Developer shall prepare and implement a soil/groundwater handing plan that identifies measures to properly dispose of contaminated materials. Measures could include worker education and training, as appropriate, and site-specific controls to avoid risks to workers and adjacent residents or others.	Project Developer to submit Phase I Environmental Site Assessment to City. Project Developer to implement soil/groundwater handling plan to City for review and approval.	Project Developer	Department of Public Works	Prior to issuance of grading and building permits

Mitigation and Avoidance Measures	Action	Implementing Party	Monitoring Party	Timing
UTILITIES AND SERVICE SYSTEMS				
SW-UT-1: Identify Underground and Overhead Utilities and Provide Coordination with Utility Providers. Prior to construction of the soundwall, the Project Developer shall identify all underground and overhead utilities within the footprint of the soundwall. If utilities are present, the Project Developer shall coordinate with the appropriate utility owners regarding utility shutoff during construction and relocation, as necessary.	Project Developer to identify all underground and overhead utilities within the footprint of the soundwall and provide documentation to City of coordination with the appropriate utility owners regarding utility shutoff during construction and relocation for review and approval.	City Planning & Inspection	City Planning & Inspection	Prior to issuance of grading and building permits

EXHIBIT MMRP-1
City Place Santa Clara Project – Intersection Mitigation Implementation
Planning/CEQA File # PLN2014-10554/CEQ2014-01180
State Clearinghouse # 2014072078

With Each Development Area Plan

Each DAP application 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 City (with assistance of consultants as desired) will peer review the data in the application and will determine at DAP approval for the development proposed in the DAP (1) the number of trips projected to result and the allocation of such 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.

As Development Occurs

The Project Trip thresholds set forth in the table below, *Intersection Mitigation Sensitivity Analysis Results: Full Funding Responsibility*, establish the number of Project Trips at which each of the required intersection mitigation measures that are wholly the Project's responsibility to implement must be in place. The Project Phase column of the table is informational and not controlling.

Prior to the issuance of each building permit for a new building, using the calculated number of vehicle trips from the DAP application, Developer will calculate and submit to City the cumulative number of Project trips that will result from all prior development within the Project for which building permits have been issued plus the proposed new building. If the cumulative number of Project Trips meet or exceed any of the intersection Project Trip thresholds, the mitigation measures identified for each of those intersections shall be completed prior to issuance of the certificate of occupancy for the building for which the new permit is being sought, except that, for Intersections 48, 55, 57, 82, 84, 109 and 123, Developer will instead fund the mitigation measures at the costs specified in the table below, *Costs for Certain Full Funding Responsibility Improvements*, prior to the issuance of the pertinent building permit. Any building permits for renovations, remodeling or changes in use to previously permitted and occupied buildings prior to the completion of all Full Funding Responsibility intersection mitigations that result in net new vehicle trips will be subject to the same process.

Prior to the issuance of a building permit for each new building, the Developer shall pay to City a transportation fair share fee of $2,474.18 per PM peak hour trip based on the calculated number of vehicle trips for each new building. The per trip fair share fee was determined by summing the Project's fair share of the estimated costs of mitigation measures for impacts to intersections located in the Cities of Santa Clara, San Jose, Sunnyvale, and those under the jurisdiction of the County of Santa Clara, totaling $14,292,901 plus the Project's voluntary contribution to the Santa Clara Valley Transportation Authority (VTA) for impacts to freeway segments in Santa Clara and San Mateo Counties in the amount of $16,164,220, divided by the 12,310 PM peak hour trips projected to be generated by the Project. The fee will be allocated among pertinent jurisdictions as follows: VTA 53.07%; County of Santa Clara 32.97%; City of San Jose 13.25%; City of Sunnyvale 0.11%; and City of Santa Clara 0.60%. Any building permits for renovations, remodeling or changes in use to previously permitted and occupied buildings that result in net new vehicle trips will be subject to the fee on the basis of net new PM peak hour vehicle trips until the full amount of the combined fair share fee and voluntary contribution of $30,457,121 has been paid, after which no additional fee shall be paid.

Site access improvements will be built as required by DAP conditions of approval.

EXHIBIT MMRP-1

City Place Santa Clara Project – Intersection Mitigation Sensitivity Analysis Results: Full Funding Responsibility

Planning/CEQA File # PLN2014-10554/CEQ2014-01180

State Clearinghouse # 2014072078

ID	Intersection	Jurisdiction/ CMP[20]	Mitigation Measure[21]	Impact Peak Hour	Project Trips	Project Phase
22	Agnew Road-De La Cruz Boulevard/ Montague Expressway	Santa Clara County (CMP)	Partial Mitigation: Add a second northbound left-turn lane.	AM	450	Phase 1
54	Lawrence Expressway/Benton Street	Santa Clara County	Partial Mitigation: Add a second southbound left-turn lane and a second eastbound left-turn lane.	AM	2,240	Phase 2
55	Lawrence Expressway/ Homestead Road	Santa Clara County (CMP)	Add a third eastbound through lane and a third westbound through lane (Yahoo! Santa Clara Campus TIA, August 2009; City of Sunnyvale Citywide Deficiency Plan, September 2005; and City of Santa Clara Traffic Mitigation Program, June 2011).	AM	2,240	Phase 2
76	San Tomas Expressway/Walsh Avenue	Santa Clara County	Partial Mitigation: Add a second eastbound left-turn lane.	AM	2,240	Phase 2
82	San Tomas Expressway/ Pruneridge Avenue	Santa Clara County	Partial Mitigation: Add a second northbound left-turn lane.	AM	2,240	Phase 2
8	Great America Parkway/Tasman Drive*	Santa Clara (CMP)	Partial Mitigation: Add a southbound right-turn lane and add a third westbound left-turn lane.	PM	2,610	Phase 2
48	Lawrence Expressway/US 101 SB Ramps	Santa Clara County	Convert eastbound left-turn lane to a shared left-/right-turn lane.	PM	2,610	Phase 2
59	Great America Parkway/Yerba Buena (Great America) Way	Santa Clara	Partial Mitigation: Add a second westbound right-turn lane with an overlap phase and a second southbound left-turn lane.	PM	3,650	Phase 2
60	Great America Parkway/Old Mountain View-Alviso Road	Santa Clara	Partial Mitigation: Add a second eastbound left-turn lane.	PM	3,650	Phase 2

[20] CMP = Congestion Management Program intersection (VTA).

[21] Partial Mitigation: The proposed mitigation measure mitigates the impact at one but not the other peak hour or reduces the delay but not enough to mitigate the impact.

ID	Intersection	Jurisdiction/ CMP[20]	Mitigation Measure[21]	Impact Peak Hour	Project Trips	Project Phase
71	Bowers Avenue/ Central Expressway	Santa Clara County (CMP)	Partial Mitigation: Add third southbound left-turn lane and third eastbound left-turn lane.**	PM	3,650	Phase 2
57	Great America Parkway/SR 237 WB Ramps	San José (CMP)[22]	Add third westbound left-turn lane and associated receiving lane under underpass. Add a second westbound right-turn lane. Include safe and convenient bicycle and pedestrian facilities along Great America Parkway. Intersections #58 and #123 would also need to be modified to accommodate these intersection improvements.[23]	AM	2,690	Phase 3
58	Great America Parkway/SR 237 EB Ramps	Santa Clara (CMP)	Add third southbound through lane and a second eastbound right-turn lane.[24]	AM	2,690	Phase 3
123	Great America Parkway/Gold Street Connector	San José	Add a second northbound right-turn lane.[25]	AM	2,690	Phase 3
79	San Tomas Expressway/Benton Street*	Santa Clara County	Add a second eastbound left-turn lane.	AM	3,140	Phase 3
120	De La Cruz Boulevard/ Laurelwood Road	Santa Clara	Reconfigure the northbound and southbound approaches to include one left-turn lane, one through, and one shared through/right-turn lane; change the phasing from split to protected in the northbound and southbound directions; and increase cycle length.	AM	3,140	Phase 3
14	Lick Mill Boulevard/ Tasman Drive	Santa Clara	Partial Mitigation: Reconfigure northbound and southbound approach to two left-turn lanes, one through lane, and one right-turn lane. Change the northbound/southbound signal phasing from split to protective. Add a second westbound left-turn lane.	PM	4,690	Phase 3
23	Lick Mill Boulevard/ Montague Expressway	Santa Clara County	Add a third southbound left-turn lane.	PM	5,730	Phase 4

[22] An LOS D threshold is used for study intersections within San José, including CMP designated intersections. Santa Clara County intersections in San José use an LOS E threshold.

[23] Intersection #58 (Great America Parkway/SR 237 EB Ramps) and #123 (Great America Parkway/Gold Street Connector) are not impacted intersections, but would need to be modified to accommodate the improvements at Intersection #57 (Great America Parkway/SR 237 WB Ramps).

[24] Intersection #58 (Great America Parkway/SR 237 EB Ramps) and #123 (Great America Parkway/Gold Street Connector) are not impacted intersections, but would need to be modified to accommodate the improvements at Intersection #57 (Great America Parkway/SR 237 WB Ramps).

[25] Intersection #58 (Great America Parkway/SR 237 EB Ramps) and #123 (Great America Parkway/Gold Street Connector) are not impacted intersections, but would need to be modified to accommodate the improvements at Intersection #57 (Great America Parkway/SR 237 WB Ramps).

ID	Intersection	Jurisdiction/ CMP[20]	Mitigation Measure[21]	Impact Peak Hour	Project Trips	Project Phase
96	Lafayette Street/ Montague Expressway WB Ramps	Santa Clara	Add second westbound right-turn lane with an overlap phase and a second southbound left-turn lane.	AM	6,730	Phase 7
84	Gold Street/Gold Street Connector	San José[26]	Convert northbound through lane to a shared left-turn/through lane, add a second northbound left-turn lane and second eastbound right-turn lane. (move pedestrian crossing to north leg of intersection).	AM	7,180	Phase 7
114	Calle Del Sol/Calle Del Luna	Santa Clara	Signalize.	PM	8,340	Phase 7
90	Lafayette Street/Calle De Luna	Santa Clara	Reconstruct the westbound approach to include two left-turn lanes and one right-turn lane.	AM	8,970	Phase 8
13	Calle Del Sol/Tasman Drive*	Santa Clara	Add a westbound right-turn lane. Reconfigure southbound approaches to include two left-turn lanes and one right-turn lane with overlap phase.	PM	9,380	Phase 8
73	Bowers Avenue/ Monroe Street	Santa Clara	Add a northbound and a southbound left-run lane. Change the northbound and southbound from split to protected left-turn phasing.	PM	10.420	Phase 8
94	Lafayette Street/ Agnew Road	Santa Clara	Add a second eastbound left-turn lane and a second southbound left-turn lane.	PM	10,420	Phase 8
109	Liberty Street/Taylor Street	San José[27]	Signalize. Off-setting Mitigation: Construct traffic control devices to divert traffic from entering the Alviso neighborhood.**	PM	10,420	Phase 8

Notes:

Based on information concerning funding sources and status of planning for and construction of transportation improvements identified in the EIR as being 100% the responsibility of the Project Developer, the City Engineer has made relatively minor changes to the responsibilities for implementing such measures; those adjustments are reflected in this table.

* Intersection improvement identified at this intersection under existing or background no-project conditions. See Appendix 3.3-D of the *City Place Santa Clara Project Draft Environmental Impact Report* (October 2015).

** City-preferred mitigation option.

Source: Fehr & Peers, 2016.

[26] An LOS D threshold is used for study intersections within San José, including CMP designated intersections. Santa Clara County intersections in San José use an LOS E threshold.

[27] An LOS D threshold is used for study intersections within San José, including CMP designated intersections. Santa Clara County intersections in San José use an LOS E threshold.

EXHIBIT MMRP-1

City Place Santa Clara Project – Costs for Certain Full Funding Responsibility Improvements
Planning/CEQA File # PLN2014-10554/CEQ2014-01180
State Clearinghouse # 2014072078

ID	Intersection	Mitigation	Total Cost	Basis of Cost
48	Lawrence Expressway/ US 101 SB Ramps	Convert eastbound left turn lane to a shared left/right turn lane.	**$13,500**	The cost estimate was prepared by BKF Engineers and accepted by the City. The cost estimate assumes that the work is limited to striping.
55	Lawrence Expwy/ Homestead Rd	Add a third eastbound through lane and a third westbound through lane (Yahoo! Santa Clara Campus TIA, August 2009; City of Sunnyvale Citywide Deficiency Plan, September 2005; and City of Santa Clara Traffic Mitigation Program, June 2011).	**$2,841,800**	The cost estimate was prepared by BKF Engineers and accepted by the City. The cost estimate assumes that 10' turn lanes and 11' through lanes will be implemented. While the Project has 100% responsibility for this mitigation, the project's responsibility for the cost is reduced by previous contributions made by Yahoo ($96,060) and the County of Santa Clara ($400,000). Right of way for this mitigation has been previously dedicated by Kaiser negating the need for the Project to acquire any right of way for mitigation. The Project will make a monetary contribution equal to its cost responsibility in lieu of constructing the mitigation.
57	Great America Pkwy/SR 237 WB Ramps	Add third westbound left-turn lane and associated receiving lane under underpass. Add a second westbound right-turn lane.	**$2,351,652**	The Total Cost includes both local road work and freeway ramp work. The cost estimate was prepared by BKF Engineers and accepted by the City. The cost of the local road work is estimated at $963,508 and the freeway ramp work at $1,388,144. Since the freeway ramp work will be performed concurrently with the intersection mitigation, the estimated cost of the freeway ramp work is deducted from the Freeway Fair Share voluntary contribution amount.
82	San Tomas Expwy/ Pruneridge Ave	Partial Mitigation: Add a second northbound left-turn lane.	**$271,900**	The cost estimate was prepared by BKF Engineers and accepted by the City after concurrence with the cost by the County. The estimate assumes that the second northbound left turn lane will be implemented by the County as part of the San Tomas widening project.

ID	Intersection	Mitigation	Total Cost	Basis of Cost
84	Gold Street/Gold Street connector	Convert northbound through lane to a shared left-turn/through lane, add second northbound left-turn lane and a second eastbound right-turn lane (move pedestrian crossing to north leg of intersection).	**$735,100**	In order to avoid modifications to existing electrical transmission line towers, the City waived the mitigation requirement to add a second northbound left turn lane. The City also agreed to include a surveillance camera at the intersection as requested by the City of San Jose. The cost estimate was prepared by BKF Engineers and accepted by the City. The estimated cost includes $685,100 for the intersection mitigation and an additional $50,000 for the surveillance camera requested by the City of San Jose. The estimated cost assumes that 11' lanes will be implemented and the work associated with the addition of the surveillance camera does not require a new signal controller or installation of equipment to the control station.
109	Liberty St/Lewis St	Signalize.	**$300,000**	The City of San Jose requested that the intersection not be signalized per the mitigation. The City of Santa Clara will provide the City of San Jose with the monetary equivalent of the cost of installing a signal. BKF Engineers estimated and the City of Santa Clara concurred with a cost for signalization of $300,000.
123	Great America Pkwy/ Gold Street connector	Add a second northbound right-turn lane (from Int. 57 dual westbound right-turn lanes).	**$ --**	The cost of this work is included in the cost estimate for intersection #57.

EXHIBIT G-2
FORM OF GROUND LEASE (PHASES 2-7)

EXHIBIT F
Required Buildings

[To be attached upon Ground Lease execution]

EXHIBIT G
FORM OF LEASE ADDENDUM

ADDENDUM TO GROUND LEASE
(CITY PLACE SANTA CLARA – PHASE [ ])

This ADDENDUM TO GROUND LEASE (CITY PLACE SANTA CLARA – PHASE [ ] (this "**Addendum**") is made and entered into as of _____, 20__ by and between the **CITY OF SANTA CLARA, CALIFORNIA**, a chartered municipal corporation, as landlord ("**City**"), and **[INSERT TENANT]**, a _____, as tenant ("**Tenant**" and, together with City, the "**Parties**"), and modifies that certain Ground Lease (City Place Santa Clara – Phase [ ]), dated as of _____, 20__ by and between City and Tenant (the "**Lease**").

RECITALS

Tenant and City enter into this Addendum with reference to the following facts and circumstances:

A. Tenant and City are parties to the Lease. Capitalized terms used herein and not defined herein shall have the meanings given to such terms in the Lease.

B. [Section 3.3.2(i) of the Lease provides that, upon each determination of Premium Costs allocated to the Premises under the DDA and upon the final reconciliation under Section 16.1.3(b) of the DDA, the Parties shall execute and append to the Lease an addendum documenting such determination.] [***OR***] [Section 3.3.2(ii) of the Lease provides that, upon determination of Allowed Square Footage allocated to the Premises under the DDA, the Parties shall execute and append to the Lease an addendum documenting such determination.]

C. City and Tenant wish to enter into this Lease Addendum in order to document their determination of [Premium Costs][Allowed Square Footage] allocated to the Premises in accordance with the terms of the Lease.

AGREEMENT

NOW, THEREFORE, in reliance on the foregoing and in consideration of the mutual covenants, agreements and conditions set forth herein, and for other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged by the Parties, the Parties hereby agree as follows:

1. [Premium Costs. For purposes of calculating the Base Rent Adjustment in the 45th and 70th Project Lease Year, the Premium Costs allocated to the Premises are $_____.][Allowed Square Footage. The Allowed Square Footage allocated to the Premises is _____ gross square feet.]

EXHIBIT G
FORM OF LEASE ADDENDUM

2. Effect of Addendum; No Other Modifications. The agreements and declarations made and set forth in this Addendum are made a part of the Lease and are intended to and shall have the same force and effect as if set forth in the body of the Lease. The Lease remains in full force and effect, with no modifications except as expressly set forth in this Addendum.

3. Counterparts. This Addendum may be executed in counterparts, each of which shall be deemed to be an original, and all of which, taken together, shall constitute one and the same document.

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EXHIBIT G
FORM OF LEASE ADDENDUM

IN WITNESS WHEREOF, Tenant and City have executed this Addendum as of the date set forth above.

CITY:

TENANT:

EXHIBIT H

Appraisal Instructions

I. Introduction:

These Appraisal Instructions (these "**Instructions**") constitute an integral part of that certain Ground Lease (City Place Santa Clara – Phase [ ]) (the "**Ground Lease**"), dated as of _____, 2___, by and between the City of Santa Clara, California, a chartered municipal corporation, as landlord ("**City**"), and [*Insert Tenant*], a [_____], as tenant ("**Tenant**"). All capitalized terms used herein but not otherwise defined herein shall have the meaning ascribed to such terms in the Ground Lease.

These Instructions shall govern preparation and delivery of each appraisal (each, an "**Appraisal**") of the [Phase [ ] Airspace Parcel][Tasman Parcels] Fee Fair Market Value (the "**Fair Market Value**") for purposes of calculating the Base Rent adjustment under Sections 3.4.1 through 3.4.6 of the Ground Lease in each of the 45th Project Lease Year and the 70th Project Lease Year.

These Instructions shall constitute the sole instructions to be utilized by the appraiser in preparing an Appraisal.

II. Documents Applicable to Premises:

City and Tenant agree that the Premises are presently subject to or otherwise affected by each and all of the following (collectively, the "**Project Documents**"), to the extent such Project Documents remain in effect and apply to the Premises at the time of preparation of an Appraisal:

1. The CC&Rs;
2. the DDA;
3. the Development Agreement;
4. the Landfill Operation and Management Agreement;
5. the Ground Lease;
6. the MCP;
7. the Non-Water Corrective Action Plan;
8. the Post-Closure Land Use Plan;
9. the Post-Closure Permit;
10. the Project MMRP;
11. the Revised Closure Plan;
12. the Revised Post-Closure Maintenance Plan;
13. the Waste Discharge Requirements;
14. the Water Corrective Action Plan; and
15. any other Authorizations heretofore and hereafter received for any portion of the Project and agreements entered into pursuant to the DDA, together with all exhibits thereto, as any of the foregoing may be amended from time to time.

Prior to commencement of an Appraisal, the parties shall review (i) all matters of any type or nature which affect title to the Premises or any interest therein and (ii) the then-current operations of the Premises and each of the City and the Tenant shall have the right to identify any additional entitlement or regulatory approvals and documents pertaining to the Premises and not listed above that are to be designated as part of the Project Documents and considered by the appraiser in the preparation of such Appraisal.

III. Appraisal Standards:

Each Appraisal shall be a self-contained report based on a comprehensive study and analysis and setting forth, in detail, all data, analysis, and conclusions, as necessary and typical of a complete, self-contained appraisal report. Each Appraisal shall be prepared in accordance with the Standards of Professional Appraisal Practice and the Code of Professional Ethics promulgated by the Appraisal Institute to the extent then in effect (the "**AI Standards**"), or its then-equivalent, should the Appraisal Institute no longer be operating; provided, that, in the event of a conflict, ambiguity or inconsistency between the AI Standards and these Instructions, these Instructions shall govern and control in all respects.

IV. Appraisal Principles:

Each Appraisal shall be prepared in accordance with the following principles:

1. The Fair Market Value shall be calculated as if the Premises were vacant and unimproved by any structures, buildings, improvements, fixtures, additions, alterations and betterments of whatsoever nature or description, including, without limitation, all Infrastructure Improvements and Buildings included in any DAP approved for the Premises.

2. The Fair Market Value shall be calculated as if the Premises were not benefitted by any other Infrastructure Improvements, including, without limitation, any Infrastructure Improvements installed under the Premises, in the Landfill Parcel or elsewhere. Without limiting the foregoing, the Fair Market Value shall reflect any burdens, limitations, restrictions, constraints or impacts upon the Premises, whether arising from or under any of the Project Documents (other than the Ground Lease), in respect of any Infrastructure Improvements, or otherwise existing, including, without limitation, any restrictions on development or use of the Premises, any third-party property rights or other rights appurtenant thereto, any regulatory restrictions applicable to the Premises, and any negative or affirmative covenants of any kind or nature whatsoever that are applicable to the Premises (including, without limitation, any restrictions, third-party rights or covenants related to the City's obligations with respect to the Landfill). Notwithstanding the foregoing, the Fair Market Value shall not reflect, and in preparing their Appraisals the appraisers shall not consider, any incremental and/or unusual additional on-site and off-site costs of development due to the fact that the Premises are located on a landfill (e.g., additional construction and engineering costs for foundation, methane gas monitoring and collection, settlement slab, increased utility costs and the like), including any of the types of additional costs that are contemplated by Premium Costs as established under the DDA.

3. The Fair Market Value shall be calculated as if the Premises were not subject to the provisions of the Ground Lease or any other ground lease or sublease, including, without limitation, the economics of the Ground Lease. Without limiting the foregoing, the Fair Market Value shall be calculated to account for all provisions of the CC&Rs and the other Projects Documents that are in effect at the time of the preparation of each Appraisal and to the extent then-applicable to the Premises.

4. The Fair Market Value shall reflect each and every zoning, land use and other regulatory restriction applicable to the Premises at the time of preparation of each Appraisal, including any local, state or federal regulatory requirements and any other requirements imposed by any governmental, quasi-governmental or regulatory authority of any kind or nature whatsoever then in effect.

5. The Fair Market Value shall reflect the restrictions on the development, use and occupancy of the Premises in effect at the time of the preparation of each Appraisal, including, without limitation, (i) restrictions upon the uses and/or density (including dimensions, height and square footage) existing at such time and (ii) the Allowed Square Footage allocated to the Premises. Without limiting the foregoing, such restrictions shall include any third-party property rights or other rights appurtenant thereto, any regulations applicable to the Premises, and any negative or affirmative covenants of any kind or nature whatsoever that are then burdening the Premises with respect to the development, use and occupancy thereof, including, without limitation, any contractual third-party consent rights.

6. The Fair Market Value shall reflect any other factor reasonably relevant to the calculation thereof that is not inconsistent with the standards set forth in Items 1 through 5 above. Without limiting the generality of the foregoing, such other factors shall include, without limitation, any restriction, third-party right, or covenant of any kind or nature whatsoever that burdens or otherwise affects the Premises, whether imposed by contract, regulation, judgment, decree or otherwise.

V. Appraisal Procedures:

The following sets forth general procedures for the preparation of each Appraisal; provided, that the party contracting for such Appraisal (City or Tenant, as applicable, in such capacity, the "**Contracting Party**") may modify or waive these procedures in its sole discretion.

1. Pre-Work Conference: At the request of the Contracting Party, the appraiser shall attend a pre-work conference for discussion and understanding of these Instructions, including a timing update. The pre-work conference may be held in conjunction with an inspection of the Premises.

2. Draft Report: The appraiser shall submit to the Contracting Party a complete, self-contained initial draft of the appraisal report (the "**Draft Report**"), consisting of a manipulatable or editable copy of such report, within the period specified within the fully executed contract for appraisal services. The appraiser shall provide to the Contracting Party the Draft Report, as well as maps, drawings, photographs and any other relevant

background information or materials used in preparation of the Draft Report, by the most expeditious means then available and in the then-prevailing format.

3. Review and Comment Period: Following its receipt of the Draft Report, the Contracting Party shall review such Draft Report and, within ___ calendar days thereafter, provide any comments or feedback to the appraiser by the most expeditious means then available and in the then-prevailing format.

4. Final Appraisal: Following receipt of any comments, the appraiser shall, within a reasonable time (not to exceed 15 calendar days without the Contracting Party's written consent), revise the Draft Report to reflect any such comments or feedback and deliver to the Contracting Party a final Appraisal, consisting of three (3) signed copies thereof, by the most expeditious means then available and in the then-prevailing format.

VI. Confidentiality:

The Contracting Party and the appraiser acknowledge and agree that, in the course of preparing an Appraisal pursuant to these Instructions, the Contracting Party may disclose confidential information, which has been approved and authorized by Contracting Party for release, to the appraiser.

The appraiser agrees not to disclose such confidential information to any third party and to treat it with the same degree of care as it would its own confidential information. It is understood, however, that the appraiser may disclose such confidential information on a "need to know" basis to the appraiser's employees and subcontractors. As a condition precedent to any such disclosure, each and all of such employees and subcontractors shall have executed a written confidentiality agreement with the Contracting Party which obligates such employees and subcontractors to maintain the confidentiality of such confidential information.

Each Appraisal, the Fair Market Value calculation included therein, and the supporting documentation also constitute confidential information, and the appraiser shall strictly abide by the confidentiality and ethics provisions of the AI Standards.

The appraiser must obtain written authorization from the Contracting Party before disclosure of any confidential information. The passage of time in and of itself shall not extinguish either the appraiser's responsibility for confidentiality or the appraiser/client relationship. The appraiser/client relationship is extinguished only upon written release from the Contracting Party. Even though the appraiser/client relationship may terminate, the appraiser shall at all times remain subject to the confidentiality and ethics provisions of the AI Standards.

TABLE 1

Exhibit I

Examples of Calculations of Base Rent Escalations

(for illustrative purposes only)

Per DDA Sections 4.8(c) & (d), 6, Exhibit G-1 Article 3, and Exhibit G-2 Article 3

Key Illustrative Assumptions

	Take Down	Allowable Square Footage	Premium Allocation
Phase 1	2017	873,000	$0
Phase 2	2018	1,419,800	$175,000,000
Phase 2A	2021	0	NA
Phase 3	2022	1,419,800	$175,000,000
Phase 4	2025	1,419,800	$150,000,000
Phase 5	2028	1,440,000	$100,000,000
Phase 6	2030	1,296,000	$100,000,000
Phase 7	2032	1,296,000	$100,000,000
Total		9,164,400	$800,000,000

Project Lease Year	Illustrative Year	Aggregate Project Base Rent	Phase 1 [1]		Phase 2 - 7 [3]	
			Periodic Escalations [2]	Aggregate Base Rent	Periodic Escalations [4]	Aggregate Base Rent
1	2017	$750,000	3.1.2 Adj	$750,000	-	-
2	2018	$2,272,500	-	$772,500	-	$1,500,000
3	2019	$2,340,675	-	$795,675	-	$1,545,000
4	2020	$2,410,895	-	$819,545	-	$1,591,350
5	2021	$3,389,091	3.1.3 Adj	$1,000,000	-	$2,389,091
6	2022	$3,990,763	-	$1,030,000	-	$2,960,763
7	2023	$4,110,486	-	$1,060,900	-	$3,049,586
8	2024	$4,641,074	3.1.4 Adj	$1,500,000	-	$3,141,074
9	2025	$5,530,306	-	$1,545,000	-	$3,985,306
10	2026	$5,696,215	-	$1,591,350	-	$4,104,865
11	2027	$5,867,102	-	$1,639,091	-	$4,228,011
12	2028	$6,815,615	-	$1,688,263	-	$5,127,351
13	2029	$7,020,083	-	$1,738,911	-	$5,281,172
14	2030	$8,186,822	-	$1,791,078	-	$6,395,743
15	2031	$8,880,128	-	$1,844,811	10.0%	$7,035,318
16	2032	$10,160,897	-	$1,900,155	-	$8,260,742
17	2033	$10,465,724	-	$1,957,160	-	$8,508,564
18	2034	$10,779,696	-	$2,015,875	-	$8,763,821
19	2035	$11,103,086	-	$2,076,351	-	$9,026,736
20	2036	$12,297,538	3.3.2(a) Adj	$3,000,000	-	$9,297,538
21	2037	$12,666,464	-	$3,090,000	-	$9,576,464
22	2038	$13,046,458	-	$3,182,700	-	$9,863,758
23	2039	$13,437,852	-	$3,278,181	-	$10,159,671
24	2040	$13,840,987	-	$3,376,526	-	$10,464,461
25	2041	$15,225,086	10.0%	$3,714,179	10.0%	$11,510,907
26	2042	$15,681,838	-	$3,825,604	-	$11,856,234
27	2043	$16,152,293	-	$3,940,373	-	$12,211,921
28	2044	$16,636,862	-	$4,058,584	-	$12,578,279
29	2045	$17,135,968	-	$4,180,341	-	$12,955,627
30	2046	$17,650,047	-	$4,305,752	-	$13,344,296
31	2047	$18,179,549	-	$4,434,924	-	$13,744,625
32	2048	$18,724,935	-	$4,567,972	-	$14,156,963
33	2049	$19,286,683	-	$4,705,011	-	$14,581,672
34	2050	$19,865,284	-	$4,846,161	-	$15,019,122
35	2051	$21,851,812	10.0%	$5,330,777	10.0%	$16,521,035
36	2052	$22,507,366	-	$5,490,701	-	$17,016,666
37	2053	$23,182,587	-	$5,655,422	-	$17,527,166
38	2054	$23,878,065	-	$5,825,084	-	$18,052,981
39	2055	$24,594,407	-	$5,999,837	-	$18,594,570
40	2056	$25,332,239	-	$6,179,832	-	$19,152,407
41	2057	$26,092,206	-	$6,365,227	-	$19,726,979
42	2058	$26,874,972	-	$6,556,184	-	$20,318,789
43	2059	$27,681,222	-	$6,752,869	-	$20,928,352
44	2060	$28,511,658	-	$6,955,455	-	$21,556,203
45	2061	$57,429,672	3.3.2(b) Adj	$7,651,001	3.3.2(b) Adj	$49,778,671
46	2062	$58,865,414	-	$7,842,276	-	$51,023,138
47	2063	$60,337,049	-	$8,038,333	-	$52,298,716
48	2064	$61,845,475	-	$8,239,291	-	$53,606,184
49	2065	$63,391,612	-	$8,445,273	-	$54,946,339
50	2066	$64,976,402	-	$8,656,405	-	$56,319,997
51	2067	$66,600,812	-	$8,872,815	-	$57,727,997
52	2068	$68,265,833	-	$9,094,636	-	$59,171,197
53	2069	$75,092,416	10.0%	$10,004,099	10.0%	$65,088,317
54	2070	$76,969,726	-	$10,254,202	-	$66,715,524
55	2071	$78,893,969	-	$10,510,557	-	$68,383,413
56	2072	$80,866,319	-	$10,773,321	-	$70,092,998
57	2073	$82,887,977	-	$11,042,654	-	$71,845,323
58	2074	$84,960,176	-	$11,318,720	-	$73,641,456
59	2075	$87,084,180	-	$11,601,688	-	$75,482,492
60	2076	$89,261,285	-	$11,891,730	-	$77,369,555
61	2077	$98,187,413	10.0%	$13,080,903	10.0%	$85,106,510
62	2078	$100,642,099	-	$13,407,926	-	$87,234,173
63	2079	$103,158,151	-	$13,743,124	-	$89,415,027
64	2080	$105,737,105	-	$14,086,702	-	$91,650,403
65	2081	$108,380,533	-	$14,438,870	-	$93,941,663
66	2082	$111,090,046	-	$14,799,842	-	$96,290,204
67	2083	$113,867,297	-	$15,169,838	-	$98,697,460
68	2084	$116,713,980	-	$15,549,084	-	$101,164,896
69	2085	$119,631,829	-	$15,937,811	-	$103,694,018
70	2086	$132,306,660	3.3.2(c) Adj	$17,531,592	3.3.2(c) Adj	$114,775,068
71	2087	$135,614,326	-	$17,969,881	-	$117,644,445
72	2088	$139,004,684	-	$18,419,129	-	$120,585,556
73	2089	$142,479,802	-	$18,879,607	-	$123,600,195
74	2090	$146,041,797	-	$19,351,597	-	$126,690,200
75	2091	$149,692,841	-	$19,835,387	-	$129,857,455
76	2092	$153,435,162	-	$20,331,272	-	$133,103,891
77	2093	$157,271,042	-	$20,839,553	-	$136,431,488
78	2094	$161,202,818	-	$21,360,542	-	$139,842,275
79	2095	$165,232,888	-	$21,894,556	-	$143,338,332
80	2096	$181,756,177	10.0%	$24,084,011	10.0%	$157,672,166
81	2097	$186,300,081	-	$24,686,112	-	$161,613,970
82	2098	$190,957,583	-	$25,303,264	-	$165,654,319
83	2099	$195,731,523	-	$25,935,846	-	$169,795,677
84	2100	$200,624,811	-	$26,584,242	-	$174,040,569
85	2101	$205,640,431	-	$27,248,848	-	$178,391,583
86	2102	$210,781,442	-	$27,930,069	-	$182,851,373
87	2103	$216,050,978	-	$28,628,321	-	$187,422,657
88	2104	$221,452,253	-	$29,344,029	-	$192,108,223
89	2105	$226,988,559	-	$30,077,630	-	$196,910,929
90	2106	$249,687,415	10.0%	$33,085,393	10.0%	$216,602,022
91	2107	$255,929,600	-	$33,912,528	-	$222,017,072
92	2108	$262,327,840	-	$34,760,341	-	$227,567,499
93	2109	$268,886,036	-	$35,629,349	-	$233,256,687
94	2110	$275,608,187	-	$36,520,083	-	$239,088,104
95	2111	$282,498,392	-	$37,433,085	-	$245,065,306
96	2112	$289,560,851	-	$38,368,912	-	$251,191,939
97	2113	$296,799,873	-	$39,328,135	-	$257,471,738
98	2114	$304,219,870	-	$40,311,338	-	$263,908,531
99	2115	$311,825,366	-	$41,319,122	-	$270,506,244

Notes

All numbers are illustrative, representing a specific scenario. Actual numbers may vary

[1] See Table 2A for detailed Phase 1 Ground Lease calculations

[2] Section References are from DDA Exhibit G-1

[3] See Table 3A for detailed Phase 2-7 Ground Lease calculations

[4] Section References are from DDA Exhibit G-2

TABLE 2A

Exhibit I

Examples of Calculations of Base Rent Escalations

(for illustrative purposes only)

Ground Lease Base Rent Payments Phase 1

Per DDA Section 6, and Exhibit G-1 Article 3

Phase 1 Illustrative Schedule of Performance Per DDA Exhibit F, Exhibit G-1 Section 3.1.4		
Land Take Down	2017	
Commencement of Construction of Infrastructure	2019	
Construction Period	2	Years
Opening	2021	
4th Anniversary of the Opening Date	2024	

Project Lease Year	Illustrative Year	Base Rent Escalations Initial DDA G-1 3.1	Regular DDA G-1 3.2	Periodic [1] DDA G-2 3.3	Aggregate Base Rent Phase 1
1	2017	3.1.2 Adj	3%	-	$750,000
2	2018	-	3%	-	$772,500
3	2019	-	3%	-	$795,675
4	2020	-	3%	-	$819,545
5	2021	3.1.3 Adj	3%	-	$1,000,000
6	2022	-	3%	-	$1,030,000
7	2023	-	3%	-	$1,060,900
8	2024	3.1.4 Adj	3%	-	$1,500,000
9	2025	-	3%	-	$1,545,000
10	2026	-	3%	-	$1,591,350
11	2027	-	3%	-	$1,639,091
12	2028	-	3%	-	$1,688,263
13	2029	-	3%	-	$1,738,911
14	2030	-	3%	-	$1,791,078
15	2031	-	3%	-	$1,844,811
16	2032	-	3%	-	$1,900,155
17	2033	-	3%	-	$1,957,160
18	2034	-	3%	-	$2,015,875
19	2035	-	3%	-	$2,076,351
20	**2036**	-	-	**3.3.2(a) Adj**	**$3,000,000**
21	2037	-	3%	-	$3,090,000
22	2038	-	3%	-	$3,182,700
23	2039	-	3%	-	$3,278,181
24	2040	-	3%	-	$3,376,526
25	2041	-	-	10%	$3,714,179
26	2042	-	3%	-	$3,825,604
27	2043	-	3%	-	$3,940,373
28	2044	-	3%	-	$4,058,584
29	2045	-	3%	-	$4,180,341
30	2046	-	3%	-	$4,305,752
31	2047	-	3%	-	$4,434,924
32	2048	-	3%	-	$4,567,972
33	2049	-	3%	-	$4,705,011
34	2050	-	3%	-	$4,846,161
35	2051	-	-	10%	$5,330,777
36	2052	-	3%	-	$5,490,701
37	2053	-	3%	-	$5,655,422
38	2054	-	3%	-	$5,825,084
39	2055	-	3%	-	$5,999,837
40	2056	-	3%	-	$6,179,832
41	2057	-	3%	-	$6,365,227
42	2058	-	3%	-	$6,556,184
43	2059	-	3%	-	$6,752,869
44	2060	-	3%	-	$6,955,455
45	**2061**	-	-	**3.3.2(b) Adj**	**$7,651,001**

Project Lease Year	Illustrative Year	Base Rent Escalations Initial DDA G-1 3.1	Regular DDA G-1 3.2	Periodic [1] DDA G-2 3.3	Aggregate Base Rent Phase 1
46	2062	-	CPI w/ Cap	-	$7,842,276
47	2063	-	CPI w/ Cap	-	$8,038,333
48	2064	-	CPI w/ Cap	-	$8,239,291
49	2065	-	CPI w/ Cap	-	$8,445,273
50	2066	-	CPI w/ Cap	-	$8,656,405
51	2067	-	CPI w/ Cap	-	$8,872,815
52	2068	-	CPI w/ Cap	-	$9,094,636
53	2069	-	-	10%	$10,004,099
54	2070	-	CPI w/ Cap	-	$10,254,202
55	2071	-	CPI w/ Cap	-	$10,510,557
56	2072	-	CPI w/ Cap	-	$10,773,321
57	2073	-	CPI w/ Cap	-	$11,042,654
58	2074	-	CPI w/ Cap	-	$11,318,720
59	2075	-	CPI w/ Cap	-	$11,601,688
60	2076	-	CPI w/ Cap	-	$11,891,730
61	2077	-	-	10%	$13,080,903
62	2078	-	CPI w/ Cap	-	$13,407,926
63	2079	-	CPI w/ Cap	-	$13,743,124
64	2080	-	CPI w/ Cap	-	$14,086,702
65	2081	-	CPI w/ Cap	-	$14,438,870
66	2082	-	CPI w/ Cap	-	$14,799,842
67	2083	-	CPI w/ Cap	-	$15,169,838
68	2084	-	CPI w/ Cap	-	$15,549,084
69	2085	-	CPI w/ Cap	-	$15,937,811
70	**2086**	-	-	**3.3.2(c) Adj**	**$17,531,592**
71	2087	-	CPI w/ Cap	-	$17,969,881
72	2088	-	CPI w/ Cap	-	$18,419,129
73	2089	-	CPI w/ Cap	-	$18,879,607
74	2090	-	CPI w/ Cap	-	$19,351,597
75	2091	-	CPI w/ Cap	-	$19,835,387
76	2092	-	CPI w/ Cap	-	$20,331,272
77	2093	-	CPI w/ Cap	-	$20,839,553
78	2094	-	CPI w/ Cap	-	$21,360,542
79	2095	-	CPI w/ Cap	-	$21,894,556
80	2096	-	-	10%	$24,084,011
81	2097	-	CPI w/ Cap	-	$24,686,112
82	2098	-	CPI w/ Cap	-	$25,303,264
83	2099	-	CPI w/ Cap	-	$25,935,846
84	2100	-	CPI w/ Cap	-	$26,584,242
85	2101	-	CPI w/ Cap	-	$27,248,848
86	2102	-	CPI w/ Cap	-	$27,930,069
87	2103	-	CPI w/ Cap	-	$28,628,321
88	2104	-	CPI w/ Cap	-	$29,344,029
89	2105	-	CPI w/ Cap	-	$30,077,630
90	2106	-	-	10%	$33,085,393
91	2107	-	CPI w/ Cap	-	$33,912,528
92	2108	-	CPI w/ Cap	-	$34,760,341
93	2109	-	CPI w/ Cap	-	$35,629,349
94	2110	-	CPI w/ Cap	-	$36,520,083
95	2111	-	CPI w/ Cap	-	$37,433,085
96	2112	-	CPI w/ Cap	-	$38,368,912
97	2113	-	CPI w/ Cap	-	$39,328,135
98	2114	-	CPI w/ Cap	-	$40,311,338
99	2115	-	CPI w/ Cap	-	$41,319,122

Notes

All numbers are illustrative, representing a specific scenario.

Actual numbers may vary

[1] See Table 2B for more detailed calculations of Base Rent Adjustments in the 20th, 45th and 70th Project Lease Years

TABLE 2B

Exhibit I

Examples of Calculations of Base Rent Escalations

(for illustrative purposes only)

Base Rent Adjustments in the 20th, 45th and 70th Project Lease Years Phase 1

DDA Exhibit G-1 Section 3.3.2

LINE	Reference Per DDA Exhibit G-1			Phase 1 Rent Adjustments
Base Rent Adjustment in the 20th Lease Year		**DDA Exhibit G-1 Section 3.3.2(a)**		
1		Land Acres		8.0
2		Tasman Parcels Fee Fair Market Value in Year 20	*Illustrative*	$40,000,000
3		Per Acre		*$5,000,000*
4		Per Land Square Foot		*$114.78*
5		Multiply Line 2 By 6.5%		$2,600,000
6		The Greater of Line 5 and $3,000,000		$3,000,000
7		The Lesser of Line 6 and $3,500,000		$3,000,000
8		**Base Rent Adjustment in the 20th Lease Year - Line 7**		**$3,000,000**
Base Rent Adjustment in the 45th Lease Year		**DDA Exhibit G-1 Section 3.3.2(b)**		
9		Land Acres		8.0
10	3.3.2(b)(i)	Tasman Parcels Fee Fair Market Value in Year 45	*Illustrative*	$64,000,000
11		Per Acre		*$8,000,000*
12		Per Land Square Foot		*$183.65*
13		Multiply Line 10 By 6.5%		$4,160,000
14	3.3.2(b)(ii)	Base Rent For Year 44		$6,955,455
15		Multiple Line 14 by 110%		$7,651,001
16		The Greater of Lines 13, and 15		$7,651,001
17		**Base Rent Adjustment in the 45th Lease Year - Line 16**		**$7,651,001**
Base Rent Adjustment in the 70th Lease Year		**DDA Exhibit G-1 Section 3.3.2(b)**		
18		Land Acres		8.0
19	3.3.2(b)(i)	Tasman Parcels Fee Fair Market Value in Year 70	*Illustrative*	$96,000,000
20		Per Acre		*$12,000,000*
21		Per Land Square Foot		*$275.48*
22		Multiply Line 19 By 6.5%		$6,240,000
23	3.3.2(b)(ii)	Base Rent For Year 69		$15,937,811
24		Multiple Line 23 by 110%		$17,531,592
25		The Greater of Lines 22, and 24		$17,531,592
26		**Base Rent Adjustment in the 70th Lease Year - Line 25**		**$17,531,592**

Notes

All numbers are illustrative, representing a specific scenario. Actual numbers may vary

TABLE 3A

Exhibit I

Examples of Calculations of Base Rent Escalations

(for illustrative purposes only)

Ground Lease Base Rent Payments Phase 2 - 7

Per DDA Sections 4.8(c) & (d), 6, and Exhibit G-2 Article 3

	TOTAL Phase 2 - 7	Phase 2	Phase 2A	Phase 3	Phase 4	Phase 5	Phase 6	Phase 7
Phasing								
Illustrative Take Down		2018	2021	2022	2025	2028	2030	2032
Allowable Square Footage								
Original Allowable Square Footage Per MCP	8,291,400	1,419,800	NA	1,419,800	1,419,800	1,440,000	1,296,000	1,296,000
Illustrative Actual Allowable Square Footage	8,291,400	1,419,800	NA	1,419,800	1,419,800	1,440,000	1,296,000	1,296,000
	100%	*100%*	*NA*	*100%*	*100%*	*100%*	*100%*	*100%*
Initial Annual Base Rent								
Base Rent Per DDA Section 6.1.8		$1,500,000	$750,000	$500,000	$750,000	$750,000	$875,000	$875,000
Base Rent After Adjusted Per DDA 6.1.9(a)		$1,500,000	$750,000	$500,000	$750,000	$750,000	$875,000	$875,000
Base Rent After Increase Per DDA 6.1.9(d)		$1,500,000	$750,000	$500,000	$750,000	$772,500	$956,136	$1,014,365
Phase 2A Rent Re-Allocation								
Illsutrative After 2 Years Per DDA 4.8(c) & (d)		75%	NA	25%	-	-	-	-
Illustrative Base Rent After Re-Allocation		$2,335,667	$0	$713,919	-	-	-	-

Project Lease Year	Illustrative Year	Base Rent Escalations Regular DDA G-2 3.2	Periodic [1,2] DDA G-2 3.3	Phase 2 - 7 Aggregate Rent Phase 2 - 7	Annual Rent Payments Per DDA Section 4.8(d), Section 6, and Exhibit G-2 Article 3 *(Illustrative Example)* Phase 2	Phase 2A	Phase 3	Phase 4	Phase 5	Phase 6	Phase 7
1	2017	-	-	-	-	-	-	-	-	-	-
2	2018	3%	-	$1,500,000	$1,500,000	-	-	-	-	-	-
3	2019	3%	-	$1,545,000	$1,545,000	-	-	-	-	-	-
4	2020	3%	-	$1,591,350	$1,591,350	-	-	-	-	-	-
5	2021	3%	-	$2,389,091	$1,639,091	$750,000	-	-	-	-	-
6	2022	3%	-	$2,960,763	$1,688,263	$772,500	$500,000	-	-	-	-
7	2023	3%	-	$3,049,586	$2,335,667	$0	$713,919	-	-	-	-
8	2024	3%	-	$3,141,074	$2,405,737	$0	$735,336	-	-	-	-
9	2025	3%	-	$3,985,306	$2,477,910	$0	$757,396	$750,000	-	-	-
10	2026	3%	-	$4,104,865	$2,552,247	$0	$780,118	$772,500	-	-	-
11	2027	3%	-	$4,228,011	$2,628,814	$0	$803,522	$795,675	-	-	-
12	2028	3%	-	$5,127,351	$2,707,679	$0	$827,627	$819,545	$772,500	-	-
13	2029	3%	-	$5,281,172	$2,788,909	$0	$852,456	$844,132	$795,675	-	-
14	2030	3%	-	$6,395,743	$2,872,576	$0	$878,030	$869,456	$819,545	$956,136	-
15	2031	-	10%	$7,035,318	$3,159,834	$0	$965,833	$956,401	$901,500	$1,051,750	-
16	2032	3%	-	$8,260,742	$3,254,629	$0	$994,808	$985,093	$928,545	$1,083,302	$1,014,365
17	2033	3%	-	$8,508,564	$3,352,268	$0	$1,024,652	$1,014,646	$956,401	$1,115,801	$1,044,796
18	2034	3%	-	$8,763,821	$3,452,836	$0	$1,055,392	$1,045,085	$985,093	$1,149,275	$1,076,140
19	2035	3%	-	$9,026,736	$3,556,421	$0	$1,087,054	$1,076,438	$1,014,646	$1,183,754	$1,108,424
20	2036	3%	-	$9,297,538	$3,663,113	$0	$1,119,665	$1,108,731	$1,045,085	$1,219,266	$1,141,677
21	2037	3%	-	$9,576,464	$3,773,007	$0	$1,153,255	$1,141,993	$1,076,438	$1,255,844	$1,175,927
22	2038	3%	-	$9,863,758	$3,886,197	$0	$1,187,853	$1,176,253	$1,108,731	$1,293,520	$1,211,205
23	2039	3%	-	$10,159,671	$4,002,783	$0	$1,223,488	$1,211,540	$1,141,993	$1,332,325	$1,247,541
24	2040	3%	-	$10,464,461	$4,122,866	$0	$1,260,193	$1,247,887	$1,176,253	$1,372,295	$1,284,967
25	2041	-	10%	$11,510,907	$4,535,153	$0	$1,386,212	$1,372,675	$1,293,878	$1,509,524	$1,413,464
26	2042	3%	-	$11,856,234	$4,671,208	$0	$1,427,799	$1,413,855	$1,332,694	$1,554,810	$1,455,868
27	2043	3%	-	$12,211,921	$4,811,344	$0	$1,470,633	$1,456,271	$1,372,675	$1,601,454	$1,499,544
28	2044	3%	-	$12,578,279	$4,955,684	$0	$1,514,752	$1,499,959	$1,413,855	$1,649,498	$1,544,530
29	2045	3%	-	$12,955,627	$5,104,355	$0	$1,560,194	$1,544,958	$1,456,271	$1,698,983	$1,590,866
30	2046	3%	-	$13,344,296	$5,257,485	$0	$1,607,000	$1,591,307	$1,499,959	$1,749,952	$1,638,592
31	2047	3%	-	$13,744,625	$5,415,210	$0	$1,655,210	$1,639,046	$1,544,958	$1,802,451	$1,687,750
32	2048	3%	-	$14,156,963	$5,577,666	$0	$1,704,866	$1,688,217	$1,591,307	$1,856,525	$1,738,382
33	2049	3%	-	$14,581,672	$5,744,996	$0	$1,756,012	$1,738,864	$1,639,046	$1,912,220	$1,790,534
34	2050	3%	-	$15,019,122	$5,917,346	$0	$1,808,693	$1,791,030	$1,688,217	$1,969,587	$1,844,250
35	2051	-	10%	$16,521,035	$6,509,081	$0	$1,989,562	$1,970,133	$1,857,039	$2,166,546	$2,028,674
36	2052	3%	-	$17,016,666	$6,704,353	$0	$2,049,249	$2,029,237	$1,912,750	$2,231,542	$2,089,535
37	2053	3%	-	$17,527,166	$6,905,484	$0	$2,110,726	$2,090,114	$1,970,133	$2,298,488	$2,152,221
38	2054	3%	-	$18,052,981	$7,112,648	$0	$2,174,048	$2,152,817	$2,029,237	$2,367,443	$2,216,787
39	2055	3%	-	$18,594,570	$7,326,028	$0	$2,239,269	$2,217,402	$2,090,114	$2,438,466	$2,283,291
40	2056	3%	-	$19,152,407	$7,545,809	$0	$2,306,448	$2,283,924	$2,152,817	$2,511,620	$2,351,790
41	2057	3%	-	$19,726,979	$7,772,183	$0	$2,375,641	$2,352,442	$2,217,402	$2,586,969	$2,422,343
42	2058	3%	-	$20,318,789	$8,005,348	$0	$2,446,910	$2,423,015	$2,283,924	$2,664,578	$2,495,014
43	2059	3%	-	$20,928,352	$8,245,509	$0	$2,520,318	$2,495,705	$2,352,442	$2,744,515	$2,569,864
44	2060	3%	-	$21,556,203	$8,492,874	$0	$2,595,927	$2,570,576	$2,423,015	$2,826,851	$2,646,960
45	2061	-	3.3.2(b) Adj	$49,778,671	$8,492,874	$0	$5,137,130	$5,260,667	$12,220,000	$9,334,000	$9,334,000

TABLE 3A

Exhibit I

Examples of Calculations of Base Rent Escalations

(for illustrative purposes only)

Ground Lease Base Rent Payments Phase 2 - 7

Per DDA Sections 4.8(c) & (d), 6, and Exhibit G-2 Article 3

Project Lease Year	Illustrative Year	Base Rent Escalations Regular DDA G-2 3.2	Base Rent Escalations Periodic [1,2] DDA G-2 3.3	Phase 2 - 7 Aggregate Rent Phase 2 - 7	Phase 2	Phase 2A	Phase 3	Phase 4	Phase 5	Phase 6	Phase 7
				Annual Rent Payments Per DDA Section 4.8(d), Section 6, and Exhibit G-2 Article 3 *(Illustrative Example)*							
45	2061	-	3.3.2(b) Adj	$49,778,671	$8,492,874	$0	$5,137,130	$5,260,667	$12,220,000	$9,334,000	$9,334,000
46	2062	CPI w/ Cap	-	$51,023,138	$8,705,196	$0	$5,265,558	$5,392,183	$12,525,500	$9,567,350	$9,567,350
47	2063	CPI w/ Cap	-	$52,298,716	$8,922,826	$0	$5,397,197	$5,526,988	$12,838,638	$9,806,534	$9,806,534
48	2064	CPI w/ Cap	-	$53,606,184	$9,145,897	$0	$5,532,127	$5,665,163	$13,159,603	$10,051,697	$10,051,697
49	2065	CPI w/ Cap	-	$54,946,339	$9,374,544	$0	$5,670,430	$5,806,792	$13,488,594	$10,302,990	$10,302,990
50	2066	CPI w/ Cap	-	$56,319,997	$9,608,908	$0	$5,812,191	$5,951,961	$13,825,808	$10,560,564	$10,560,564
51	2067	CPI w/ Cap	-	$57,727,997	$9,849,130	$0	$5,957,496	$6,100,761	$14,171,454	$10,824,578	$10,824,578
52	2068	CPI w/ Cap	-	$59,171,197	$10,095,358	$0	$6,106,433	$6,253,280	$14,525,740	$11,095,193	$11,095,193
53	2069	-	10%	$65,088,317	$11,104,894	$0	$6,717,077	$6,878,607	$15,978,314	$12,204,712	$12,204,712
54	2070	CPI w/ Cap	-	$66,715,524	$11,382,517	$0	$6,885,004	$7,050,573	$16,377,772	$12,509,830	$12,509,830
55	2071	CPI w/ Cap	-	$68,383,413	$11,667,080	$0	$7,057,129	$7,226,837	$16,787,216	$12,822,576	$12,822,576
56	2072	CPI w/ Cap	-	$70,092,998	$11,958,757	$0	$7,233,557	$7,407,508	$17,206,896	$13,143,140	$13,143,140
57	2073	CPI w/ Cap	-	$71,845,323	$12,257,726	$0	$7,414,396	$7,592,696	$17,637,069	$13,471,719	$13,471,719
58	2074	CPI w/ Cap	-	$73,641,456	$12,564,169	$0	$7,599,756	$7,782,513	$18,077,996	$13,808,512	$13,808,512
59	2075	CPI w/ Cap	-	$75,482,492	$12,878,273	$0	$7,789,750	$7,977,076	$18,529,945	$14,153,724	$14,153,724
60	2076	CPI w/ Cap	-	$77,369,555	$13,200,230	$0	$7,984,493	$8,176,503	$18,993,194	$14,507,567	$14,507,567
61	2077	-	10%	$85,106,510	$14,520,253	$0	$8,782,943	$8,994,153	$20,892,514	$15,958,324	$15,958,324
62	2078	CPI w/ Cap	-	$87,234,173	$14,883,259	$0	$9,002,516	$9,219,007	$21,414,826	$16,357,282	$16,357,282
63	2079	CPI w/ Cap	-	$89,415,027	$15,255,340	$0	$9,227,579	$9,449,482	$21,950,197	$16,766,214	$16,766,214
64	2080	CPI w/ Cap	-	$91,650,403	$15,636,724	$0	$9,458,269	$9,685,719	$22,498,952	$17,185,370	$17,185,370
65	2081	CPI w/ Cap	-	$93,941,663	$16,027,642	$0	$9,694,725	$9,927,862	$23,061,426	$17,615,004	$17,615,004
66	2082	CPI w/ Cap	-	$96,290,204	$16,428,333	$0	$9,937,093	$10,176,059	$23,637,961	$18,055,379	$18,055,379
67	2083	CPI w/ Cap	-	$98,697,460	$16,839,041	$0	$10,185,521	$10,430,460	$24,228,910	$18,506,763	$18,506,763
68	2084	CPI w/ Cap	-	$101,164,896	$17,260,017	$0	$10,440,159	$10,691,222	$24,834,633	$18,969,433	$18,969,433
69	2085	CPI w/ Cap	-	$103,694,018	$17,691,518	$0	$10,701,163	$10,958,502	$25,455,499	$19,443,668	$19,443,668
70	2086	-	3.3.2(c) Adj	$114,775,068	$19,460,670	$0	$11,771,279	$12,766,000	$28,001,049	$21,388,035	$21,388,035
71	2087	CPI w/ Cap	-	$117,644,445	$19,947,186	$0	$12,065,561	$13,085,150	$28,701,075	$21,922,736	$21,922,736
72	2088	CPI w/ Cap	-	$120,585,556	$20,445,866	$0	$12,367,200	$13,412,279	$29,418,602	$22,470,805	$22,470,805
73	2089	CPI w/ Cap	-	$123,600,195	$20,957,013	$0	$12,676,380	$13,747,586	$30,154,067	$23,032,575	$23,032,575
74	2090	CPI w/ Cap	-	$126,690,200	$21,480,938	$0	$12,993,290	$14,091,275	$30,907,919	$23,608,389	$23,608,389
75	2091	CPI w/ Cap	-	$129,857,455	$22,017,962	$0	$13,318,122	$14,443,557	$31,680,617	$24,198,599	$24,198,599
76	2092	CPI w/ Cap	-	$133,103,891	$22,568,411	$0	$13,651,075	$14,804,646	$32,472,632	$24,803,564	$24,803,564
77	2093	CPI w/ Cap	-	$136,431,488	$23,132,621	$0	$13,992,352	$15,174,762	$33,284,448	$25,423,653	$25,423,653
78	2094	CPI w/ Cap	-	$139,842,275	$23,710,936	$0	$14,342,160	$15,554,131	$34,116,559	$26,059,244	$26,059,244
79	2095	CPI w/ Cap	-	$143,338,332	$24,303,710	$0	$14,700,714	$15,942,985	$34,969,473	$26,710,725	$26,710,725
80	2096	-	10%	$157,672,166	$26,734,081	$0	$16,170,786	$17,537,283	$38,466,420	$29,381,798	$29,381,798
81	2097	CPI w/ Cap	-	$161,613,970	$27,402,433	$0	$16,575,056	$17,975,715	$39,428,081	$30,116,343	$30,116,343
82	2098	CPI w/ Cap	-	$165,654,319	$28,087,494	$0	$16,989,432	$18,425,108	$40,413,783	$30,869,251	$30,869,251
83	2099	CPI w/ Cap	-	$169,795,677	$28,789,681	$0	$17,414,168	$18,885,736	$41,424,128	$31,640,982	$31,640,982
84	2100	CPI w/ Cap	-	$174,040,569	$29,509,423	$0	$17,849,522	$19,357,879	$42,459,731	$32,432,007	$32,432,007
85	2101	CPI w/ Cap	-	$178,391,583	$30,247,159	$0	$18,295,760	$19,841,826	$43,521,224	$33,242,807	$33,242,807
86	2102	CPI w/ Cap	-	$182,851,373	$31,003,337	$0	$18,753,154	$20,337,872	$44,609,255	$34,073,877	$34,073,877
87	2103	CPI w/ Cap	-	$187,422,657	$31,778,421	$0	$19,221,983	$20,846,319	$45,724,486	$34,925,724	$34,925,724
88	2104	CPI w/ Cap	-	$192,108,223	$32,572,881	$0	$19,702,532	$21,367,477	$46,867,598	$35,798,867	$35,798,867
89	2105	CPI w/ Cap	-	$196,910,929	$33,387,203	$0	$20,195,096	$21,901,664	$48,039,288	$36,693,839	$36,693,839
90	2106	-	10%	$216,602,022	$36,725,924	$0	$22,214,605	$24,091,830	$52,843,217	$40,363,223	$40,363,223
91	2107	CPI w/ Cap	-	$222,017,072	$37,644,072	$0	$22,769,970	$24,694,126	$54,164,297	$41,372,304	$41,372,304
92	2108	CPI w/ Cap	-	$227,567,499	$38,585,174	$0	$23,339,220	$25,311,479	$55,518,405	$42,406,611	$42,406,611
93	2109	CPI w/ Cap	-	$233,256,687	$39,549,803	$0	$23,922,700	$25,944,266	$56,906,365	$43,466,777	$43,466,777
94	2110	CPI w/ Cap	-	$239,088,104	$40,538,548	$0	$24,520,768	$26,592,872	$58,329,024	$44,553,446	$44,553,446
95	2111	CPI w/ Cap	-	$245,065,306	$41,552,012	$0	$25,133,787	$27,257,694	$59,787,250	$45,667,282	$45,667,282
96	2112	CPI w/ Cap	-	$251,191,939	$42,590,812	$0	$25,762,132	$27,939,137	$61,281,931	$46,808,964	$46,808,964
97	2113	CPI w/ Cap	-	$257,471,738	$43,655,582	$0	$26,406,185	$28,637,615	$62,813,979	$47,979,188	$47,979,188
98	2114	CPI w/ Cap	-	$263,908,531	$44,746,972	$0	$27,066,339	$29,353,555	$64,384,328	$49,178,668	$49,178,668
99	2115	CPI w/ Cap	-	$270,506,244	$45,865,646	$0	$27,742,998	$30,087,394	$65,993,937	$50,408,135	$50,408,135

Notes

All numbers are illustrative, representing a specific scenario. Actual numbers may vary

[1] See Table 3B for more detailed calculations of Base Rent Adjustment in the 45th Project Lease Year

[2] See Table 3C for more detailed calculations of Base Rent Adjustment in the 70th Project Lease Year

TABLE 3B

Exhibit I

Examples of Calculations of Base Rent Escalations

(for illustrative purposes only)

Base Rent Adjustment in the 45th Project Lease Year Phase 2-7

DDA Exhibit G-2 Section 3.3.2

LINE	Reference Per DDA Exhibit G-2		Aggregate Total Phase 2-7	Phase 2	Phase 2A	Phase 3	Phase 4	Phase 5	Phase 6	Phase 7
Premises Overview - *Illustrative*										
1	3.3.2(a)(ii)	Allowed Square Footage	8,291,400	1,419,800	NA	1,419,800	1,419,800	1,440,000	1,296,000	1,296,000
2	3.3.2(a)(i)	Premium Costs	$800,000,000	$175,000,000	NA	$175,000,000	$150,000,000	$100,000,000	$100,000,000	$100,000,000
3		*Premium Costs Per Allowed Square Footage*	*$96.49*	*$123.26*	*NA*	*$123.26*	*$105.65*	*$69.44*	*$77.16*	*$77.16*
4	Exhibit H	Airspace Parcel Fee Fair Market Value in Year 45	$1,576,800,000	$230,933,333	NA	$230,933,333	$230,933,333	$396,800,000	$243,600,000	$243,600,000
5		*Land Acres*	*197.1*	*28.9*	*NA*	*28.9*	*28.9*	*49.6*	*30.5*	*30.5*
6		*Per Acre*	*$8,000,000*	*$8,000,000*	*NA*	*$8,000,000*	*$8,000,000*	*$8,000,000*	*$8,000,000*	*$8,000,000*
7		*Per Land Square Foot*	*$183.65*	*$183.65*	*NA*	*$183.65*	*$183.65*	*$183.65*	*$183.65*	*$183.65*
Base Rent Adjustment in the 45th Project Lease Year DDA Exhibit G-2 Section 3.3.2(b) - The Greatest of Lines 13, 18, and 20										
8	3.3.2(b)(i)	Line 4 Divided by Line 1		$162.65	NA	$162.65	$162.65	$275.56	$187.96	$187.96
9		Cap Allowed Fair Market Value of $200		$200.00	NA	$200.00	$200.00	$200.00	$200.00	$200.00
10		The Lesser of Line 8 and Line 9		$162.65	NA	$162.65	$162.65	$200.00	$187.96	$187.96
11		Line 3 Premium Costs Per Allowable Square Footage		$123.26	NA	$123.26	$105.65	$69.44	$77.16	$77.16
12		Line 10 Less Line 11		$39.40	NA	$39.40	$57.00	$130.56	$110.80	$110.80
13		Multiple Line 12 by 6.5%		$2.56	NA	$2.56	$3.71	$8.49	$7.20	$7.20
14	3.3.2(b)(ii)	Line 1 Allowed Square Footage allocated to Premises		1,419,800	NA	1,419,800	1,419,800	1,440,000	1,296,000	1,296,000
15		Aggregate Project Allowed Square Footage		8,291,400	NA	8,291,400	8,291,400	8,291,400	8,291,400	8,291,400
16		Line 14 Divided by Line 15		0.1712	NA	0.1712	0.1712	0.1737	0.1563	0.1563
17		$30,000,000 multiplied by Line 16 (1)		$5,137,130	NA	$5,137,130	$5,137,130	$5,210,218	$4,689,196	$4,689,196
18		Line 17 Divided by Line 1		$3.62	NA	$3.62	$3.62	$3.62	$3.62	$3.62
19	3.3.2(b)(iii)	Base Rent For Year 44		$8,492,874	NA	$2,595,927	$2,570,576	$2,423,015	$2,826,851	$2,646,960
20		Line 19 Divided by Line 1		$5.98	NA	$1.83	$1.81	$1.68	$2.18	$2.04
21		**The Greatest of Lines 13, 18, and 20**		**$5.98**	**NA**	**$3.62**	**$3.71**	**$8.49**	**$7.20**	**$7.20**
22		**Base Rent Year 45 - Line 1 Multiplied by Line 21**	**$49,778,671**	**$8,492,874**	**$0**	**$5,137,130**	**$5,260,667**	**$12,220,000**	**$9,334,000**	**$9,334,000**

Notes

All numbers are illustrative, representing a specific scenario. Actual numbers may vary

[1] $30,000,000 referenced in Line 17 may change per DDA Exhibit G-2 Section 3.3.3

TABLE 3C

Exhibit I

Examples of Calculations of Base Rent Escalations

(for illustrative purposes only)

Base Rent Adjustment in the 70th Project Lease Year Phase 2-7

DDA Exhibit G-2 Section 3.3.2

LINE	Reference Per DDA Exhibit G-2		Aggregate Total Phase 2-7	Phase 2	Phase 2A	Phase 3	Phase 4	Phase 5	Phase 6	Phase 7
Premises Overview - *Illustrative*										
1	3.3.2(a)(ii)	Allowed Square Footage	8,291,400	1,419,800	NA	1,419,800	1,419,800	1,440,000	1,296,000	1,296,000
2	3.3.2(a)(i)	Premium Costs	$800,000,000	$175,000,000	NA	$175,000,000	$150,000,000	$100,000,000	$100,000,000	$100,000,000
3		*Premium Costs Per Allowed Square Footage*	*$96.49*	*$123.26*	*NA*	*$123.26*	*$105.65*	*$69.44*	*$77.16*	*$77.16*
4	Exhibit H	Airspace Parcel Fee Fair Market Value in Year 70	$2,365,200,000	$346,400,000	NA	$346,400,000	$346,400,000	$595,200,000	$365,400,000	$365,400,000
5		*Land Acres*	*197.1*	*28.9*	*NA*	*28.9*	*28.9*	*49.6*	*30.5*	*30.5*
6		*Per Acre*	*$12,000,000*	*$12,000,000*	*NA*	*$12,000,000*	*$12,000,000*	*$12,000,000*	*$12,000,000*	*$12,000,000*
7		*Per Land Square Foot*	*$275.48*	*$275.48*	*NA*	*$275.48*	*$275.48*	*$275.48*	*$275.48*	*$275.48*
Base Rent Adjustment in the 45th Project Lease Year DDA Exhibit G-2 Section 3.3.2(b) - The Greater of Lines 13, and 16										
8	3.3.2(c)(i)	Line 4 Divided by Line 1		$243.98	NA	$243.98	$243.98	$413.33	$281.94	$281.94
9		Cap Allowed Fair Market Value of $350		$350.00	NA	$350.00	$350.00	$350.00	$350.00	$350.00
10		The Lesser of Line 8 and Line 9		$243.98	NA	$243.98	$243.98	$350.00	$281.94	$281.94
11		Line 3 Premium Costs Per Allowable Square Footage		$123.26	NA	$123.26	$105.65	$69.44	$77.16	$77.16
12		Line 10 Less Line 11		$120.72	NA	$120.72	$138.33	$280.56	$204.78	$204.78
13		Multiple Line 12 by 6.5%		$7.85	NA	$7.85	$8.99	$18.24	$13.31	$13.31
14	3.3.2(b)(ii)	Base Rent For Year 69		$17,691,518	NA	$10,701,163	$10,958,502	$25,455,499	$19,443,668	$19,443,668
15		Line 14 Divided by Line 1		$12.46	NA	$7.54	$7.72	$17.68	$15.00	$15.00
16		Multiple Line 15 by 110%		$13.71	NA	$8.29	$8.49	$19.45	$16.50	$16.50
17		**The Greater of Lines 13, and 16**		**$13.71**	**NA**	**$8.29**	**$8.99**	**$19.45**	**$16.50**	**$16.50**
18		**Base Rent Year 45 - Line 1 Multiplied by Line 17**	**$114,775,068**	**$19,460,670**	**$0**	**$11,771,279**	**$12,766,000**	**$28,001,049**	**$21,388,035**	**$21,388,035**

Notes

All numbers are illustrative, representing a specific scenario. Actual numbers may vary

EXHIBIT J

Insurance Requirements

Developer, and its subcontractor(s), if any, shall purchase and maintain the insurance policies set forth below on all of its operations under this Agreement at its/their sole cost and expense. Such policies shall be maintained for the full term of this Agreement and the related warranty period (if applicable). For purposes of the insurance policies required under this Agreement, the term "City" shall include the duly elected or appointed council members, commissioners, officers, agents, employees, and volunteers of the City of Santa Clara, California, individually or collectively.

1. **MINIMUM SCOPE AND LIMITS OF REQUIRED INSURANCE POLICIES.**

   The following policies shall be maintained with insurers authorized to do business in the State of California and shall be issued under forms of policies satisfactory to the City:

   a. **COMMERCIAL GENERAL LIABILITY INSURANCE POLICY ("CGL").**

      Policy shall include coverage at least as broad as set forth in Insurance Services Office (herein "ISO") Commercial General Liability coverage (Occurrence Form CG 0001) with policy limits not less than the following:

      $5,000,000 each occurrence;
      $5,000,000 for personal injury liability;
      $5,000,000 aggregate for products-completed operations; and,
      $5,000,000 general aggregate.

   b. **BUSINESS AUTOMOBILE LIABILITY POLICY ("BAL").**

      Policy shall include coverage at least as broad as set forth in Insurance Services Office Business Automobile Liability coverage, Symbol 1 "Any Auto" (Form CA 0001). This policy shall include a minimum combined single limit of not less than two million ($2,000,000) dollars for each accident, for bodily injury and/or property damage.

   c. **WORKERS' COMPENSATION AND EMPLOYERS' LIABILITY INSURANCE POLICY ("WC/EL").** (A Workers' Compensation Policy or adequate levels of self-insurance are required only if Developer has employees or volunteers.)

      These policies shall include at least the following coverages and policy limits:

EXHIBIT J

Insurance Requirements

1. Workers' Compensation insurance as required by the laws of the State of California; and

2. Employer's Liability insurance with coverage amounts not less than one million ($1,000,000) dollars each accident/Bodily Injury (herein "BI"); one million ($1,000,000) dollars policy limit BI by disease; and, one million ($1,000,000) dollars each employee BI by disease.

2. **DEDUCTIBLES AND SELF-INSURANCE RETENTIONS.**

Any deductibles and/or self-insured retentions which apply to any of the insurance policies referred to above shall be declared in writing by Developer and approved by the City before work is begun pursuant to this Agreement. At the option of the City, Developer shall provide a financial guarantee satisfactory to the City guaranteeing payment of losses and related investigations, claim administration, and/or defense expenses.

3. **ENDORSEMENTS.**

All of the following clauses and endorsements, or similar provisions, are required to be made a part of the required insurance policies indicated in parentheses below:

a. Additional Insureds The City of Santa Clara, its City Council, commissions, officers and employees are hereby added as additional insureds in respect to liability arising out of the Owner/Developer's work for the City, providing coverage at least as broad as Insurance Services Office (ISO) Endorsement CG 2010, or insurer's equivalent (CGL);

b. General Aggregate The general aggregate limits shall provide coverage at least as broad as Insurance Services Office (ISO) Endorsement CG 2503, or insurer's equivalent (CGL);

c. Primary Insurance This policy shall be considered primary insurance with respect to any other valid and collectible insurance City may possess, including any self-insured retention City may have, and any other insurance City does possess shall be considered excess insurance only and shall not be called upon to contribute with this insurance (CGL & BAL); and

d. Notice of Cancellation No cancellation shall be effective until written notice has been given at least thirty (30) days prior to the effective date of such cancellation to City at the address set forth below, except the insurer may give ten (10) days' notice for non-payment of premium (CGL, BAL, WC/EL & PL).

EXHIBIT J

Insurance Requirements

4. **ABSENCE OF INSURANCE COVERAGE.**

City may direct Developer to immediately cease all activities with respect to this Agreement if the City determines that Developer fails to carry, in full force and effect, all insurance policies or self-insurance with coverages at or above the limits specified in this Agreement. Any delays or expense caused due to stopping of work and change of insurance shall be considered Developer's delay and expense. At the City's discretion, under conditions of lapse, City may purchase appropriate insurance and charge all costs related to such policy to Developer.

5. **PROOF OF INSURANCE COVERAGE AND COVERAGE VERIFICATION.**

A Certificate of Insurance, on an Accord form, and implementing endorsements shall be provided to City by each of Developer's insurance companies as evidence of the stipulated coverages prior to commencement of work under this Agreement, and annually thereafter at least ten (10) days prior to termination of existing coverage for the term of this Agreement. City reserves the right to require complete, certified copies of all required insurance policies, including endorsements affecting the coverage required by this Agreement at any time. All of the insurance companies providing insurance for Developer shall have, and provide evidence of, a Best Rating Service rate of "A VI" or above.

The Certificate of Insurance and coverage verification and all other notices related to cancellation shall be mailed to:

Office of the City Clerk
Attention: Director of Planning & Inspection
1500 Warburton Avenue
Santa Clara, California 95050

102099864.1

EXHIBIT K
FORM OF RECOGNITION AGREEMENT

RECOGNITION, NON-DISTURBANCE AND ATTORNMENT AGREEMENT

THIS AGREEMENT (this "Agreement"), dated as of _____, ____ between CITY OF SANTA CLARA, CALIFORNIA, a chartered municipal corporation (the "Ground Lessor"), and _____, a _____ (the "Tenant").

WITNESSETH:

WHEREAS, Ground Lessor is the owner in fee of the property (the "Premises") more particularly described on Exhibit A attached hereto, and has leased the same to [*Related SPE*] (the "Landlord"), as tenant, pursuant to that certain Ground Lease (City Place Santa Clara – Phase [_]) dated as of _____, 20__ (said ground lease, as heretofore or hereafter amended or supplemented, the "Ground Lease"), a memorandum of which, dated _____, 20__, was recorded on _____, 20__ as Instrument No. _____ in the Official Records of Santa Clara County, California. Capitalized terms used herein but not defined herein shall have the meanings set forth in the Ground Lease;

WHEREAS, Tenant has entered into a lease dated _____, 20_, between Landlord, as sublandlord, and Tenant, as subtenant (said lease, as heretofore or hereafter amended, supplemented, extended, or otherwise modified, the "Lease"), with respect to a portion of the Premises (as more particularly described in the Lease as the "Premises", the "Demised Premises"); and

WHEREAS, Tenant and Ground Lessor desire to enter into this Agreement pursuant to which Ground Lessor agrees not to disturb Tenant's possession of the Demised Premises, and to recognize Tenant as a direct tenant of Ground Lessor, and Tenant agrees to attorn to Ground Lessor, under the terms of the Lease and this Agreement, in the event that Ground Lessor terminates the Ground Lease and succeeds to the interests of Landlord under the Lease.

NOW, THEREFORE, in consideration of the premises and the agreements of the parties contained herein, the parties hereto hereby covenant and agree as follows:

Section 1. Tenant acknowledges and agrees that the Lease is and shall be subject and subordinate to the Ground Lease and all renewals, amendments, modifications, consolidations, replacements and extensions thereof. Such subordination shall be effective and self-operative without the execution of any further instruments; however, Tenant shall confirm the provisions of this paragraph in writing from time to time upon written request from Ground Lessor.

Section 2. Ground Lessor hereby acknowledges and confirms that Tenant is a Qualifying Subtenant (as such term is defined in the Ground Lease) and designates the Lease as a Qualifying Sublease (as such term is defined in the Ground Lease).

Section 3. Ground Lessor and Tenant hereby agree that in the event Ground Lessor acquires or succeeds to the interest of Landlord under the Lease (the date upon which event occurs hereinafter being referred to as the "Succession Date"), then, provided that on the Succession Date no event of default exists and is continuing under the Lease which would permit

EXHIBIT K
FORM OF RECOGNITION AGREEMENT

Landlord to terminate the Lease or exercise any dispossess remedy provided for in the Lease, the Lease shall continue as a direct lease between Ground Lessor and Tenant upon all of the terms, covenants, conditions and agreements set forth in the Lease and remaining to be performed, with the same force and effect as if Ground Lessor, as landlord, and Tenant, as tenant, entered into a lease (on such terms, covenants and conditions, including any renewals thereof) as of the date of the termination of the Ground Lease, for a term equal to the unexpired term of the Lease. At the request of either party, Ground Lessor and Tenant shall execute and exchange an instrument confirming such direct lease relationship, but the failure of either party to execute such instrument shall not affect their rights and obligations with respect to said direct lease relationship. As of the Succession Date, Tenant agrees to be bound by said direct lease relationship and to fully and completely attorn to Ground Lessor and recognize Ground Lessor as its landlord and shall pay its rent, additional rent and all other sums due under the Lease at the address designated by Ground Lessor by written notice to Tenant from time to time. Notwithstanding the foregoing or anything else contained in this Agreement:

(a) Ground Lessor shall not be subject to any offsets or defenses that Tenant might have as to Landlord and shall not in any way or to any extent be liable to Tenant for any past act, breach or default on the part of Landlord under the Lease, and Tenant shall have no right to assert the same or any claims for damages arising therefrom against Landlord as its landlord, nor shall Ground Lessor be obligated to fund to, or for the benefit of, Tenant, any then undisbursed (as of the effective date of such recognition) tenant improvement or refurbishment allowance or other allowances or monetary concessions; and

(b) Ground Lessor shall not be required or obligated to credit Tenant with any rent, additional rent, security deposits, security or other amounts delivered or paid by Tenant to Landlord.

(c) Ground Lessor shall not be bound by any amendment, modification or supplement to the Lease which has not been consented to in writing by Ground Lessor, which consent Ground Lessor agrees not to unreasonably withhold.

Section 4. Whenever it is provided in this Agreement that a notice, demand, request, consent, approval or other communication (each, a "Notice") shall or may be given to or served upon either of the parties by the other, and whenever either of the parties shall desire to give or serve upon the other any Notice with respect hereto or the Premises, each such Notice shall be in writing and, any law or statute to the contrary notwithstanding, shall not be effective for any purpose unless given or served as follows: (a) by personal delivery (including by same day commercial courier service), with receipt acknowledged, (b) delivered by reputable, national overnight delivery service (with its confirmatory receipt therefor), next Business Day delivery specified, (c) sent by registered or certified United States mail, postage prepaid. or (d) sent by a telephonic facsimile transmitting machine (with the receipt of such transmittal acknowledged in writing or by telephone), with a confirmatory copy to be delivered thereafter by duplicate notice in accordance with any of clauses (a). (b) or (c) of this Section 4, in each case to the parties as follows:

Notices under this Agreement shall be addressed to the parties as follows:

EXHIBIT K
FORM OF RECOGNITION AGREEMENT

(a) If to Tenant:

_____
_____
_____
Attention: _____

With a copy to:

_____
_____
_____
Attention: _____

(b) If to Ground Lessor:

City of Santa Clara, California
_____
_____
_____
Attention: _____

With a copy to:

_____
_____
_____
Attention: _____

Either party may change the address(es) to which any such Notice is to be delivered by furnishing ten (10) days written notice of such change(s) to the other party in accordance with the provisions of this Section 4. The attorney for any party may send Notices on that party's behalf.

Every Notice shall be deemed to have been given or served (a) if given by hand or overnight delivery service, upon delivery thereof, (b) if given by telephonic facsimile transmitting machine, upon delivery by such means to the addressee, regardless of the timing of receipt of any confirmatory copy, and (c) if given by certified or registered mail, on the third (3rd) Business Day after the posting of the same, postage prepaid; in each case with failure to accept delivery to constitute delivery for such purpose.

Section 5. Tenant represents and warrants to Ground Lessor that Tenant has provided Ground Lessor with a true, correct and complete copy of the Lease, including all amendments, modifications, extensions and supplements thereto. Ground Lessor represents and warrants that the Ground Lessor has not delivered to Landlord any written notice of default under the Ground Lease that has not been cured as of the date hereof. Each party to this Agreement represents and warrants to each other party that it has full power and authority to

enter into and perform this Agreement and that the undersigned signatory is a duly authorized officer, signatory, member or partner (as applicable) of such party.

Section 6. Upon the request of either Tenant or Ground Lessor, Tenant or Ground Lessor, as the case may be, shall promptly execute and deliver to the other any further agreement or other instrument in recordable form reasonably acceptable to Tenant or Ground Lessor, as applicable, which may be necessary or appropriate to evidence such attornment or direct lease relationship, but the failure to do so shall not affect the rights and obligations of Tenant and Ground Lessor under this Agreement.

Section 7. This Agreement binds and benefits the parties and their respective successors and assigns.

Section 8. This Agreement may not be modified, amended or terminated unless in writing and duly executed by the party against whom the same is sought to be asserted and constitutes the entire agreement between the parties with respect to the subject matter hereof.

Section 9. As between Ground Lessor and Tenant only, in the event of inconsistencies between the terms and conditions of the Lease and the terms and conditions of this Agreement, the terms and conditions of this Agreement shall govern.

Section 10. This Agreement may be executed in any number of counterparts and by different parties hereto in separate counterparts, each of which when so executed shall be deemed to be an original and all of which taken together shall constitute but one and the same agreement.

Section 11. This Agreement shall be governed by the laws of the State of California.

Section 12. 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, the remainder of this Agreement, or the application of such term or provision 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.

[SIGNATURES ON NEXT PAGE]

EXHIBIT K
FORM OF RECOGNITION AGREEMENT

IN WITNESS WHEREOF, the parties hereto have duly executed this Agreement as of the day and year first above written.

GROUND LESSOR:

CITY OF SANTA CLARA, CALIFORNIA

By: _____
Name:
Title:

ACKNOWLEDGEMENT

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

STATE OF CALIFORNIA)
) ss.
COUNTY OF SANTA CLARA)

On _____ before me, _____, Notary Public, personally appeared _____, who proved to me on the basis of satisfactory evidence-to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

_____ (Seal)
Notary Public

EXHIBIT K
FORM OF RECOGNITION AGREEMENT

TENANT:

_____

By: _____
Name: _____
Title: _____

ACKNOWLEDGEMENT

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

STATE OF CALIFORNIA)
) ss.
COUNTY OF _____)

On _____ before me, _____, Notary Public, personally appeared _____, who proved to me on the basis of satisfactory evidence-to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

_____ (Seal)
Notary Public

EXHIBIT K
FORM OF RECOGNITION AGREEMENT

Exhibit A

Premises

[_____]

EXHIBIT L
NOTICE PARTIES

If to City:

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

With a copy to:

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

If to Tenant:

[_____]
[_____]
[_____]
[_____]
Attn: [_____]

With a copy to:

[_____]
[_____]
[_____]
[_____]
Attn: [_____]

102100273.1

EXHIBIT M

PRE-APPROVED ARBITRATORS LIST

Bruce Belding: http://www.thecca.net/profile/bruce-belding

Brad Bening, Esq. - http://wsblaw.net/Brad%20Bening%20Mediationpage%20FINAL.pdfHon.

Joseph Biafore, Jr. (ret.) - http://www.jamsadr.com/biafore/

Zela Claiborne, Esq.: http://www.jamsadr.com/claiborne/

Bruce A. Edwards, Esq. - http://www.jamsadr.com/Edwards/Construction/

Hon. Jamie Jacobs-May (ret.) - http://www.jamsadr.com/jacobs-may/

Hon. William Martin (ret.) - http://www.jamsadr.com/william-martin/

EXHIBIT N
FORM OF MEMORANDUM OF GROUND LEASE

RECORDING REQUESTED BY AND WHEN RECORDED MAIL TO:	
	(Space above this line for Recorder's use only)

MEMORANDUM OF GROUND LEASE
(CITY PLACE SANTA CLARA – PHASE [ ])

THIS MEMORANDUM OF GROUND LEASE (CITY PLACE SANTA CLARA – PHASE [ ]) (this "Memorandum") is made as of the ___ day of _____, 20__, by and between the CITY OF SANTA CLARA, CALIFORNIA, a chartered municipal corporation, as landlord (and any successor entities thereto, "Landlord") and [INSERT TENANT], a _____ ("Tenant").

W I T N E S S E T H:

WHEREAS, City and Tenant entered into that certain Ground Lease (City Place Santa Clara – Phase [ ]), dated as of the date hereof (the "Lease")

WHEREAS, pursuant to the Lease: (x) City has leased to Tenant, and Tenant has hired from City, the premises more particularly described on Exhibit A attached hereto and made a part hereof (the "Premises"), together with all easements, appurtenances and other rights and privileges now or hereafter belonging or appertaining to the Premises; [(y) City has granted and demised to Tenant certain non-exclusive easements, coupled with an interest, as more particularly described in the Lease] and (z) City has agreed to grant to Tenant an exclusive right to purchase from Landlord certain portions of the Premises in accordance with the terms of the Lease; [and]

[for Phases 2-7 only][WHEREAS, the Premises lie above the Landfill Parcel, as defined and more particularly described in the Lease and as described on Exhibit B attached hereto and made a part hereof, over and through which Tenant has various easements, as more particularly described in the Lease and in this Memorandum; and]

WHEREAS, in accordance with Section 27280 of the California Government Code, the parties desire to record this Memorandum summarizing certain (but not all) of the provisions, covenants and conditions set forth in the Lease.

NOW, THEREFORE, City and Tenant declare as follows:

1. The term of the Lease shall commence on the date hereof, and shall end on _____, 2___, unless such term shall sooner end pursuant to any

of the covenants, agreements, terms, provisions and limitations of the Lease or pursuant to law.

2. **[for Phases 2-7 only]**[Pursuant to and in accordance with Section 2.3 of the Lease, the City grants the following easements to Tenant, on terms and conditions more particularly described in the Lease (capitalized terms used but not defined herein shall have the meanings ascribed to such terms in the Lease):

   (a) An easement over, under, upon, in and through all portions of the Landfill and Landfill Parcel that underlie the Airspace Parcel for the construction, reconstruction, replacement, removal, relocation, maintenance, modification, repair, operation and use of (i) all pilings, infrastructure and other support mechanisms, improvements and equipment intended by Tenant to support, operate, maintain, secure, use or stabilize Improvements and Buildings constructed or planned to be constructed by Tenant under the DDA, the Lease or any other Authorization, (ii) utility facilities, lines, cable, equipment and other improvements necessary or convenient to facilitate the provision of utility and other services to the Premises, Buildings and Improvements thereon as Tenant may desire from time to time (including water, electricity, sewage, cable, internet and gas) to be constructed over, under, upon, in or though the Landfill Parcel and (iii) all other penetrations, installations, equipment and/or improvements from the Premises (or adjacent areas) into (or through) the Landfill Parcel that are permitted or required under the terms of the DDA, the Lease or any other Authorization or otherwise are necessary or convenient from time to time during the Term to enable, facilitate, enhance or provide for the economical and efficient construction, development, installation, maintenance, repair, removal, relocation, replacement, use, management, and operation of the Improvements, together with the right of access to the areas covered by this easement and areas immediately adjacent thereto as may be necessary or convenient for such purposes;

   (b) An easement over, under, upon, in and through the Project Site for the construction, development, reconstruction, replacement, relocation, maintenance, repair, operation and use by Tenant of Infrastructure Improvements contemplated by the Infrastructure Master Plan and/or that are required or permitted by the DDA, the Lease, any other Authorization or the CC&Rs to be built or installed, or caused to be built or installed, together with the right of access to the areas covered by this easement and areas immediately adjacent thereto as may be necessary or convenient for such purposes; provided, that the easement granted in this paragraph (b) shall not be deemed to encumber or be enforceable with respect to any portion of the Project Site that is subject to a ground lease from City covering all or any portion of the Project Site; and

(c) An easement over, under, upon, in and through the Landfill Parcel in order to allow Tenant, its agents or contractors to take such action as Tenant desires to ameliorate, mitigate, manage, remedy, remediate and/or repair any environmental, soils or other physical condition within the Landfill Parcel that (i) is causing damage to, or is threatening to cause damage to, any Improvements, pylons or other installations or equipment installed, operated or used by Tenant under Section 2.3.1 of the Lease or any Improvements or property located within the Premises or any business operated within the Improvements, or (ii) poses any form of threat to the health and safety of any occupants or visitors to the Premises, the Improvements (or any businesses operated therein) (or to any Subtenant) or that may otherwise interfere with the operation of the Premises or any business contained in the Premises.]

3. The Lease contains a purchase option given by City in favor of Tenant to acquire fee title to certain portions of the Premises and any and all buildings and improvements located thereon, pursuant to and in accordance with the provisions of Article 7 of the Lease.

4. The Lease contains a provision for the severance of the Premises and the execution and creation of one or more severed parcel leases, pursuant to and in accordance with Article 7 of the Lease.

5. This Memorandum shall be deemed terminated and of no further force or effect following the date upon which the Term of the Lease (as defined therein) shall have expired, in accordance with the terms of the Lease.

6. In the event of any inconsistency or conflict between the terms of this Memorandum and the terms and conditions of the Lease, the terms and conditions of the Lease shall control.

7. This Memorandum may be executed in any number of counterparts, each of which shall constitute an original, but all of which, taken together, shall constitute but one and the same instrument.

8. A copy of the Lease is maintained at the offices of City.

[Remainder of Page Intentionally Left Blank]

EXHIBIT N
FORM OF MEMORANDUM OF GROUND LEASE

IN WITNESS WHEREOF, this Memorandum has been duly executed by the parties hereto as of the day and year first above written.

CITY OF SANTA CLARA, CALIFORNIA,
a chartered municipal corporation

By:_____
Name:
Title:

ACKNOWLEDGEMENT

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

STATE OF CALIFORNIA)
) ss.
COUNTY OF SANTA CLARA)

On _____ before me, _____, Notary Public, personally appeared
_____, who proved to me on the basis of satisfactory evidence-to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

_____ (Seal)
Notary Public

[Signatures continue on following page]

EXHIBIT N
FORM OF MEMORANDUM OF GROUND LEASE

[TENANT],
a Delaware limited liability company

By:_____
Name:
Title:

ACKNOWLEDGEMENT

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

STATE OF CALIFORNIA)
) ss.
COUNTY OF _____)

On _____ before me, _____, Notary Public, personally appeared

_____, who proved to me on the basis of satisfactory evidence-to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

_____ (Seal)
Notary Public

Exhibit A

Premises

[To be attached upon execution]

Exhibit B

Landfill Parcel

[To be attached upon execution]

EXHIBIT H

MINIMUM REQUIREMENTS FOR MASTER CC&Rs

As a condition of approval for the first Final Map for the Project, Developer shall submit to City staff, and obtain administrative approval of, the Master CC&Rs in accordance with Section 6.2.1(c) of the DDA. The Master CC&Rs shall contain at a minimum the provisions set forth in this Exhibit H. Defined terms used but not defined below shall have the meanings set forth in the DDA.

Declarant: Related Santa Clara, LLC or its successor and assigns as Master Developer under the DDA ("**Master Developer**").

Property: The Airspace Parcels and the Tasman Parcels, as defined in the DDA (collectively, the "**Property**"). City will consent to recordation of the Master CC&Rs that are consistent with these minimum requirements on property owned by City and any other Airspace Parcels to be transferred to any third party. In addition, as described in Section 1.2.1 of the DDA, each Final Map will identify the Building parcels that are anticipated to be divided into and operated as separate condominium projects (each, a "**Building Parcel**").

Master Owners' Association and Condominium Owners' Associations: The Master CC&Rs shall designate a master owners' association (the "**Master Owners' Association**") comprised of the ground lessee or owner of each individual lot or condominium unit (but not including the City) within the portion of the Property covered by such Master CC&Rs. The Master CC&Rs will contemplate that each of the Building Parcels will also be subject to a Condominium Declaration of Covenants and Restrictions ("**Condominium CC&Rs**") to be recorded against each of the Building Parcels that will designate a condominium association (each, a "**Condominium Owners' Association**") comprised of the ground lessee or owner of each individual lot or condominium unit (but not including the City) within the portion of the Property covered by the Condominium CC&Rs.

Governing Documents: Master Developer shall record one overall set of Master CC&Rs, and such other annexations, declarations, public use easements and/or other instruments governing the common use, maintenance and obligations associated with the Property (collectively, the "**Governing Documents**") and may record one or more separate sets of Governing Documents against the commercial portions of the Property and the residential portions of the Property. City shall cooperate and approve the recordation of the Governing Documents in such form as is reasonably Approved by the City Manager in consultation with the City Attorney. The Master CC&Rs shall specify that they shall become applicable to each Phase in accordance with Section 6.6.2 of the DDA.

Easements, Operating Covenants and Use Restrictions. The Governing Documents will include the following: descriptions of the separately-held interests in the Property; descriptions of the reciprocal, joint use, non-exclusive, and exclusive easements between and among the holders of interests in the Property; covenants for collective management, administration,

operation, maintenance, repair, replacement and reconstruction of the common areas; the formation and operation of the Master Owners' Association; certain covenants and restrictions relative to the use of the easement areas, the Building Parcels and condominium projects and units located therein (including, without limitation, permitted and prohibited uses, signage and parking, consistent with the terms of the Master Community Plan); and provisions regarding insurance, damage and destruction and other matters pertaining to the Project.

Transportation Management Association: The Master CC&Rs **[and/or the applicable Condominium CC&Rs]** shall include the obligation to establish and maintain at all times during the Term of the Master CC&Rs a Transportation Management Association that shall operate in accordance with the requirements of Mitigation Measure TRA-1.1 in the MMRP.

Other Mitigation Measures: The Master CC&Rs **[and/or the applicable Condominium CC&Rs]** shall require compliance with Mitigation Measures that are applicable to the Project overall (i.e., not allocable to specific Phases).

Parking: The Master CC&Rs and/or the applicable Condominium CC&Rs will establish reciprocal easements and reasonable restrictions governing the use of common parking facilities, including those common parking facilities to be constructed within the Building Parcels. Such reciprocal easements and reasonable use restrictions shall include any provisions as reasonably required to implement Section 5.5 of the DDA (Parking and Access).

Relationship to Landfill Operation and Management Agreement. Unless documented in a separate agreement at City's election, the Master CC&Rs may incorporate applicable provisions of the Landfill Operation and Management Agreement including the imposition of environmental restrictions as required by applicable Governmental Authorities. Such provisions will address the Master Owners' Association, Condominium Owners' Association and Building Parcel owners responsibility for compliance with the applicable obligations of the Developer under the Landfill Operation and Management Agreement and will include a funding mechanism therefor. Without limiting the foregoing, the Master CC&Rs shall assign to the Master Owners' Association the obligation for payment of the Annual Landfill Costs to the City, including a mechanism for the funding of such obligations from Master Owners' Association members.

Maintenance and Repair. The Master CC&Rs will provide for the ownership of the privately maintained Infrastructure, or "common area", by the Master Owners' Association, the applicable Condominium Owners' Association or the owners of each individual lot or condominium unit as tenants in common, as appropriate in each case, and will require the applicable Master Owners' Association, Condominium Owners' Association or other owner to be responsible at no cost to the City for the ongoing operation, maintenance and repair (including necessary replacements) associated with (i) the privately-owned Infrastructure (including streets, public open space and parks) within the Project Site that will be reserved in the Governing Documents as "Common Easement Areas" for the non-exclusive use, enjoyment and benefit of the Building Parcel owners, condominium owners and/or other holders of interests, and (ii) any publicly-owned Infrastructure by mutual agreement with the City.

Funding and Other Responsibilities: The Governing Documents shall describe the various relationships between the City, Master Developer and its successors, including the Master Owners' Association, the Condominium Owners' Associations and individual property owners regarding payments for funding the Master Owners' Association obligations and detailing the Master Owners' Association's responsibility for the public use, maintenance and repair (including necessary replacements) of the Infrastructure covered by each final map (other than Infrastructure to be dedicated to City except to the extent mutually agreed by City and Master Developer. The Governing Documents shall require that each Master Owners' Association and Condominium Owners' Association distribute to its constituent property owners on an annual basis (i) an annual budget of the applicable Master Owners' Association or Condominium Owners' Association, and (ii) a reserve study performed by the applicable Master Owners' Association and/or Condominium Owners' Association. The Governing Documents will include procedures reasonably necessary to assure that the annual budget (including reserves) will be adequately funded. Such measures will include providing the Master Owners' Association with the right and obligation to assess its members for the reasonable cost of the Associations' maintenance, repair and public services obligations, the right to lien the property of any member who defaults in the payment of an assessment and the obligation to diligently pursue all reasonable actions permitted by law as necessary to collect delinquencies.

Construction Covenant: The Master CC&Rs will include a covenant requiring the construction of all buildings to be prosecuted diligently and continuously, and further requiring the owner of any work of construction that is left in an unfinished state for a substantial period of time, but in no event more than one hundred twenty (120) consecutive days or a total of one hundred and eighty (180) days, to take reasonable measures to protect public health and safety, protect the building structure from the elements and screen unsightly elements from view (such as fencing, painting or attractive screens or coverings). The Master CC&Rs shall provide the Master Association thereunder with an obligation to diligently pursue all reasonable actions permitted by law as necessary to enforce this construction covenant, including a right of entry and a right to impose special assessments to recover any costs expended in connection with the enforcement thereof.

Indemnities. The Governing Documents shall indemnify City as to any Claims or costs and expenses incurred by City as a result of Master Owners' Association's or Condominium Owners' Association's (as applicable) or their successors' failure to comply with its maintenance and repair obligations, except to the extent of the negligence or willful misconduct of the City or to the extent that such actions are undertaken by the City and reimbursed to the extent permitted under the applicable Ground Lease. Each set of Master CC&Rs and Condominium CC&Rs shall require the Master Owners' Association or the Condominium Owners' Association (as relevant) and their successors to obtain and maintain comprehensive general liability insurance with the City identified as an additional insured on the insurance policy in amounts not less than the minimum coverage amounts required under the DDA.

Term. The Master CC&Rs shall provide for a minimum term of ninety-nine (99) years with ten (10) year automatic renewals, but in no event shall the Master CC&Rs expire earlier than the expiration date of the last Ground Lease to be Taken Down under the DDA. City, at its option, shall have the right to void the CC&Rs at the expiration of the last Ground Lease subject to

providing any existing tenancies or owners within the Project Site in lawful occupancy beyond the term thereof with equivalent rights to protect access, use and maintenance of common areas and rights and obligations related to the landfill.

City as Third-Party Beneficiary. The City shall be a third party beneficiary to all Governing Documents and shall have the right, but not the duty, to enforce the Governing Documents against the Master Developer and its successors, including the Master Owners' Association, the Condominium Owners' Associations and individual property owners, as applicable, and to receive copies of all information and documentation that are sent to all of the owners of lots and units pursuant to the requirements of the Governing Documents or required by law related to the ongoing operation, maintenance and repair (including necessary replacements) of the "common area" as provided therein, including without limitation, copies of (i) the annual budget of the relevant Master Owners' Association or Condominium Owners' Association when it is distributed to the property owners, and (ii) a copy of the reserve study performed by the relevant Master Owners' Association or Condominium Owners' Association when it is distributed to the property owners. No Governing Documents may be amended or otherwise modified without City's Approval.

Project Development and Maintenance Responsibilities. In accordance with Article 15 of the DDA, the Master CC&Rs shall set forth the obligations of the Master Owners' Association for the funding and/or responsibility for ongoing maintenance, repair and replacement of private and public streets and the Neighborhood Parks, and funding for police and fire services, all as established in accordance with the Project Documents.

EXHIBIT I

DDA 5.1.3 Financing Plan Template

Phase Summary

Phase _____

Parcel _____

Projected Timing

Construction Commencement	Date:
Opening	Date:

Proposed Program

Office			SF
Retail / Entertainment			SF
Hotel		Keys	SF
Residential		Units	SF
Other	Type(s):		SF
Building GSF			**SF**
Parking Spaces - Structure			Spaces
Parking Spaces - Surface			Spaces

Preliminary Development Cost [5.3.1 (i)]

Non-Premium Costs	
Hard Costs	Total Amount:
Soft Costs	Total Amount:
Total Estimated Non-Premium Costs	Total Amount:
Premium Costs (Per Exhibit N)	
Premium Offsite Development	Total Amount:
Premium Onsite Development	Total Amount:
Premium Landfill	Total Amount:
Premium Engineering	Total Amount:
Miscellaneous	Total Amount:
Total Estimated Premium Costs	Total Amount:
Total Estimated Development Costs	**Total Amount:**

Projected Funding [5.3.1 (ii), (iii) & (iv)]

Total Debt	Source(s):	% of Total:
Total Equity	Source(s):	% of Total:
Proposed Source(s) and Capital Costs to be Publicly Financed		
Source:		Total Amount:
Source:		Total Amount:
Source:		Total Amount:
Source:		Total Amount:
Proposed Source(s) and Annual Operations to be Publicly Financed		
Source:		Total Amount:
Source:		Total Amount:
Source:		Total Amount:
Source:		Total Amount:
Intended Source(s) and Projected Cost For Private Maintenance of Public Improvements		
Source:		Total Amount:
Source:		Total Amount:
Source:		Total Amount:
Source:		Total Amount:

EXHIBIT J

Form of Permit to Enter

PERMIT TO ENTER

THE CITY OF SANTA CLARA, a chartered municipal corporation (the "**City**"), grants to [**RELATED SANTA CLARA, LLC**, a Delaware limited liability company][***THIRD PARTY PHASE DEVELOPER***], a _____] ("**Permittee**"), a non-exclusive, non-possessory permit to enter upon certain City-owned or -leased real property (hereinafter referred to as the "**Permit Area**") located at _____ upon the terms, covenants and conditions hereinafter set forth in this Permit to Enter ("**Permit**").

1. **Permit Area**: The Permit Area (**"Permit Area"**) is more particularly shown on Exhibit 1 hereto and made a part hereof. The Permit is non-exclusive and non-possessory, and is subject to the rights of ingress and egress by the City and others, who are authorized to access portions of the Permit Area.

2. **Interim Use**: The Permittee shall use the Permit Area to construct Infrastructure approved under the Infrastructure Master Plan (as those terms are defined in the Disposition and Development Agreement dated as of _____ by and between City and Related Santa Clara, LLC [***insert description of other uses as applicable***] (the "**DDA**") and to facilitate the construction being performed by Permittee and its contractors and agents on nearby parcels ("Interim Use"). No uses other than those specifically stated herein are authorized hereby.

3. **Time of Entry**: Entry may commence, once the Permit is fully executed, on _____, at 8:00 a.m. Entry shall terminate on **[for Phases 1-3][December 31, 2024]** at 5:00 p.m., unless earlier terminated by the City under Section 10 hereof or earlier terminated by Permittee by cessation of activities/operations, or unless such time is extended by the City. City shall have the right to have its representatives present at any time when Permittee has entered the Permit Area.

4. **Indemnification:**

a. General Indemnification. Permittee shall reimburse, indemnify, defend and hold harmless (collectively, "**Indemnify**" and in each case, an **"Indemnification"**) the City and the commissioners, supervisors, elected and appointed officials, officers, employees, attorneys, contractors and agents of City and, as applicable, the partners, Affiliates (as defined in the DDA), 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 a City Party or City Parties, as applicable, of carrying out the terms of any judgment, settlement, consent, decree, stipulated judgment or other partial or complete termination of an action or proceeding that requires a City Party or City Parties, as applicable, to take any action (collectively **"Losses"**) arising from or as a result of, except to the extent such Losses are directly caused by the act or omission of a City Party: any of the Permittee's or its agents', servants', employees' or contractors' operations or activities in or around the Permit

Area, including, without limitation, (a) the death of any person or any accident, injury, loss or damage whatsoever caused to any person or to the property of any person that shall occur in or around the Permit Area to the extent caused by the act or omission of Permittee or its agents, servants, employees or contractors, or (b) any breach or default by Permittee in the performance or discharge of its agreements and obligations under this Permit. Permittee's Indemnification obligations under this Section 4 shall survive expiration or termination of this Permit.

c. Other Remedies. The agreements to indemnify set forth in this Section 4 are in addition to, and in no way shall be construed to limit or replace, any other obligations or liabilities that Permittee may have to City under this Permit.

d. Defense of Claims. City agrees to give prompt notice to Permittee (the **"Indemnifying Party"**) 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 Permittee under this Permit) 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 written 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 the Indemnifying Party. The failure of City to give such notice within such timeframes shall not affect the rights of City or obligations of the Indemnifying Party under this Permit except to the extent that the Indemnifying Party is prejudiced by such failure. The Indemnifying Party shall, at its option but subject to the reasonable approval by City, be entitled to control the defense, compromise or settlement of any such matter through counsel of the Indemnifying Party's choice; provided, that in all cases City shall be entitled to participate in such defense, compromise or settlement at City's own expense. If the Indemnifying Party 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 the Indemnifying Party of a properly detailed invoice for such expense.

e. Limitations of Liability. It is understood and agreed that no City Party shall be personally liable to Permittee, nor shall any direct or indirect partners, members or shareholders of Permittee or its officers, directors, agents or employees (or of their successors or assigns) be personally liable to City, in the event of any default or breach of this Permit by City or Permittee or for any amount that may become due to Permittee 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. Notwithstanding anything to the contrary set forth herein, the Indemnifications by Permittee shall exclude any Losses relating to the Santa Clara All-Purpose Landfill, which shall be instead governed solely by Article **Error! Reference source not found.**4 of the DDA and any other applicable agreements.

f. No Mechanics' Liens: Permittee shall not permit any mechanics' or other liens to be levied against the Permit Area for any labor or material furnished to Permittee or

claimed to have been furnished to Permittee or to Permittee's agents or contractors in connection with the Interim Use and Permittee shall hold the City free and harmless from any and all Losses, cost or expense connected with or arising from any such lien or the Interim Use.

5. Hazardous Substance Acknowledgement and Indemnification:

a. Hazardous Substance Indemnification.

i. In addition to, and without limiting, the Indemnifications set forth in Section 4, Permittee shall Indemnify the City Parties from and against any and all Losses incurred by or asserted against any City Party in connection with, arising out of, or in response to, or in any manner relating to:

1. Permittee's breach of any obligation under this Permit with respect to Hazardous Substances;

2. Permittee's violation of any obligation under this Permit with respect to its compliance with Environmental Laws on or relative to the Permit Area;

3. Any Release or threatened Release of a Hazardous Substance, or any condition of pollution, contamination or Hazardous Substance-related nuisance on, under or from real property at the Permit Area (including any Public Improvements) to the extent the Release, threatened Release, condition, contamination or nuisance was caused, contributed to, or exacerbated by Permittee on any portion of the Permit Area; provided, that this clause 3 shall not apply as to a City Party to the extent such violation, Release, threatened Release, condition, contamination or nuisance commenced or was created by or caused, contributed to or exacerbated by such City Party.

Permittee's obligations under Section 5.a, and its indemnities contained elsewhere in this Permit, shall: (1) apply regardless of the availability or amount of insurance proceeds; and (2) survive the expiration or other termination of this Permit. However, if it is reasonable to assert that a claim for Indemnification under this Section 5 is covered by a pollution liability insurance policy, pursuant to which such City Party is an insured party or a potential claimant, then City shall reasonably cooperate with Permittee in asserting a claim or claims under such insurance policy or indemnity but without waiving any of its rights under this Section 5.a. Permittee specifically acknowledges and agrees that it has an immediate and independent obligation to defend the City Parties from any claim that may reasonably fall or is otherwise determined to fall within the indemnification provision of this Section 5.a5.i, even if the allegations are or may be groundless, false or fraudulent. Permittee's obligation to defend under this Section 5.a shall arise at the time such claim is tendered to Permittee and shall continue at all times thereafter. Notwithstanding the foregoing, if a City Party is a named insured on a pollution liability insurance policy obtained by Permittee, such City Party will not seek indemnification from Permittee under this Section 5.a unless it has asserted and diligently pursued a claim for insurance under such policy and until any limits from the policy are exhausted, on condition that (i) Permittee pays any self-insured retention amount required under the policy, (ii) Permittee pays such City Party's costs and expenses (including attorneys' fees and expenses) of pursuing

such claim, (iii) Permittee agrees to a tolling of any and all statutes of limitation relating to such City Party's right to seek indemnification under this Section 5.a, and (iv) nothing in this sentence requires any City Party to pursue a claim for insurance through litigation prior to seeking indemnification from Permittee.

b. Hazardous Substance Acknowledgement: Permittee recognizes that, in entering upon the Permit Area and performing the Interim Use under this Permit, its employees, invitees, subpermittees, contractors and subcontractors may be working with, or be exposed to substances or conditions which are toxic or otherwise hazardous. Permittee acknowledges that the City is relying on the Permittee to identify and evaluate the potential risks involved and to take all appropriate precautions to avoid such risks to its employees, invitees, subpermittees, contractors and subcontractors. Permittee agrees that it is assuming full responsibility for ascertaining the existence of such risks, evaluating their significance, implementing appropriate safety precautions for its employees, invitees, subpermittees, contractors and subcontractors and making the decision on how (and whether) to enter upon the Permit Area and carry out the Interim Use, with due regard to such risks and appropriate safety precautions.

c. Proper Disposal of Hazardous Substances: Permittee assumes sole responsibility for managing, removing and properly disposing of any waste produced during or in connection with Permittee's entry and/or Interim Use of the Permit Area including, without limitation, preparing and executing any manifest or other documentation required for or associated with the removal, transportation and disposal of Hazardous Substances to the extent required in connection with the Permittee's activities hereunder.

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

e. Environmental Laws: For purposes of this Permit, the term "**Environmental Laws**" shall include but not be limited to all federal, state and local laws, regulations, ordinances, and judicial and administrative directives, orders and decrees dealing with or pertaining to solid or hazardous waste, wastewater discharges, drinking water, air emissions, Hazardous Substance releases or reporting requirements, Hazardous Substance use or storage, and employee and community right-to-know requirements, related to the Interim Use.

EXHIBIT J

Form of Permit to Enter

f. Release: For purposes of this Permit, the term "**Release**" shall mean any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, or disposing into the environment (including the abandonment or discarding of barrels, containers, and other closed receptacles containing any Hazardous Substance or pollutant or contaminant).

g. Soils Investigation: If the Interim Use under Section 2 of this Permit includes any soils investigations, then Permittee warrants as follows:

(1) If any soils investigation permitted hereby involves the drilling of holes having a diameter dimension that could create a safety hazard for persons, said holes shall during any drilling operations be carefully safeguarded and shall upon the completion of said drilling operations be refilled (and compacted to the extent necessary) to the level of the original surface penetrated by the drilling.

(2) The City has no responsibility or liability of any kind or character with respect to any utilities that may be located in or on the Permit Area. Permittee has the sole responsibility to locate the same and to protect the same from damage. Permittee shall be solely responsible for any damage to utilities or damage resulting from any damaged utilities.

(3) All soils test data and reports prepared based thereon, obtained from these activities shall be provided to the City upon request and the City may use said data for whatever purposes it deems appropriate, including making it available to others for use in connection with any development. Such data, reports and City use shall be without any charge to the City.

(4) Any hole drilled shall, if not refilled and compacted at the end of each day's operation, be carefully safeguarded and secured after the completion of each day's work, as shall the drilling work area and any equipment if left on the Permit Area.

6. Insurance: Permittee shall procure and maintain insurance coverages for the duration of the Permit, including any extensions, consisting of the types and coverage amounts required under Exhibit 2. The cost of such insurance shall be borne by the Permittee. City shall be named as an additional insured under the insurance policies.

a. No Limitation on Indemnities. Permittee's compliance with the provisions of this Section shall in no way relieve or decrease Permittee's indemnification obligations herein or any of Permittee's other obligations or liabilities under this Permit.

b. Lapse of Insurance. Notwithstanding anything to the contrary in this Permit, City may elect in City's sole and absolute discretion to terminate this Permit upon the lapse of any required insurance coverage by written notice to Permittee.

c. Permittee's Personal Property. Permittee shall be responsible, at its expense, for separately insuring Permittee's equipment and personal property.

d. Subpermittee: Permittee shall include all subpermittees and subcontractors as insureds under its policies or shall require each subpermittee and subcontractor to furnish separate insurance certificates and endorsements. All coverages for subpermittees and subcontractors shall be subject to all the requirements stated herein.

7. **"As Is", Maintenance, Restoration, Vacating**: The Permit Area is accepted "AS IS" and entry upon the Permit Area by Permittee is an acknowledgment by Permittee that all dangerous places and defects in said Permit Area are known to it and are to be made secure and kept in such secure condition by Permittee. Permittee shall maintain the Permit Area so that it will not be unsafe, unsightly or unsanitary. Upon termination of the Permit, Permittee shall vacate the Permit Area and remove any and all personal property located thereon and restore the Permit Area to its condition at the time of entry. The City shall have the right without notice to dispose of any property left by Permittee after it has vacated the Permit Area. The City makes no representations or warranties, express or implied, with respect to the environmental condition of the Permit Area or the surrounding property (including without limitation all facilities, improvements, structures and equipment thereon and soil and groundwater thereunder), or compliance with any Environmental Laws, and gives no indemnification, express or implied, for any Losses arising out of or related to the presence, discharge, migration or Release or threatened Release of any Hazardous Substance in or from the Permit Area.

8. **Compliance With Laws**:

a. Compliance with all Laws: All activities and operations of the Permittee and/or its invites, agents, contractors, subcontractors, subpermittees and employees and all authorized entries, under this Permit shall be performed in a safe and reasonable manner and in full compliance with all applicable laws, rules, statutes, ordinances and regulations of all federal, state and local governmental authorities,, including but not limited to mitigation measures, if any, and the obtaining of all necessary governmental permits, authorizations and approvals.

b. Nondiscrimination: The Permittee herein covenants for itself and for all persons claiming under or through it that there shall be no discrimination against or segregation of any person or group of persons on account of race, color, creed, religion, sex, sexual orientation, gender identity, marital or domestic partner status, disability (including AIDS or HIV status), national origin or ancestry in the use, occupancy or enjoyment of the Permit Area.

9. **Security of Permit Area:** If the Permit Area is fenced, Permittee shall maintain said fence in good condition and repair any damage caused by Permittee or as a result of the Interim Use. Permittee may relocate the fence as needed, provided that the fence is restored to its original condition upon termination of the permit. During the term of the Permit, the Permittee shall be solely responsible for keeping the Permit Area and all of its equipment and other property located thereon secure at all times, and City shall have no responsibility whatsoever in that regard.

10. **Early Termination:** If Permittee shall be in breach of any of its obligations under this Permit, City shall have the right to terminate this Permit if such breach has not been cured within forty-eight (48) hours after Permittee's receipt of written notice from City to do so.

EXHIBIT J

Form of Permit to Enter

Permittee acknowledges that this Permit gives Permittee a license only and notwithstanding anything to the contrary in this Permit, this Permit does not constitute a grant by City of any ownership, leasehold, easement or other similar property interest or estate whatsoever in the Permit Area, or any portion thereof. Upon the expiration or other termination of this Permit, Permittee shall promptly vacate the Permit Area, and shall remove all equipment, materials, trash, and other materials and property remaining thereon. In the event of termination due to a breach or threatened breach by Permittee of any provision hereunder, City may seek any remedy available at law or in equity, including but not limited to a suit for damages or an action for specific performance or injunction. All remedies provided herein or by law or equity shall be cumulative and not exclusive. No termination or expiration of this Permit shall relieve Permittee of its obligations to perform those acts required to be performed either prior to or after its termination.

11. **Entry under Permittee Authority**: The Permit granted Permittee for the Interim Use as defined in Section 2 shall mean and include all subpermittees, agents and employees of the Permittee. In this regard, Permittee assumes all responsibility for the safety of all persons and property and any contents placed in the Permit Area pursuant to this Permit. All Interim Uses performed in the Permit Area and all persons entering the Permit Area and all property and equipment placed therein in furtherance of the permission granted herein is presumed to be with the express authorization of the Permittee.

12. **Signs**: Except for construction signs, temporary safety or warning signs, or any other signs approved by City, Permittee shall not place, erect or maintain any sign, advertisement, banner or similar object on the Permit Area.

13. **No Assignment**: This Permit is personal to Permittee and it may not be assigned or otherwise transferred, either in whole or in part, except in connection with a Consent Transfer, Permitted Transfer or Leasehold Mortgage to the extent permitted under the DDA.

14. **Governing Law**: This Permit shall be governed by and interpreted under the laws of the State of California.

15. **Attorneys' Fees**: In any action or proceeding arising out of this Permit, the prevailing party shall be entitled to reasonable attorneys' fees and costs.

16. **Supplementary Provisions:**

a. Is a fence and gate required? Yes ☐ No ☐

Fence and Gate: If "Yes" is checked above, the Permittee shall, at its expense, erect a fence (with gate) securing the Permit Area before entry on the Permit Area and shall maintain said fence and gate in good condition and repair during the time of entry as specified in Section 3. Said fence and gate erected by Permittee shall constitute the personal property of Permittee.

b. Is security personnel required? Yes ☐ No ☐

EXHIBIT J

Form of Permit to Enter

Security Personnel: If "Yes" is checked above, Permittee shall provide necessary security personnel at its own expense to prevent unauthorized entry into Permit Area during:

Daytime: Yes ☐ No ☐ Nighttime: Yes ☐ No ☐

c. Will subpermittees use the Permit Area? Yes ☐ No ☐

Subpermittees: If "Yes" is checked above, each subpermittee shall execute this Permit by which execution each such Subpermittee agrees to all of the terms, covenants and conditions hereof. However, subpermittees may be covered under Permittee's insurance in lieu of obtaining and maintaining separate insurance pursuant to Section 6.e. As additional subpermittees are identified for various aspects of the Interim Use hereunder, they shall execute this Permit, if still valid, or a new permit to enter, before entering the Permit Area or commencing operations therein.

102027893.9

EXHIBIT J

Form of Permit to Enter

IN WITNESS WHEREOF, the parties hereto have duly executed this instrument in triplicate as of the _____ day of _____, 20__.

[PERMITTEE]

By: _____
Name: _____
Title: _____

CITY

By: _____
Name: _____
Title: _____

APPROVED AS TO FORM:

_____
City Attorney

By: _____
Name: _____
Title:

EXHIBIT J

Form of Permit to Enter

Exhibit 1

MAP OF PERMIT AREA

[TO BE ATTACHED]

EXHIBIT J

Form of Permit to Enter

Exhibit 2

INSURANCE REQUIREMENTS

Developer, and its subcontractor(s), if any, shall purchase and maintain the insurance policies set forth below on all of its operations under this Agreement at its/their sole cost and expense. Such policies shall be maintained for the full term of this Agreement and the related warranty period (if applicable). For purposes of the insurance policies required under this Agreement, the term "City" shall include the duly elected or appointed council members, commissioners, officers, agents, employees, and volunteers of the City of Santa Clara, California, individually or collectively.

1. **MINIMUM SCOPE AND LIMITS OF REQUIRED INSURANCE POLICIES**.

The following policies shall be maintained with insurers authorized to do business in the State of California and shall be issued under forms of policies satisfactory to the City:

a. **COMMERCIAL GENERAL LIABILITY INSURANCE POLICY ("CGL")**.

Policy shall include coverage at least as broad as set forth in Insurance Services Office (herein "ISO") Commercial General Liability coverage (Occurrence Form CG 0001) with policy limits not less than the following:

$5,000,000 each occurrence;
$5,000,000 for personal injury liability;
$5,000,000 aggregate for products-completed operations; and,
$5,000,000 general aggregate.

b. **BUSINESS AUTOMOBILE LIABILITY POLICY ("BAL")**.

Policy shall include coverage at least as broad as set forth in Insurance Services Office Business Automobile Liability coverage, Symbol 1 "Any Auto" (Form CA 0001). This policy shall include a minimum combined single limit of not less than two million ($2,000,000) dollars for each accident, for bodily injury and/or property damage.

c. **WORKERS' COMPENSATION AND EMPLOYERS' LIABILITY INSURANCE POLICY ("WC/EL")**. (A Workers' Compensation Policy or adequate levels of self-insurance are required only if Developer has employees or volunteers.)

These policies shall include at least the following coverages and policy limits:

1. Workers' Compensation insurance as required by the laws of the State of

California; and

2. Employer's Liability insurance with coverage amounts not less than one million ($1,000,000) dollars each accident/Bodily Injury (herein "BI"); one million ($1,000,000) dollars policy limit BI by disease; and, one million ($1,000,000) dollars each employee BI by disease.

2. **DEDUCTIBLES AND SELF-INSURANCE RETENTIONS**.

Any deductibles and/or self-insured retentions which apply to any of the insurance policies referred to above shall be declared in writing by Developer and approved by the City before work is begun pursuant to this Agreement. At the option of the City, Developer shall provide a financial guarantee satisfactory to the City guaranteeing payment of losses and related investigations, claim administration, and/or defense expenses.

3. **ENDORSEMENTS**.

All of the following clauses and endorsements, or similar provisions, are required to be made a part of the required insurance policies indicated in parentheses below:

a. Additional Insureds The City of Santa Clara, its City Council, commissions, officers and employees are hereby added as additional insureds in respect to liability arising out of the Owner/Developer's work for the City, providing coverage at least as broad as Insurance Services Office (ISO) Endorsement CG 2010, or insurer's equivalent (CGL);

b. General Aggregate The general aggregate limits shall provide coverage at least as broad as Insurance Services Office (ISO) Endorsement CG 2503, or insurer's equivalent (CGL);

c. Primary Insurance This policy shall be considered primary insurance with respect to any other valid and collectible insurance City may possess, including any self-insured retention City may have, and any other insurance City does possess shall be considered excess insurance only and shall not be called upon to contribute with this insurance (CGL & BAL); and

d. Notice of Cancellation No cancellation shall be effective until written notice has been given at least thirty (30) days prior to the effective date of such cancellation to City at the address set forth below, except the insurer may give ten (10) days' notice for non-payment of premium (CGL, BAL, WC/EL & PL).

4. **ABSENCE OF INSURANCE COVERAGE**.

EXHIBIT J

Form of Permit to Enter

City may direct Developer to immediately cease all activities with respect to this Agreement if the City determines that Developer fails to carry, in full force and effect, all insurance policies or self-insurance with coverages at or above the limits specified in this Agreement. Any delays or expense caused due to stopping of work and change of insurance shall be considered Developer's delay and expense. At the City's discretion, under conditions of lapse, City may purchase appropriate insurance and charge all costs related to such policy to Developer.

5. **PROOF OF INSURANCE COVERAGE AND COVERAGE VERIFICATION**.

A Certificate of Insurance, on an Accord form, and implementing endorsements shall be provided to City by each of Developer's insurance companies as evidence of the stipulated coverages prior to commencement of work under this Agreement, and annually thereafter at least ten (10) days prior to termination of existing coverage for the term of this Agreement. City reserves the right to require complete, certified copies of all required insurance policies, including endorsements affecting the coverage required by this Agreement at any time. All of the insurance companies providing insurance for Developer shall have, and provide evidence of, a Best Rating Service rate of "A VI" or above.

The Certificate of Insurance and coverage verification and all other notices related to cancellation shall be mailed to:

Office of the City Clerk
Attention: Director of Planning & Inspection
1500 Warburton Avenue
Santa Clara, California 95050

EXHIBIT K

Form of Certificate of Completion

This document is exempt from payment of a recording fee pursuant to California Government Code Section 27383 **RECORDING REQUESTED BY AND WHEN RECORDED RETURN TO:** **City of Santa Clara** **City Clerk's Office** **1500 Warburton Avenue** **Santa Clara, CA 95050**	

Recorder's Stamp

CERTIFICATE OF COMPLETION

WHEREAS, pursuant to that certain Disposition and Development Agreement (City Place Santa Clara) (as amended, the "**Agreement**") dated for reference purposes as of August 12, 2016 and recorded in the Official Records of the City of Santa Clara (the "**Official Records**") on _____ ___, 2016 as Document No. _____ at Reel ____, Image ____. In accordance with the Agreement and the Ground Lease for Phase __, _____, a _____, is the Phase Developer of Phase __. Phase Developer undertook certain obligations to construct certain Initial Improvements on certain real property situated in the City of Santa Clara, State of California, which Initial Improvements are particularly described in Exhibit ___ hereto (the "**Completed Initial Improvements**") and which property is more particularly described in Exhibit ___ hereto (the "**Property**");

WHEREAS, capitalized terms used but not otherwise defined herein have the meanings set forth in the Agreement; and

WHEREAS, City has conclusively determined that the construction obligations of Phase Developer as specified in the Agreement with respect to the Completed Initial Improvements have been fully performed in accordance with the requirements of the Agreement [with the exception of the following: _____]; and

WHEREAS, City's determination regarding the above construction obligations is not directed to, and City assumes no responsibility for, engineering or structural matters, latent defects, or compliance with building codes and regulations or Applicable Law regarding construction standards therefor; and

[WHEREAS, together with all previously issued Certificates of Completion with respect to the Property, City has conclusively determined that all of the construction obligations of Phase Developer under the Agreement with respect to the [_____] have been fully performed;]

NOW, THEREFORE, as provided in the Agreement, with respect to the Completed Initial Improvements and the Property, and subject to the foregoing provisions of this certificate, City

does hereby certify that the Completed Initial Improvements have been fully performed and completed as set forth above [except for the following_____].

Nothing contained in this instrument shall modify in any other way any other provisions of the Agreement or any other provision of any documents incorporated in the Agreement, including the survival provisions contained therein.

Upon recordation of this Certificate of Completion, the provisions of the Agreement requiring construction and completion of the Completed Initial Improvements shall be deemed satisfied as set forth above [except to the extent that this Certificate describes portions of the Completed Initial Improvements that have not been completed].

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

IN WITNESS WHEREOF, City has executed this Certificate of Completion as of ____ __, 20__.

102129083.2

EXHIBIT L

PRELIMINARY TITLE REPORT

---------- strike-through means Disapproved Exceptions

Circled exceptions means Initially Approved Exceptions

First American Title Company
National Commercial Services
1737 North First Street, Suite 500
San Jose, CA 95112

First American Title Insurance National Commercial Services
1737 N. First Street, Suite 500
San Jose , CA 95112
Phone: (408)451-7828

Escrow Officer:	Carol M. Herrera
Phone:	(408)451-7829
Email:	cmherrera@firstam.com
Property:	City Place, Lafayette Street, Santa Clara, CA

PRELIMINARY REPORT

In response to the above referenced application for a policy of title insurance, this company hereby reports that it is prepared to issue, or cause to be issued, as of the date hereof, a Policy or Policies of Title Insurance describing the land and the estate or interest therein hereinafter set forth, insuring against loss which may be sustained by reason of any defect, lien or encumbrance not shown or referred to as an Exception below or not excluded from coverage pursuant to the printed Schedules, Conditions and Stipulations of said Policy forms.

The printed Exceptions and Exclusions from the coverage and Limitations on Covered Risks of said policy or policies are set forth in Exhibit A attached. *The policy to be issued may contain an arbitration clause. When the Amount of Insurance is less than that set forth in the arbitration clause, all arbitrable matters shall be arbitrated at the option of either the Company or the Insured as the exclusive remedy of the parties.* Limitations on Covered Risks applicable to the CLTA and ALTA Homeowner's Policies of Title Insurance which establish a Deductible Amount and a Maximum Dollar Limit of Liability for certain coverages are also set forth in Exhibit A. Copies of the policy forms should be read. They are available from the office which issued this report.

Please read the exceptions shown or referred to below and the exceptions and exclusions set forth in Exhibit A of this report carefully. The exceptions and exclusions are meant to provide you with notice of matters which are not covered under the terms of the title insurance policy and should be carefully considered.

It is important to note that this preliminary report is not a written representation as to the condition of title and may not list all liens, defects, and encumbrances affecting title to the land.

This report (and any supplements or amendments hereto) is issued solely for the purpose of facilitating the issuance of a policy of title insurance and no liability is assumed hereby. If it is desired that liability be assumed prior to the issuance of a policy of title insurance, a Binder or Commitment should be requested.

Dated as of June 08, 2016 at 7:30 A.M.

The form of Policy of title insurance contemplated by this report is:

ALTA Extended Loan Policy

A specific request should be made if another form or additional coverage is desired.

Title to said estate or interest at the date hereof is vested in:

City of Santa Clara

The estate or interest in the land hereinafter described or referred to covered by this Report is:

Fee simple

The Land referred to herein is described as follows:

(See attached Legal Description)

At the date hereof exceptions to coverage in addition to the printed Exceptions and Exclusions in said policy form would be as follows:

1. General and special taxes and assessments for the fiscal year ~~2016-2017~~ a lien not yet due or payable.

2. The lien of supplemental taxes, if any, assessed pursuant to Chapter 3.5 commencing with Section 75 of the California Revenue and Taxation Code.

3. General and special taxes and assessments for the fiscal year ~~2015-2016~~ are exempt. If the exempt status is terminated an additional tax may be levied.

4. An easement for public utilities and incidental purposes, recorded October 18, 1912 in Book 393 of Deeds, Page 331.
   In Favor of: Pacific Gas and Electric Company
   Affects: as described therein

5. An easement for public utilities and incidental purposes, recorded August 21, 1913 in Book 407 of Deeds, Page 298.
   In Favor of: Pacific Gas and Electric Company
   Affects: as described therein

6. An easement for gas pipe line and incidental purposes, recorded November 5, 1931 as Book 586, page 516 of Official Records.

In Favor of:	Pacific Gas and Electric Company, a California corporation
Affects:	as described therein

Terms and provisions contained in the above document.

7. An easement for gas pipeline and incidental purposes, recorded November 24, 1931 in Book 592, Page 232 of Official Records.

In Favor of:	Pacific Gas and Electric Company, a California corporation
Affects:	as described therein

The terms and provisions contained in the document entitled "Joint Use Agreement" recorded May 02, 1988 in Book K520, Page 1137 of Official Records.

Document(s) declaring modifications thereof recorded February 05, 1992 in Book M035, Page 1868 of Official Records.

8. An easement for wires and crossarms for the transmission and distribution of electricity and incidental purposes, recorded April 9, 1936 as Book 768, Page 191 and September 29, 1936 in Book 786, Page 426, both of of Official Records.

In Favor of:	Pacific Gas and Electric Company
Affects:	as described therein

9. An easement for public utilities and incidental purposes, recorded September 11, 1953 as Book 2718, Page 512 of Official Records.

In Favor of:	Pacific Gas and Electric Company
Affects:	as described therein

10. An easement for sewer lines and pipes and incidental purposes, recorded April 17, 1957 in Book 3777, Page 474 of Official Records.

In Favor of:	City of Santa Clara, a municipal corporation
Affects:	as described therein

11. An easement for installation and maintenance of sewer lines and incidental purposes, recorded May 21, 1957 in Book 3802, Page 365 of Official Records.

In Favor of:	City of Santa Clara, a municipal corporation
Affects:	as described therein

12. Abutter's rights of ingress and egress to or from State Highway 237 have been relinquished in the document recorded June 10, 1960 in Book 4820, Page 641 of Official Records.

13. A waiver of any claims for damages by reason of the location, construction, landscaping or maintenance of a contiguous freeway, highway, roadway or transit facility as contained in the document recorded June 10, 1960 in Book 4820, Page 641 of Official Records.

14. An easement for sewer lines and incidental purposes, recorded October 19, 1960 as Book 4954, Page 133 of Official Records.

In Favor of:	City of Santa Clara
Affects:	as described therein

15. An easement for underground conduits and/or overhead wires, cables and lines, and for wire clearance purposes and incidental purposes, recorded October 23, 1967 as Book 7902, page 134 of Official Records.

In Favor of:	City of Santa Clara
Affects:	as described therein

16. An easement for gas, oil and water pipe lines and incidental purposes, recorded February 5, 1969 in Book 8425, Page 726 of Official Records.

In Favor of:	The Pacific Gas and Electric Company
Affects:	as described therein

17. An easement for pipelines, streets and utilities and incidental purposes, recorded April 26, 1973 as Instrument No. 4503719 in Book 0346, Page 667 of Official Records.

In Favor of:	City of Santa Clara
Affects:	as described therein

The location of the easement cannot be determined from record information.

~~18. The fact that the land lies within the boundaries of the North Bayshore Redevelopment Project Area, as disclosed by the document recorded December 31, 1973 as Book 708, Page 585 of Official Records.~~

Document(s) declaring modifications thereof recorded February 15, 2011 as Instrument No. 21084708; ~~March 9, 2011~~ as Instrument No. 21106523; and March 16, 2011 as Instrument Nos. ~~21113371, 21113372 and 21113374, all of of Official Records.~~

19. The terms and provisions contained in the document entitled "Instrument" recorded July 1, 1974 as Instrument No. 4800146 in Book 0971, Page 104 of Official Records. By and between Southern Pacific Transportation Company and the City of Santa Clara.

20. The terms and provisions contained in the document entitled "A Resolution Dedicating Lands of the City of Santa Clara to Particular Public Uses" recorded October 1, 1974 as Instrument No. 4864639 in Book B111, Page 1 of Official Records. By City of Santa Clara.

21. An easement for slope purposes and incidental purposes, recorded October 01, 1974 in Book B111, Page 31 of Official Records.

In Favor of:	City of Santa Clara
Affects:	as described therein

~~22. Any uncertainty in the location of a portion of the Western boundary line of the land by reason of~~ the cite to the deed to Santa Clara Valley Water District recorded July 8, 1975 as Instrument No. 5046606 in Book B498, Page 28 of Official Records. The deed recorded in Book B498, Page 28 of Official Records contains an erroneous legal description. Instead the Western boundary line of the land should tie to the deeds to the Santa Clara Valley Water District recorded January 8, 1976

as Instrument No. 5192360 in Book B811, Page 392 of Official Records, and recorded February 6, 1984 as Instrument No. 7969918 in Book I288, Page 241 of Official Records.

23. The terms and provisions contained in the document entitled "Street or Highway Easement" recorded October 28, 1982 as Instrument No. 7503245 in Book H110, Page 448 of Official Records.

24. The terms and provisions contained in the document entitled "Agreement " recorded November 21, 1984 as Instrument No. 8258862 in Book J059, Page 714 of Official Records. By and between Southern Pacific Transportation Company and the City of Santa Clara.

25. Terms and provisions of an unrecorded lease dated June 27, 1984, by and between City of Santa Clara, a municipal corporation as lessor and All Purpose Landfill Company, a California partnership and Cambrian Energy Systems, a California limited partnership as lessee, as disclosed by a Lease recorded February 22, 1985 in Book J266, Page 694 of Official Records.

Assignment of hereinabove lease recorded February 22, 1985 in Book J266, Page 705.

Defects, liens, encumbrances or other matters affecting the leasehold estate, whether or not shown by the public records are not shown herein.

26. The terms, provisions and easement(s) contained in the document entitled "Easement Agreement By City and Agency" recorded May 15, 1985 as Instrument No. 8411270 in Book J347, Page 2195 of Official Records.

Document(s) declaring modifications thereof recorded April 21, 1998 as Instrument No. 14150279 of Official Records.

27. The terms and provisions contained in the document entitled Recreation Facilities Agreement, executed by and between Sports and Open Space Authority of the City of Santa Clara, as recreation facility lessee and SCCC Associates, a California general partnership, as hotel lessee and consented to be the City of Santa Clara, recorded May 16, 1985, as Instrument No. 8411277 in Book J348, Page 1 of Official Records.

First Amendment thereof recorded December 2, 1987 as Instrument No. 9524030 in Book K377, Page 638 of Official Records. Second Amendment thereof recorded April 21, 1998 as Instrument No. 14150277 of Official Records. First Supplement thereof recorded February 16, 2001 as Instrument No. 15563487 of Official Records.

The terms and provisions contained in the document entitled "Non-Disturbance and Attornment Agreement" recorded December 2, 1987 as Instrument No. 9524032 in Book K377, Page 660 of Official Records.

28. Terms and provisions of an unrecorded lease dated April 30, 1985, by and between The Redevelopment Agency of the City of Santa Clara as lessor and SCCC Associates, a California general as lessee, as disclosed by a Memorandum of Lease recorded May 16, 1985 in Book J347, Page 2242 of Official Records.

Defects, liens, encumbrances or other matters affecting the leasehold estate, whether or not shown by the public records are not shown herein.

29. The terms and provisions contained in the document entitled "Hotel Ground Lease" recorded May 16, 1985 as Instrument No. 8411269 in Book J348, Page 42 of Official Records. By and between The Redevelopment Agency of the City of Santa Clara and SCCC Associates.

30. An easement for electric generation, transmission facilities and incidental purposes, recorded July 24, 1985 in Book J407, Page 615 of Official Records.

In Favor of:	Pacific Lightning Energy Systems, a California corporation
Affects:	as described therein

31. The effect of a map purporting to show the land and other property, filed January 7, 1987 in Book 570, Page 5 of Record of Surveys.

32. A lease dated August 1, 1987, executed by Redevelopment Agency of the City of Santa Clara and Sports and Open Space Authority of the City of Santa Clara as lessor and City of Santa Clara as lessee, recorded August 06, 1987 in Book K251, Page 219 of Official Records.

Defects, liens, encumbrances or other matters affecting the leasehold estate, whether or not shown by the public records are not shown herein.

33. An easement for electrical transmission lines, poles and incidental purposes, recorded September 17, 1987 as Instrument No. 9435091 in Book K297, Page 246 of Official Records.

In Favor of:	Pacific Gas and Electric Company, a California corporation
Affects:	as described therein

Terms and provisions contained in the above document.

Document(s) declaring modifications thereof recorded March 5, 2002 as Instrument No. 16140681 of Official Records.

34. The terms, provisions and easement(s) contained in the document entitled "Joint Use Agreement" recorded May 2, 1988 in Book K520, Page 1137 of Official Records.

Document(s) declaring modifications thereof recorded February 05, 1992 in Book M035, Page 1868 of Official Records.

35. A lease dated March 1, 1989, executed by City of Santa Clara as lessor and Sports and Open Space Authority of the City of Santa Clara as lessee, recorded March 01, 1989 as Instrument No. 10022823 in Book K862, Page 677 of Official Records.

Document(s) declaring modifications thereof recorded July 21, 1983 as Instrument No. 12008608 of Official Records.

Defects, liens, encumbrances or other matters affecting the leasehold estate, whether or not shown by the public records are not shown herein.

36. Terms and provisions of an unrecorded lease dated March 1, 1989, by and between Sports and Open Space Authority of the City of Santa Clara as lessor and City of Santa Clara, a municipal corporation as lessee, as disclosed by a Memorandum of Lease Agreement recorded March 01, 1989 as Instrument No. 10022824 in Book K862, Page 688 of Official Records.

The terms and provisions contained in the document entitled "Assignment Agreement" recorded March 01, 1989 as Instrument No. 10022825 in Book K862, Page 695 of Official Records.

Document(s) declaring modifications thereof recorded July 21, 1993 as Instrument No. 12008608 of Official Records.

Defects, liens, encumbrances or other matters affecting the leasehold estate, whether or not shown by the public records are not shown herein.

37. An easement for pipe lines and incidental purposes, recorded February 5, 1992 as Book M035, Page 1868 of Official Records.

In Favor of:	Pacific Gas and Electric Company
Affects:	as described therein

Terms and provisions contained in the above document.

38. A lease dated July 1, 1993, executed by City of Santa Clara as lessor and Open Space Authority of the City of Santa Clara as lessee, recorded July 21, 1993 as Instrument No. 12008609 in Book M896, Page 1981 of Official Records.

First Amendment to Site Lease recorded February 16, 2001 as Instrument No. 15563486 of Official Records. First Amendment and Restated Site Leases recorded November 13, 2002 as Instrument No. 16610535 of Official Records.

Defects, liens, encumbrances or other matters affecting the leasehold estate, whether or not shown by the public records are not shown herein.

39. Terms and provisions of an unrecorded lease dated July 1, 1993, by and between Sports and Open Space Authority of the City of Santa Clara as lessor and City of Santa Clara as lessee, as disclosed by a Memorandum of Lease Agreement recorded July 21, 1993 as Instrument No. 12008610 in Book M896, Page 1990 of Official Records.

First Amendment to Lease Agreement recorded February 16, 2001 as Instrument No. 15563485 of Official Records. First Amendment and Restated Lease Agreement recorded November 13, 2002 as Instrument No. 16610536 of Official Records.

The terms and provisions contained in the document entitled "Assignment of the Rights Under the Lease Agreement" recorded November 13, 2002 as Instrument No. 16610537 of Official Records.

Defects, liens, encumbrances or other matters affecting the leasehold estate, whether or not shown by the public records are not shown herein.

40. Abutter's rights of ingress and egress to or from State Highway 237 have been relinquished in the document recorded February 10, 1997 as Instrument No. 13607857 of Official Records.

41. An easement for ingress and egress and incidental purposes, recorded April 21, 1998 as Instrument No. 14150279 of Official Records.
In Favor of: Redevelopment Agency of the City of Santa Clara
Affects: as described therein

42. An easement for public utilities, including public communication services and incidental purposes, recorded September 25, 1998 as Instrument No. 14415534 of Official Records.
In Favor of: City of Santa Clara
Affects: as described therein

43. An easement shown or dedicated on the map filed or recorded February 15, 2001 as Book 737, Page 1 of Maps
For: private landscape, sanitary sewer, recycled water and incidental purposes.

Per the filed map, said easements shall be kept open and free from buildings, and structures of any kind except public utility structures, irrigation systems and appurtenances thereto and lawful fences. No private utility shall be placed in said easements except for purpose of crossing. The City of Santa Clara shall have right of access for the purpose of maintaining, replacing, adding to or removal of said facilities.

44. The terms and provisions contained in the document entitled "Development Agreement" recorded February 16, 2001 as Instrument No. 15563482 of Official Records.

Document(s) declaring modifications thereof recorded July 3, 2006 as Instrument No. 18999226 of Official Records.

45. The terms, provisions and easement(s) contained in the document entitled "Easement Agreement" recorded February 16, 2001 as Instrument No. 15563491 of Official Records.

46. An easement for transmission of electric energy and communication and incidental purposes, recorded September 26, 2002 as Instrument No. 16502193 of Official Records.
In Favor of: Pacific Gas and Electric Company, a California corporation
Affects: as described therein

Terms and provisions contained in the above document.

47. Terms and provisions of an unrecorded lease dated February 12, 2008, by and between City of Santa Clara, a chartered California municipal corporation as lessor and Ameresco Santa Clara LLC, a Delaware limited liability company as lessee, as disclosed by a Memorandum of Lease recorded February 10, 2009 as Instrument No. 20126485 of Official Records.

Defects, liens, encumbrances or other matters affecting the leasehold estate, whether or not shown by the public records are not shown herein.

48. The effect of a document entitled "Resolution No. 10-7719, A Resolution of the City of Santa Clara, California, Granting Certain Portion of Real Property Owned by the City of Santa Clara Located at 5401 Lafayette Street to the City of Santa Clara for Use as an Underground Electric

Easement [APN 97-01-073 (2008-09)]", recorded May 14, 2010 as Instrument No. 20712467 of Official Records.

49. An easement for public right-of-way and incidental purposes, recorded June 2, 2011 as Instrument No. 21195719 of Official Records.

In Favor of: the City of Santa Clara
Affects: as described therein

~~50. An easement for access and incidental purposes, recorded March 29, 2012 as Instrument No. 21605284 of Official Records.~~

~~In Favor of: Santa Clara Stadium Authority~~
~~Affects: as described therein~~

~~51. The terms and provisions contained in the document entitled "City of Santa Clara Parking Rights Agreement" recorded March 29, 2012 as Instrument No. 21605287 of Official Records. By and between the City of Santa Clara and Santa Clara Stadium Authority.~~

~~52. The terms and provisions contained in the document entitled "City of Santa Clara Parking Rights Agreement" recorded March 29, 2012 as Instrument No. 21605289 of Official Records. By and between the City of Santa Clara and Forty Niners Santa Clara Stadium Company, LLC.~~

53. The terms, provisions and easement(s) contained in the document entitled "Easement Agreement" recorded October 31, 2012 as Instrument No. 21926019 of Official Records.

~~54. Rights of parties in possession.~~

~~55. Any claim that any portion of the land is or was formerly tidelands and submerged lands within the bed of an tidal slough, creek or river.~~

~~56. Any rights, interest, or easements in favor of the public, which exist or are claimed to exist over any portion of said land covered by water.~~

INFORMATIONAL NOTES

1. According to the public records, there has been no conveyance of the land within a period of twenty-four months prior to the date of this report, except as follows:

   None

2. This preliminary report/commitment was prepared based upon an application for a policy of title insurance that identified land by street address or assessor's parcel number only. It is the responsibility of the applicant to determine whether the land referred to herein is in fact the land that is to be described in the policy or policies to be issued.

3. Should this report be used to facilitate your transaction, we must be provided with the following prior to the issuance of the policy:

   A. WITH RESPECT TO A CORPORATION:
      1. A certificate of good standing of recent date issued by the Secretary of State of the corporation's state of domicile.
      2. A certificate copy of a resolution of the Board of Directors authorizing the contemplated transaction and designating which corporate officers shall have the power to execute on behalf of the corporation.
      3. A certificate of revivor and a certificate of relief from contract voidability issued by the Franchise Tax Board of the State of California.
      4. Requirements which the Company may impose following its review of the above material and other information which the Company may require.

   B. WITH RESPECT TO A CALIFORNIA LIMITED PARTNERSHIP:
      1. A certified copy of the certificate of limited partnership (form LP-1) and any amendments thereto (form LP-2) to be recorded in the public records;
      2. A full copy of the partnership agreement and any amendments;
      3. Satisfactory evidence of the consent of a majority in interest of the limited partners to the contemplated transaction;
      4. A certificate of revivor and a certificate of relief from contract voidability issued by the Franchise Tax Board of the State of California.
      5. Requirements which the Company may impose following its review of the above material and other information which the Company may require.

   C. WITH RESPECT TO A FOREIGN LIMITED PARTNERSHIP:
      1. A certified copy of the application for registration, foreign limited partnership (form LP-5) and any amendments thereto (form LP-6) to be recorded in the public records;
      2. A full copy of the partnership agreement and any amendment;
      3. Satisfactory evidence of the consent of a majority in interest of the limited partners to the contemplated transaction;
      4. A certificate of revivor and a certificate of relief from contract voidability issued by the Franchise Tax Board of the State of California.
      5. Requirements which the Company may impose following its review of the above material and

other information which the Company may require.

D. WITH RESPECT TO A GENERAL PARTNERSHIP:

1. A certified copy of a statement of partnership authority pursuant to Section 16303 of the California Corporation Code (form GP-I), executed by at least two partners, and a certified copy of any amendments to such statement (form GP-7), to be recorded in the public records;
2. A full copy of the partnership agreement and any amendments;
3. Requirements which the Company may impose following its review of the above material required herein and other information which the Company may require.

E. WITH RESPECT TO A LIMITED LIABILITY COMPANY:

1. A copy of its operating agreement and any amendments thereto;
2. If it is a California limited liability company, a certified copy of its articles of organization (LLC-1) and any certificate of correction (LLC-11), certificate of amendment (LLC-2), or restatement of articles of organization (LLC-10) to be recorded in the public records;
3. If it is a foreign limited liability company, a certified copy of its application for registration (LLC-5) to be recorded in the public records;
4. With respect to any deed, deed of trust, lease, subordination agreement or other document or instrument executed by such limited liability company and presented for recordation by the Company or upon which the Company is asked to rely, such document or instrument must be executed in accordance with one of the following, as appropriate:
   (i) If the limited liability company properly operates through officers appointed or elected pursuant to the terms of a written operating agreement, such documents must be executed by at least two duly elected or appointed officers, as follows: the chairman of the board, the president or any vice president, and any secretary, assistant secretary, the chief financial officer or any assistant treasurer;
   (ii) If the limited liability company properly operates through a manager or managers identified in the articles of organization and/or duly elected pursuant to the terms of a written operating agreement, such document must be executed by at least two such managers or by one manager if the limited liability company properly operates with the existence of only one manager.
5. A certificate of revivor and a certificate of relief from contract voidability issued by the Franchise Tax Board of the State of California.
6. Requirements which the Company may impose following its review of the above material and other information which the Company may require.

F. WITH RESPECT TO A TRUST:

1. A certification pursuant to Section 18100.5 of the California Probate Code in a form satisfactory to the Company.
2. Copies of those excerpts from the original trust documents and amendments thereto which designate the trustee and confer upon the trustee the power to act in the pending transaction.
3. Other requirements which the Company may impose following its review of the material require herein and other information which the Company may require.

G. WITH RESPECT TO INDIVIDUALS:

1. A statement of information.

The map attached, if any, may or may not be a survey of the land depicted hereon. First American Title Insurance Company expressly disclaims any liability for loss or damage which may result from reliance on this map except to the extent coverage for such loss or damage is expressly provided by the terms and provisions of the title insurance policy, if any, to which this map is attached.

LEGAL DESCRIPTION

Real property 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 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 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 A NORTHWESTERLY BOUNDARY OF THE LANDS CONVEYED TO JULES ESHNER AND MARGARET HARKINS ESHNER BY GRANT DEED RECORDED IN BOOK 3804, AT PAGE 23 OF THE OFFICIAL RECORDS OF SANTA CLARA COUNTY; THENCE ALONG THE NORTHWESTERLY AND WESTERLY BOUNDARIES OF SAID LANDS THE FOLLOWING THREE COURSES

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 BOOK 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 I288, 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 B811, 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° 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° 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.

THE DISTANCES AS SHOWN IN THIS DESCRIPTION ARE GRID DISTANCES. TO OBTAIN GROUND LEVEL DISTANCES MULTIPLY ANY DISTANCE SHOWN ABOVE BY THE FACTOR 1.00005310.

APN: 097-01-073
097-01-039
104-01-102
104-03-036
104-03-037
104-03-038
104-03-039
(Portion not assessed)

NOTICE I

Section 12413.1 of the California Insurance Code, effective January 1, 1990, requires that any title insurance company, underwritten title company, or controlled escrow company handling funds in an escrow or sub-escrow capacity, wait a specified number of days after depositing funds, before recording any documents in connection with the transaction or disbursing funds. This statute allows for funds deposited by wire transfer to be disbursed the same day as deposit. In the case of cashier's checks or certified checks, funds may be disbursed the next day after deposit. In order to avoid unnecessary delays of three to seven days, or more, please use wire transfer, cashier's checks, or certified checks whenever possible.

If you have any questions about the effect of this new law, please contact your local First American Office for more details.

NOTICE II

As of January 1, 1991, if the transaction which is the subject of this report will be a sale, you as a party to the transaction, may have certain tax reporting and withholding obligations pursuant to the state law referred to below:

In accordance with Sections 18662 and 18668 of the Revenue and Taxation Code, a buyer may be required to withhold an amount equal to three and one-third percent of the sales price in the case of the disposition of California real property interest by either:

1. A seller who is an individual with a last known street address outside of California or when the disbursement instructions authorize the proceeds be sent to a financial intermediary of the seller, OR
2. A corporate seller which has no permanent place of business in California.

The buyer may become subject to penalty for failure to withhold an amount equal to the greater of 10 percent of the amount required to be withheld or five hundred dollars ($500).

However, notwithstanding any other provision included in the California statutes referenced above, no buyer will be required to withhold any amount or be subject to penalty for failure to withhold if:

1. The sales price of the California real property conveyed does not exceed one hundred thousand dollars ($100,000), OR
2. The seller executes a written certificate, under the penalty of perjury, certifying that the seller is a resident of California, or if a corporation, has a permanent place of business in California, OR
3. The seller, who is an individual, executes a written certificate, under the penalty of perjury, that the California real property being conveyed is the seller's principal residence (as defined in Section 1034 of the Internal Revenue Code).

The seller is subject to penalty for knowingly filing a fraudulent certificate for the purpose of avoiding the withholding requirement.

The California statutes referenced above include provisions which authorize the Franchise Tax Board to grant reduced withholding and waivers from withholding on a case-by-case basis.

The parties to this transaction should seek an attorney's, accountant's, or other tax specialist's opinion concerning the effect of this law on this transaction and should not act on any statements made or omitted by the escrow or closing officer.

The Seller May Request a Waiver by Contacting:
Franchise Tax Board
Withhold at Source Unit
P.O. Box 651
Sacramento, CA 95812-0651
(916) 845-4900

Privacy Policy

We Are Committed to Safeguarding Customer Information

In order to better serve your needs now and in the future, we may ask you to provide us with certain information. We understand that you may be concerned about what we will do with such information - particularly any personal or financial information. We agree that you have a right to know how we will utilize the personal information you provide to us. Therefore, together with our parent company, The First American Corporation, we have adopted this Privacy Policy to govern the use and handling of your personal information.

Applicability

This Privacy Policy governs our use of the information which you provide to us. It does not govern the manner in which we may use information we have obtained from any other source, such as information obtained from a public record or from another person or entity. First American has also adopted broader guidelines that govern our use of personal information regardless of its source. First American calls these guidelines its *Fair Information Values*, a copy of which can be found on our website at www.firstam.com.

Types of Information

Depending upon which of our services you are utilizing, the types of nonpublic personal information that we may collect include:

- Information we receive from you on applications, forms and in other communications to us, whether in writing, in person, by telephone or any other means;
- Information about your transactions with us, our affiliated companies, or others; and
- Information we receive from a consumer reporting agency.

Use of Information

We request information from you for our own legitimate business purposes and not for the benefit of any nonaffiliated party. Therefore, we will not release your information to nonaffiliated parties except: (1) as necessary for us to provide the product or service you have requested of us; or (2) as permitted by law. We may, however, store such information indefinitely, including the period after which any customer relationship has ceased. Such information may be used for any internal purpose, such as quality control efforts or customer analysis. We may also provide all of the types of nonpublic personal information listed above to one or more of our affiliated companies. Such affiliated companies include financial service providers, such as title insurers, property and casualty insurers, and trust and investment advisory companies, or companies involved in real estate services, such as appraisal companies, home warranty companies, and escrow companies. Furthermore, we may also provide all the information we collect, as described above, to companies that perform marketing services on our behalf, on behalf of our affiliated companies, or to other financial institutions with whom we or our affiliated companies have joint marketing agreements.

Former Customers

Even if you are no longer our customer, our Privacy Policy will continue to apply to you.

Confidentiality and Security

We will use our best efforts to ensure that no unauthorized parties have access to any of your information. We restrict access to nonpublic personal information about you to those individuals and entities who need to know that information to provide products or services to you. We will use our best efforts to train and oversee our employees and agents to ensure that your information will be handled responsibly and in accordance with this Privacy Policy and First American's *Fair Information Values*. We currently maintain physical, electronic, and procedural safeguards that comply with federal regulations to guard your nonpublic personal information.

(b) the taking happened prior to the Policy Date and is binding on you if you bought the land without knowing of the taking

3. Title Risks:
   (a) that are created, allowed, or agreed to by you
   (b) that are known to you, but not to us, on the Policy Date -- unless they appeared in the public records
   (c) that result in no loss to you
   (d) that first affect your title after the Policy Date -- this does not limit the labor and material lien coverage in Item 8 of Covered Title Risks
4. Failure to pay value for your title.
5. Lack of a right:
   (a) to any land outside the area specifically described and referred to in Item 3 of Schedule A OR
   (b) in streets, alleys, or waterways that touch your land
   This exclusion does not limit the access coverage in Item 5 of Covered Title Risks.

2006 ALTA LOAN POLICY (06-17-06)
EXCLUSIONS FROM COVERAGE

The following matters are expressly excluded from the coverage of this policy, and the Company will not pay loss or damage, costs, attorneys' fees, or expenses that arise by reason of:

1. a. Any law, ordinance, permit, or governmental regulation (including those relating to building and zoning) restricting, regulating, prohibiting, or relating to
   i. the occupancy, use, or enjoyment of the Land;
   ii. the character, dimensions, or location of any improvement erected on the Land;
   iii. the subdivision of land; or
   iv. environmental protection;

   or the effect of any violation of these laws, ordinances, or governmental regulations. This Exclusion 1(a) does not modify or limit the coverage provided under Covered Risk 5.

   b. Any governmental police power. This Exclusion 1(b) does not modify or limit the coverage provided under Covered Risk 6.
2. Rights of eminent domain. This Exclusion does not modify or limit the coverage provided under Covered Risk 7 or 8.
3. Defects, liens, encumbrances, adverse claims, or other matters
   a. created, suffered, assumed, or agreed to by the Insured Claimant;
   b. not Known to the Company, not recorded in the Public Records at Date of Policy, but Known to the Insured Claimant and not disclosed in writing to the Company by the Insured Claimant prior to the date the Insured Claimant became an Insured under this policy;
   c. resulting in no loss or damage to the Insured Claimant;
   d. attaching or created subsequent to Date of Policy (however, this does not modify or limit the coverage provided under Covered Risk 11, 13, or 14); or
   e. resulting in loss or damage that would not have been sustained if the Insured Claimant had paid value for the Insured Mortgage.
4. Unenforceability of the lien of the Insured Mortgage because of the inability or failure of an Insured to comply with applicable doing-business laws of the state where the Land is situated.
5. Invalidity or unenforceability in whole or in part of the lien of the Insured Mortgage that arises out of the transaction evidenced by the Insured Mortgage and is based upon usury or any consumer credit protection or truth-in-lending law.
6. Any claim, by reason of the operation of federal bankruptcy, state insolvency, or similar creditors' rights laws, that the transaction creating the lien of the Insured Mortgage, is
   a. a fraudulent conveyance or fraudulent transfer, or
   b. a preferential transfer for any reason not stated in Covered Risk 13(b) of this policy.
7. Any lien on the Title for real estate taxes or assessments imposed by governmental authority and created or attaching between Date of Policy and the date of recording of the Insured Mortgage in the Public Records. This Exclusion does not modify or limit the coverage provided under Covered Risk 11(b).

The above policy form may be issued to afford either Standard Coverage or Extended Coverage. In addition to the above Exclusions from Coverage, the Exceptions from Coverage in a Standard Coverage policy will also include the following Exceptions from Coverage:

EXCEPTIONS FROM COVERAGE

This policy does not insure against loss or damage (and the Company will not pay costs, attorneys' fees or expenses) that arise by reason of:

1. (a) Taxes or assessments that are not shown as existing liens by the records of any taxing authority that levies taxes or assessments on real property or by the Public Records; (b) proceedings by a public agency that may result in taxes or assessments, or notices of such proceedings, whether or not shown by the records of such agency or by the Public Records.
2. Any facts, rights, interests, or claims that are not shown by the Public Records but that could be ascertained by an inspection of the Land or that may be asserted by persons in possession of the Land.
3. Easements, liens or encumbrances, or claims thereof, not shown by the Public Records.
4. Any encroachment, encumbrance, violation, variation, or adverse circumstance affecting the Title that would be disclosed by an accurate and complete land survey of the Land and not shown by the Public Records.
5. (a) Unpatented mining claims; (b) reservations or exceptions in patents or in Acts authorizing the issuance thereof; (c) water rights, claims or title to water, whether or not the matters excepted under (a), (b), or (c) are shown by the Public Records.
6. Any lien or right to a lien for services, labor or material not shown by the public records.

2006 ALTA OWNER'S POLICY (06-17-06)

EXCLUSIONS FROM COVERAGE

The following matters are expressly excluded from the coverage of this policy, and the Company will not pay loss or damage, costs, attorneys' fees, or expenses that arise by reason of:

1. a. Any law, ordinance, permit, or governmental regulation (including those relating to building and zoning) restricting, regulating, prohibiting, or relating to

   i. the occupancy, use, or enjoyment of the Land;
   ii. the character, dimensions, or location of any improvement erected on the Land;
   iii. the subdivision of land; or
   iv. environmental protection;

   or the effect of any violation of these laws, ordinances, or governmental regulations. This Exclusion 1(a) does not modify or limit the coverage provided under Covered Risk 5.

   b.Any governmental police power. This Exclusion 1(b) does not modify or limit the coverage provided under Covered Risk 6.
2. Rights of eminent domain. This Exclusion does not modify or limit the coverage provided under Covered Risk 7 or 8.
3. Defects, liens, encumbrances, adverse claims, or other matters
   a. created, suffered, assumed, or agreed to by the Insured Claimant;
   b. not Known to the Company, not recorded in the Public Records at Date of Policy, but known to the Insured Claimant and not disclosed in writing to the Company by the Insured Claimant prior to the date the Insured Claimant became an Insured under this policy;
   c. resulting in no loss or damage to the Insured Claimant;
   d. attaching or created subsequent to Date of Policy (however, this does not modify or limit the coverage provided under Covered Risk 11, 13, or 14); or
   e. resulting in loss or damage that would not have been sustained if the Insured Claimant had paid value for the Insured Mortgage.
4. Unenforceability of the lien of the Insured Mortgage because of the inability or failure of an Insured to comply with applicable doing-business laws of the state where the Land is situated.
5. Invalidity or unenforceability in whole or in part of the lien of the Insured Mortgage that arises out of the transaction evidenced by the Insured Mortgage and is based upon usury or any consumer credit protection or truth-in-lending law.
6. Any claim, by reason of the operation of federal bankruptcy, state insolvency, or similar creditors' rights laws, that the transaction creating the lien of the Insured Mortgage, is
   a. a fraudulent conveyance or fraudulent transfer, or
   b. a preferential transfer for any reason not stated in Covered Risk 13(b) of this policy.
7. Any lien on the Title for real estate taxes or assessments imposed by governmental authority and created or attaching between Date of Policy and the date of recording of the Insured Mortgage in the Public Records. This Exclusion does not modify or limit the coverage provided under Covered Risk 11(b).

The above policy form may be issued to afford either Standard Coverage or Extended Coverage. In addition to the above Exclusions from Coverage, the Exceptions from Coverage in a Standard Coverage policy will also include the following Exceptions from Coverage:

EXCEPTIONS FROM COVERAGE

This policy does not insure against loss or damage (and the Company will not pay costs, attorneys' fees or expenses) that arise by reason of:

1. (a) Taxes or assessments that are not shown as existing liens by the records of any taxing authority that levies taxes or assessments on real property or by the Public Records; (b) proceedings by a public agency that may result in taxes or assessments, or notices of such proceedings, whether or not shown by the records of such agency or by the Public Records.
2. Any facts, rights, interests, or claims that are not shown by the Public Records but that could be ascertained by an inspection of the Land or that may be asserted by persons in possession of the Land.
3. Easements, liens or encumbrances, or claims thereof, not shown by the Public Records.
4. Any encroachment, encumbrance, violation, variation, or adverse circumstance affecting the Title that would be disclosed by an accurate and complete land survey of the Land and not shown by the Public Records.
5. (a) Unpatented mining claims; (b) reservations or exceptions in patents or in Acts authorizing the issuance thereof; (c) water rights, claims or title to water, whether or not the matters excepted under (a), (b), or (c) are shown by the Public Records.
6. Any lien or right to a lien for services, labor or material not shown by the public records.

ALTA EXPANDED COVERAGE RESIDENTIAL LOAN POLICY (07-26-10)

EXCLUSIONS FROM COVERAGE

The following matters are expressly excluded from the coverage of this policy, and the Company will not pay loss or damage, costs, attorneys' fees, or expenses that arise by reason of:

1. a. Any law, ordinance, permit, or governmental regulation (including those relating to building and zoning) restricting, regulating, prohibiting, or relating to

   i. the occupancy, use, or enjoyment of the Land;
   ii. the character, dimensions, or location of any improvement erected on the Land;
   iii. the subdivision of land; or
   iv. environmental protection;

   or the effect of any violation of these laws, ordinances, or governmental regulations. This Exclusion 1(a) does not modify or limit the coverage provided under Covered Risk 5, 6, 13(c), 13(d), 14 or 16.

   b. Any governmental police power. This Exclusion 1(b) does not modify or limit the coverage provided under Covered Risk 5, 6, 13(c), 13(d), 14 or 16.
2. Rights of eminent domain. This Exclusion does not modify or limit the coverage provided under Covered Risk 7 or 8.
3. Defects, liens, encumbrances, adverse claims, or other matters

   a. created, suffered, assumed, or agreed to by the Insured Claimant;
   b. not Known to the Company, not recorded in the Public Records at Date of Policy, but Known to the Insured Claimant and not disclosed in writing to the Company by the Insured Claimant prior to the date the Insured Claimant became an Insured under this policy;
   c. resulting in no loss or damage to the Insured Claimant;
   d. attaching or created subsequent to Date of Policy (however, this does not modify or limit the coverage provided under Covered Risk 11, 16, 17, 18, 19, 20, 21, 22, 23, 24, 27 or 28); or
   e. resulting in loss or damage that would not have been sustained if the Insured Claimant had paid value for the Insured Mortgage.
4. Unenforceability of the lien of the Insured Mortgage because of the inability or failure of an Insured to comply with applicable doing-business laws of the state where the Land is situated.
5. Invalidity or unenforceability in whole or in part of the lien of the Insured Mortgage that arises out of the transaction evidenced by the Insured Mortgage and is based upon usury or any consumer credit protection or truth-in-lending law. This Exclusion does not modify or limit the coverage provided in Covered Risk 26.
6. Any claim of invalidity, unenforceability or lack of priority of the lien of the Insured Mortgage as to Advances or modifications made after the Insured has Knowledge that the vestee shown in Schedule A is no longer the owner of the estate or interest covered by this policy. This Exclusion does not modify or limit the coverage provided in Covered Risk 11.
7. Any lien on the Title for real estate taxes or assessments imposed by governmental authority and created or attaching subsequent to Date of Policy. This Exclusion does not modify or limit the coverage provided in Covered Risk 11(b) or 25.
8. The failure of the residential structure, or any portion of it, to have been constructed before, on or after Date of Policy in accordance with applicable building codes. This Exclusion does not modify or limit the coverage provided in Covered Risk 5 or 6.
9. Any claim, by reason of the operation of federal bankruptcy, state insolvency, or similar creditors' rights laws, that the transaction creating the lien of the Insured Mortgage, is

   a. a fraudulent conveyance or fraudulent transfer, or
   b. a preferential transfer for any reason not stated in Covered Risk 27(b) of this policy.

EXHIBIT M

TERM SHEET REGARDING OBLIGATIONS FOR LANDFILL POST-CLOSURE OPERATION AND MAINTENANCE

Section 14.1 of the DDA requires the execution of a Landfill Operation and Management Agreement within ninety (90) days after the Effective Date, or within thirty (30) days after the date on which all necessary Authorizations upon which the execution of the Landfill Operation and Management Agreement is contingent have issued, whichever is later. The Landfill Operation and Management Agreement shall contain at a minimum the provisions set forth in this **Exhibit M.** Defined terms used but not defined below shall have the meanings set forth in the DDA.

Subject Matter: The Landfill Operation and Management Agreement will govern, among other things, the following:

(a) The allocation of responsibilities under (a) ongoing groundwater and surface water monitoring as required by the revised Waste Discharge Requirements Order(s) ("**WDRs**") for the Landfill, to be issued by the RWQCB, (see PCLUP Section [12]), (b) an emergency response plan (see PCLUP Section [13]), and (c) an ongoing operation and maintenance plan to maintain the site features which compose the landfill cap, the drainage and storm water management features, the landfill gas ("**LFG**") collection and remediation system, the landfill gas mitigation system (see PCLUP Section [10]) and the leachate collection and removal ("**LCR**") system (see PCLUP Section [14]) ((a), (b) and (c), together with any additional post-closure obligations contemplated by the PCLUP, the Revised Corrective Action and Revised Post-Closure Maintenance Plan, the WDRs, and the Revised Closure Plan, the "**Post-Closure O&M Obligations**").

(b) The obligations of City, Master Developer, and (as applicable) the Phase Developers to comply with Mitigation Measures HAZ-4.1 (regarding Landfill Closure, Monitoring, and Maintenance Plans), HAZ-4.2 (regarding Landfill Gas Collection and Removal Systems), HAZ-4.4 (regarding Landfill Gas Monitoring and Control System Maintenance), and HAZ-6.1 (regarding the finalization of the Draft Technical Memorandum: Leachate Collection and Removal System) for the Project (together, the "**Landfill O&M Mitigation Measures**").

Master Developer WDRs: Pursuant to the WDRs to be issued to Master Developer (either as a separate document issued solely to Master Developer, as requested jointly by the Parties, or as discrete separate sections imposing responsibilities solely upon Master Developer in WDRs issued to both the City and Master Developer) (in either case, the "**Master Developer WDRs**"), Master Developer and, upon formation of a Master Owners' Association (the "**Master Owners' Association**"), the Master Owners' Association, shall be solely responsible for those portions of the Post-Closure O&M Obligations applicable to all elements of the Landfill System within those portions of the ground leased parcels that are located above the top of the fill layer of the landfill cap (the "**Airspace Parcels**"), as well as any Master Developer-owned elements located outside of the Airspace Parcels, as such areas will be more particularly delineated on a series of

diagrams to be attached to the Landfill Operation and Management Agreement (the "**Responsibility Exhibits**"). The Parties will jointly request the RWQCB to approve the substitution of Master Developer by the Master Owners' Association formed by Master Developer for the Project Site as the responsible discharger under the WDRs, upon the formation of the Master Owners' Association.

City WDRs: Pursuant to the WDRs to be issued to City (either as a separate document issued solely to the City as requested jointly by the Parties, or as discrete separate sections imposing responsibilities solely upon the City in WDRs issued to both the City and Master Developer) (in either case, the "**City WDRs**"), City shall be solely responsible for those portions of the Post-Closure O&M Obligations applicable to all elements of the Landfill System located outside of the Airspace Parcels, including public streets, public open space and other publicly-owned areas, and those portions of the Project Site underlying the Airspace Parcels located from the top of the fill layer of the landfill cap and below, as well as any City-owned elements that are contained within the Airspace Parcels (together, the "**City Fee Parcels**"), which areas are to be more particularly shown on the Responsibility Exhibits.

Responsibility Matrix: The division of the Post-Closure O&M Obligations between Master Developer and City pursuant to the Master Developer WDRs and City WDRs are set forth in the responsibility matrix attached hereto as Exhibit A (the "**Responsibility Matrix**") The parties shall modify or supplement the Responsibility Matrix and Responsibility Exhibits to reflect any changes or additions to the Post-Closure O&M Obligations contemplated by the PCLUP, the Revised Corrective Action and Revised Post-Closure Maintenance Plan, the WDRs, and the Revised Closure Plan. Upon approval by the RWQCB of substitution of Master Developer by the Master Owners' Association, each task assigned to Master Developer in the Responsibility Matrix and Responsibility Exhibits shall instead be the responsibility of the Master Owners' Association.

Landfill O&M Mitigation Measures: Master Developer and City shall ensure that all requirements set forth in the Landfill O&M Mitigation Measures shall be incorporated into the PCLUP, the Revised Corrective Action and Revised Post-Closure Maintenance Plan, the WDRs, and/or the Revised Closure Plan, such that all such requirements are ultimately included in the Post-Closure O&M Obligations.

Insurance and Indemnities.

(a) City and Master Developer (or the Tenant under a Ground Lease, as applicable) shall each be required to obtain and maintain insurance coverage related to those portions of the Post-Closure O&M Obligations and the Landfill System for which each of City and Related is respectively responsible pursuant to the WDRs, in accordance with the terms of the DDA and each Ground Lease.

(b) City and Master Developer (or the Tenant under a Ground Lease, as applicable) shall indemnify, defend and hold harmless the other party for all losses, damages, costs, fees, claims, civil penalties or other liabilities arising from the acts or omissions of the indemnifying party in connection with such party's portion of the Post-

Closure O&M Obligations pursuant to the WDRs, in accordance with the terms of the DDA and each Ground Lease.

Enhanced Landfill Costs: In the event that City's ultimate costs to comply with its Post-Closure O&M Obligations of the Landfill System exceed City's baseline costs to comply with such obligations as of the Project commencement date, and a portion of such increased costs are attributable to the Project, Master Developer (or the Master Owners' Association upon assignment) shall reimburse City for certain incremental increases in such costs in accordance with the terms of the DDA.

EXHIBIT A

Responsibility Matrix

PCLUP Section Reference	Obligation	Responsible Party	Notes/Status
9.5 – LFG Collection System Monitoring Plan	Conduct periodic monitoring and testing activities in as required by BAAQMB Regulation 8, Rule 34, CCR Title 27, and Synthetic Minor Operating Permit (SMOP) condition 2935, Part 14. Compile results and include in an annual report along with system and individual wellhead operation and downtime.	City	
11.5 – LCR System Monitoring Plan	Check LCR system as scheduled or required for potential damages from seismic activities, corrosion, etc. Extract leachate and discharge to the sanitary sewer (pending permit approval).	City	
12.0 – Groundwater and Surface Water Monitoring	Monitor groundwater and surface waters at and adjacent to the Project Site on a semi-annual basis. Compile sampling results and include in semi-annual report.	City	
13.1 – High Methane at Buildings	Maintain automatic methane monitoring system within the first floor of the buildings, set within certain alarm levels. In the event of an emergency, Building Engineering Manager to coordinate with the City's Fire Department appropriate actions and steps necessary to protect public health and safety and the environment, and immediately notify the LEA. Verify validity and record description of LFG sensor alarm for submission to LEA. During an evacuation, reoccupation prohibited until confirmed and approved by the City's Fire Department that: (1) concentrations of methane meet the applicable compliance requirements and that (2) the landfill gas mitigation system ("**LFGMS**") is operating in a manner that ensures adequate control of methane/vapor intrusion.	Master Developer	
13.2 – Other Emergency Situation	Contact emergency services in the event of an emergency such as a fire or earthquake. During an evacuation, reoccupation prohibited until confirmed and approved by the City's Fire Department that: (1) concentrations of methane meet the applicable compliance requirements; and that (2) the LFGMS systems are operating in a manner that ensures adequate control of methane/vapor intrusion. After risk of immediate danger has subsided, inspect Project Site-wide systems for damage and evaluate for necessary repair, and notify LEA accordingly. After damages assessed, record a description of damages, steps to protect public health and safety and environment, and description of further corrective actions and submit to LEA.	Master Developer as to emergencies within Airspace Parcels; City as to emergencies within City Fee Parcels. If an emergency within one party's parcel is caused by the actions or omissions of the other party, such party shall have the option to (a) remedy the emergency itself (and then be reimbursed or indemnified) or (b) require the other party to remedy the emergency (and bear all costs related thereto).	
14.1 – Final Cover Inspection and Maintenance	Conduct post-construction maintenance activities to maintain site features (pavement, foundation, landscaping) which compose the landfill cap, including inspection of landfill cover integrity and repair of landfill cover as needed. In landscaped areas, monitor	City as to site features within City Fee Parcels; Master Developer as to site features within Airspace Parcels	

PCLUP Section Reference	Obligation	Responsible Party	Notes/Status
	condition of vegetation quarterly and monthly during wet-weather season; identify areas of irregular color or growth deficiency and note spread of conditions during future inspections. Fill and then reseed areas that have ponded water or have settled to reestablish the proper grade. Close off areas where slope failures have occurred to prevent damage to equipment or harm to individuals, and implement specific corrective action depending on the extent, nature, and location of the failure. Maintain record of final cover maintenance activities. Notify regulatory agencies if required.		
14.2 – Drainage Features Inspection and Maintenance	Inspect Project Site quarterly and monthly during the wet-weather season for evidence of ponding or degradation of the Project Site's drainage control system. Remedy ponding on the lower portions of the Project Site by either backfilling the area to provide positive drainage, or providing an acceptable downstream slope to an appropriate discharge point. Inspect property perimeter for failure and make temporary repairs if necessary.	Master Developer	
14.3 – LFG System Inspection and Maintenance	Examine accessible portions of LFG system piping for potential system failures on a monthly basis. Address system failures which would reduce system efficiency and/or effectiveness within 24 hours of detection. Perform preventative maintenance will be performed at manufacturer recommended intervals. Prepare LFG system operation and maintenance (O&M) manual following construction of the system and completion of record drawings.	City	
14.4 – LFGMS Inspection and Maintenance	Ongoing operation and maintenance of the LFGMS. Repair or replace system components for operational reliability as needed during routine maintenance periods. If building improvement plans (e.g., tenant improvements) impact LFGMS components, portions of the LFGMS will be properly repaired. Prepare LFGMS O&M manual following construction of the LFGMS and completion of record drawings.	Master Developer as to portions of LFGMS within Airspace Parcels; City as to portions of LFGMS within City Fee Parcels	
14.5 – LCR System Inspection and Maintenance	Ongoing operation and maintenance of the LCR system. Conduct system inspections whenever leachate is sampled. Prepare LCR system O&M manual following construction of the LCR system and completion of record drawings.	City	
14.6 – Groundwater Monitoring System Inspection and Maintenance	Inspect groundwater monitoring wells for signs of failure or deterioration during each sampling event. If damage discovered, replace or repair well. If replaced, decommission existing, damaged well according to the California Well Standards guidelines for well destruction. Install new wells in accordance with California Well Standards guidelines.	City	
14.7 - Reporting	Compile results of periodic inspections and a summary of maintenance performed to the systems discussed in Sections 14.1 through 14.6 and include in quarterly monitoring reports.	City as to City responsibilities identified herein; Master Developer as to Master Developer responsibilities identified herein	

PCLUP Section Reference	Obligation	Responsible Party	Notes/Status
14.8 – Planned or Emergency Subsurface Activities	Waste management for future, planned or emergency, subsurface activities. Inspect and maintain the integrity of the cap and provide notification of activities that disturb the cap and measures performed to mitigate the disturbance.	Master Developer as to subsurface activities within Airspace Parcels; City as to subsurface activities within City Fee Parcels	

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EXHIBIT N
ESTIMATE OF PREMIUM COSTS AT THE REFERENCE DATE

Preliminary Estimate of Costs	Nominal 2015$
Premium Offsite Development	$104,058,151
Premium Onsite Development	$75,490,711
Premium Landfill	$447,057,402
Premium Engineering	$6,000,000
Miscellaneous	$1,500,000
Total Estimated Premium Costs	**$634,106,264**

Premium Offsite Costs:	
1) Demolition	$1,000,000
2) Site Pre/Grading	$3,984,318
3) Paving	$4,560,718
4) Incoming Power	$16,205,667
5) Gas to Property Line	$557,500
6) Water to Property Line	$200,000
7) Communication Infrastructure	$500,000
8) Upgrade existing sanitary pump stations	$2,617,321
9) Storm Drain	$800,000
10) Relocate existing utilities	$1,000,000
11) Street light infrastructure	$200,000
12) Traffic Impact Fees/Costs	$52,000,000
13) Development Site Access (free and clear title)	$15,732,628
14) Third Party design and engineering costs for Premium Offsite Items	$4,700,000
Total Premium Offsite Costs	**$104,058,151**

Premium Onsite Costs:	
1) Demolition	$1,500,000
2) Mass excavation and grading	$3,500,000
3) Permiter Roads	$55,592,961
4) Main utility distribution	$4,510,021
5) Traffic signals	$6,287,729
6) Site retaining wall associated with larger grade changes	$1,200,000
7) Third Party design and engineering costs for Premium Onsite Items	$2,900,000
Total Premium Onsite Costs	**$75,490,711**

Premium Landfill Costs:	
1) Foundation Premium	$312,628,152
2) Methan gas monitoring and collection systems	$37,250,000
3) Demolition and replacement of existing gas, leachate and ground water collection systems	$6,000,000
4) Repair and establish clay cap	$500,000
5) Parcel 4 settlement slab	$55,000,000
6) Interstitial utility space under buildings	$19,048,000
7) Perimeter building settlement walls	$725,000
8) Utility premiums; settlement vaults, flex connections, special support structures, trench liners	$11,356,250
9) Special supports for site improvements	$800,000
10) Additional base rock under asphalt paving	$750,000
11) Refuse handling, relocation and disposal	$3,000,000
12) Third Party design and engineering costs for Premium Landfill Items	$6,000,000
Total Premium Landfill Costs	**$453,057,402**

EXHIBIT O

LIST OF PRE-APPROVED ARBITERS

Bruce Belding: http://www.thecca.net/profile/bruce-belding

Brad Bening, Esq. - http://wsblaw.net/Brad%20Bening%20Mediationpage%20FINAL.pdfHon.

Joseph Biafore, Jr. (ret.) - http://www.jamsadr.com/biafore/

Zela Claiborne, Esq.: http://www.jamsadr.com/claiborne/

Bruce A. Edwards, Esq. - http://www.jamsadr.com/Edwards/Construction/

Hon. Jamie Jacobs-May (ret.) - http://www.jamsadr.com/jacobs-may/

Hon. William Martin (ret.) - http://www.jamsadr.com/william-martin/

EXHIBIT P

FORM OF ASSIGNMENT, ASSUMPTION AND RELEASE AGREEMENT

RECORDING REQUESTED BY:

AND WHEN RECORDED MAIL TO:

ASSIGNMENT, ASSUMPTION AND RELEASE AGREEMENT
(City Place Santa Clara)

This ASSIGNMENT, ASSUMPTION AND RELEASE AGREEMENT (this "Agreement"), effective as of _____, 20__ (the "Effective Date"), is entered into by and among THE CITY OF SANTA CLARA, a chartered municipal corporation (the "City"), RELATED SANTA CLARA, LLC, a Delaware limited liability company ("Master Developer"), and [_____], a [_____] ("Phase Developer").

RECITALS:

A. City and Master Developer are parties to that certain Disposition and Development Agreement (City Place Santa Clara), dated as of August 12, 2016, recorded in the Office of the Recorder of Santa Clara County, State of California (the "Official Records") on _____, 2016 as Instrument No. _____ (the "DDA"). Unless otherwise defined in this Agreement, all initially capitalized terms used in this Agreement shall have the respective meanings given them in the DDA.

B. City and Master Developer are parties to that certain Development Agreement dated as of August 12, 2016, recorded in the Official Records on _____, 2016, as Instrument No. _____ (the "Development Agreement"). The DDA and the Development Agreement are collectively referred to herein as the "**Transferred Agreements**".

C. The Transferred Agreements are included in the list of Development Entitlements attached as Exhibit B hereto and made a part hereof (the "**Development Entitlements**"), which list is illustrative of the material documents and instruments governing development of the Project, but is not intended to be an exhaustive list of all documents, instruments, and/or other matters that may govern development of the Project.

D. The DDA allows for the assignment of the DDA under a Consent Transfer or a Permitted Transfer, in either case, subject to the terms and conditions contained in Article 22 thereof, including the execution of an Assignment, Assumption and Release Agreement, substantially in the form attached to the DDA as Exhibit P.

E. The Development Agreement allows for the assignment of the Development Agreement subject to the terms and conditions of Article 9.1 thereof, subject to the Transferee thereunder entering into a Development Agreement Assignment and Assumption Agreement acknowledging the Transferee's rights and obligations thereunder.

F. This Agreement concerns the rights and obligations of the Transferred Agreements as they relate to Phase [XX] of development that is more particularly described in that certain DAP Application dated _____, 20__ (the "**Transferred Phase**"). The land covered by the Transferred Phase is generally depicted on Exhibit A.

G. In connection with the development and financing of the Transferred Phase, Master Developer has agreed to a **[Consent][Permitted]** Transfer (as defined in the DDA) to Phase Developer as of the Effective Date that will assign certain of the rights and obligations of Developer under the Transferred Agreements and Development Entitlements applicable to the Transferred Phase as more particularly set forth in this Agreement, including the right to the conveyance of the those portions of the Transferred Phase that are required to be conveyed by Ground Lease from the City under the terms of the DDA. Phase Developer is willing to accept such rights and to assume such obligations, on the terms and conditions set forth in this Agreement. This Agreement satisfies the requirements of the Transferred Agreements that any transfer must be under an Assignment, Assumption and Release Agreement.

H. **[Note: if the assignment is from a subsequent transferee of Master Developer, include relevant additional recitals, in which case "Master Developer" will be changed to "Developer"]**

AGREEMENT

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the City, Master Developer and Phase Developer agree as follows:

1. Assignment By Master Developer.

1.1 Transferred Rights and Obligations. Master Developer hereby assigns to Phase Developer as of the Effective Date each and all of the right, title and interest of the Master Developer under the Transferred Agreements to the extent applicable to the Transferred Phase (collectively, the "Transferred Rights") and each and all of the obligations, terms, covenants, and agreements of the Master Developer under the Transferred Agreements to the extent applicable to the Transferred Property (collectively, the "Transferred Obligations"); except, however, that such assignment shall not include or affect the following (collectively, the "Excluded Rights and Obligations"):

1.1.1 The rights and obligations of Master Developer with respect to Financial Obligations under Section 1.5 (Master Developer's Role Generally) of the DDA;

1.1.2 The obligations of Master Developer under Section 5.5 (Parking and Access) of the DDA;

1.1.3 The obligations of Master Developer to record the Master CC&Rs as required under Section 6.2.2(c) of the DDA;

1.1.4 The obligations of Master Developer under Article 10 (Determination of Allowed Square Footage) of the DDA;

1.1.5 The obligations of Master Developer under Article 14 (Landfill Obligations) of the DDA;

1.1.6 The obligations of Master Developer under Section 15.2.2 of the DDA.

1.1.7 The rights and obligations of Master Developer with respect to Premium Costs under Article 16 of the DDA;

1.1.8 The rights and obligations of Master Developer under Section 18.2 (Relocation Assistance) of the DDA;

1.1.9 The obligations of Master Developer under Section 4.6 (Multimodal Improvement Plan) of the Development Agreement;

1.1.10 The obligations of Master Developer under Section 4.7 (Special Facilities Required for Electric Service) of the Development Agreement;

1.1.11 The obligations of Master Developer under Article 10 (Periodic Review of Developer's Compliance) of the Development Agreement; and

1.1.12 Any obligations of Master Developer under the Transferred Agreements that arose and were to be performed prior to the Effective Date of this Agreement (unless also expressly assumed under this Agreement by Phase Developer). **[If expressly assumed, insert as necessary here.]**

1.2 Covenant by Master Developer. Master Developer acknowledges that it shall remain jointly and severally liable with Phase Developer for the failure of Phase Developer to comply with the following Development Obligations (as defined in Section 5.3 of the DDA) in accordance with the timing and terms set forth in Section 9.1 of the DDA: **[insert list of applicable Development Obligations that are assigned to the Phase Developer]**

2. Assumption By Phase Developer.

2.1 Phase Developer's Assumption. Phase Developer hereby accepts each and all of the Transferred Rights, and Phase Developer hereby assumes and agrees to be bound by

and perform, as a direct obligation of Phase Developer to the City, each and all of the Transferred Obligations.

2.2 Phase Developer's Acknowledgment. Phase Developer hereby acknowledges that it has reviewed the Transferred Agreements and agrees to be bound by the Transferred Agreements (except for the Excluded Rights and Obligations) and all conditions and restrictions applicable to the Transferred Phase, including, without limitation, all conditions and restrictions contained in the Development Entitlements that are applicable to the Transferred Phase.

3. Representations and Warranties of Master Developer. Master Developer hereby makes the following representations and warranties to the City as of the Effective Date:

3.1 Authority. Master Developer has the full right, power, authority and legal capacity to execute and deliver this Agreement, and all persons who execute this Agreement on behalf of Master Developer are duly authorized and empowered on behalf of Master Developer to do so.

3.2 Valid and Binding. This Agreement is a legal, valid and binding obligation of Master Developer, enforceable against Master Developer in accordance with its terms, except to the extent that such enforcement may be limited by applicable bankruptcy, insolvency and other similar laws affecting creditors' rights generally.

3.3 Transferred Agreements. To the extent applicable to the Transferred Phase, the Transferred Agreements are unmodified and in full force and effect, and the City has not agreed to any amendment of any provision of the Transferred Agreements with respect to the Transferred Phase. **[If any amendments have occurred, state here.]**

3.4 No Defaults. To the actual knowledge of Master Developer, no default on the part of City, and no breach, event, or failure of condition that, with notice or lapse of time or both, would constitute a default on the part of City, exists under the Transferred Agreements with respect to the Transferred Phase. **[If any default exists, describe here.]**

3.5 No Set-Offs. To the actual knowledge of Master Developer, there are no set-offs or defenses against the enforcement of any right or remedy, or any duty or obligation, of the City or Master Developer under the Transferred Agreements with respect to the Transferred Phase.

3.6 Consents. Master Developer has obtained all consents to the assignments and transfers of the Transferred Phase to Phase Developer that may be required by the Transferred Agreements and any other agreement to which Master Developer is a party or by which it is bound. Other than the consents so obtained, no consent to the Transfer of the Transferred Phase to Phase Developer is required under any agreement or other document to which Master Developer is a party or by which Master Developer or the Transferred Phase is bound (other than under the Transferred Agreements).

3.7 No Conflicts. The execution, delivery, and performance by Master Developer of this Agreement (i) will not contravene any legal requirements applicable to Master

Developer or the Transferred Phase, (ii) will not conflict with, breach or contravene any other agreement or document binding upon Master Developer or the Transferred Phase, and (iii) will not result in the creation or imposition of any liens on any portion of the Transferred Phase (except as may be permitted under the terms of the Transferred Agreements).

3.8 No Termination Right. To the actual knowledge of the Master Developer, the Master Developer currently has no right to terminate the Transferred Agreements pursuant to Section 21.4 of the DDA or Section 7.2.5 of the Development Agreement.

4. Representations and Warranties of Phase Developer. Phase Developer hereby makes the following representations and warranties to the City as of the Effective Date:

4.1 Authority. Phase Developer has the full right, power, authority and legal capacity to execute and deliver this Agreement, and all persons who execute this Agreement on behalf of Phase Developer are duly authorized and empowered on behalf of Phase Developer to do so.

4.2 Valid and Binding. This Agreement is a legal, valid and binding obligation of Phase Developer, enforceable against Phase Developer in accordance with its terms, except to the extent that such enforcement may be limited by applicable bankruptcy, insolvency and other similar laws affecting creditors' rights generally.

4.3 No City Representations. Phase Developer has reviewed and is familiar with the terms and conditions of the Transferred Agreements. Phase Developer recognizes and acknowledges that, except as expressly provided herein, the City has made and is making no representation or warranty whatsoever, express or implied, regarding the amount, nature, or extent of any obligation, liability, or duty under the Transferred Agreements with regard to the Transferred Phase. Phase Developer understands and acknowledges that (i) by its execution of this Agreement, Phase Developer has completely satisfied itself as to the existence, meaning and extent of the Transferred Obligations, and (ii) in accordance with the representations made by the City in Paragraph 5 below, the City has not agreed to any amendment of any provision of the Transferred Agreements with regard to the Transferred Phase and, except as expressly provided herein or in the Transferred Agreements, the City has not waived any right of the City or obligation of Owner under the Transferred Agreements with respect to the Transferred Phase.

4.4 Consents. Phase Developer has obtained all consents in connection with its assumption of the Transferred Obligations and for its acquisition of the Transferred Phase that may be required by any agreement or other document to which it is a party or by which it is bound. Other than the consents so obtained, no consent to the acquisition of the Transferred Phase is required under any agreement or other document to which Phase Developer is a party or by which it is bound.

4.5 No Conflicts. The execution, delivery, and performance by Phase Developer of this Agreement and of the Transferred Obligations (i) will not contravene any legal requirements applicable to Phase Developer, (ii) will not conflict with, breach, or contravene any other agreement or document binding upon Phase Developer, and (iii) will not result in the creation or imposition of any liens on any portion of the Transferred Phase (except as may be permitted under the terms of the Transferred Agreements).

4.6 Litigation. To the current actual knowledge of Phase Developer, there are no actions, suits, or proceedings at law or in equity or by or before any governmental authority pending or threatened against or affecting Phase Developer in which there is a reasonable possibility of a determination adverse to Phase Developer and that are reasonably likely, individually or in the aggregate, if determined adversely to Phase Developer, to have a material adverse effect on the ability of Phase Developer to perform the Transferred Obligations.

4.7 Net Worth. Phase Developer (a) by itself **[or by providing a Guaranty]** meets the Financial Requirement **[delete if the transfer is a Permitted Transfer under Section 22.6.1(a) and the Affiliate does not meet the Financial Requirement]**, and (b) meets the Experience Requirement as both of those terms are defined under Section 22.4.3(c) of the DDA with respect to the project contemplated on the Transferred Phase.

5. Representations and Warranties of City. The City hereby makes the following representations and warranties to Master Developer and to Phase Developer as of the Effective Date:

5.1 Authority. City has the full right, power, authority and legal capacity to execute and deliver this Agreement, and all persons who execute this Agreement on behalf of City are duly authorized and empowered on behalf of City to do so.

5.2 Valid and Binding. This Agreement is a legal, valid and binding obligation of City, enforceable against City in accordance with its terms, except to the extent that such enforcement may be limited by applicable bankruptcy, insolvency and other similar laws affecting creditors' rights generally.

5.3 Transferred Agreements. To the extent applicable to the Transferred Phase, the Transferred Agreements are in full force and effect, and the City has not agreed to any amendment of any provision of the Transferred Agreements with respect to the Transferred Phase. **[If any amendments have occurred, state here.]**

5.4 No Waivers. Except as expressly provided herein or in the Transferred Agreements, the City has not waived any right of the City or any obligation of Master Developer under the Transferred Agreements with respect to the Transferred Phase.

5.5 No Defaults. To the actual knowledge of the City, no default on the part of Master Developer, and no breach or failure of condition that, with notice or lapse of time or both, would constitute a default on the part of Master Developer, exists under the Transferred Agreements with respect to the Transferred Phase. **[If any default exists, describe here.]**

5.6 No Set-Offs. To the actual knowledge of the City, there are no set-offs or defenses against the enforcement of any right or remedy, or any duty or obligation, of the City or Master Developer under the Transferred Agreements with respect to the Transferred Phase.

5.7 No Termination Right. To the actual knowledge of the City, the City currently has no right to terminate the Transferred Agreements pursuant to Section 21.4 of the DDA or Section 7.2.5 of the Development Agreement.

6. Release of Master Developer. **[Note: if Affiliate does not meet the Financial Requirement in accordance with Section 22.6.1(a) of the DDA, then Master Developer shall not be released as to the applicable Transfer and this Section 6 will be inapplicable]**

6.1 Qualifying Transfer. The City hereby acknowledges the assignment from Master Developer to Phase Developer is a **[Permitted][Consent]** Transfer in accordance with Article 22 of the DDA and Section 9.1 of the Development Agreement. Therefore, in accordance with Section 22.7 of the DDA, but subject to the terms of Paragraph 1.2 above, the City hereby agrees to release Master Developer from its obligations under the Transferred Agreements applicable to the Transferred Phase, as more particularly set forth in Paragraph 6.2 below.

6.2 City Release. The City hereby unconditionally and irrevocably fully releases and discharges Master Developer from all obligations of Master Developer under the Transferred Agreements applicable to the Transferred Phase, including, without limitation, the Transferred Obligations, excepting therefrom the Excluded Rights and Obligations. With respect to the foregoing release, the City hereby acknowledges that such release is made with the advice of counsel and with full knowledge and understanding of the consequences and effects of such release. Further, as to unknown and unsuspected claims as of the Effective Date, the City hereby acknowledges that such release is made with the full knowledge, understanding, and agreement that California Civil Code Section 1542 provides as follows, and the City hereby agrees that the protection afforded by said Code section and any similar law of the State of California or any other jurisdiction is specifically waived:

> "A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR."

City

By: _____

6.3 City's Acknowledgment.

6.3.1 Without in any way modifying, limiting, or expanding the provisions of Section 21.2.3 of the DDA, the City hereby confirms that, pursuant to such Section 21.2.3, no Event of Default by Master Developer with respect to its obligations under the DDA shall be deemed to be an Event of Default by any Phase Developer (including any Affiliate of Master Developer) acting in its capacity as a Phase Developer under the DDA; and (B) no Event of Default by a Phase Developer (including Master Developer and Affiliates of Master Developer when acting as a Phase Developer) shall be deemed to be an Event of Default by Master Developer, an Affiliate of Master Developer or any other Phase Developer with respect to its obligations under the DDA.

6.3.2 Without in any way modifying, limiting, or expanding the provisions of Section 12.1 of the Development Agreement, the City hereby confirms that pursuant to such Section 12.1, no Event of Default by the Phase Developer, as Transferee of the

Development Agreement hereunder, this Agreement or any Ground Lease, as applicable, shall constitute a default by Master Developer or its successors and assigns with respect to any other portion of the Project Site and shall not entitle City to terminate or modify the Development Agreement with respect to such other portion of the Project Site except to the extent that termination is allowed under the DDA.

7. Covenant by Phase Developer. The Phase Developer covenants and agrees not to challenge the enforceability of any of the provisions or requirements of the Development Entitlements.

8. General Provisions.

8.1 Attorneys' Fees.

8.1.1 Prevailing Party. Should any party hereto institute any action or proceeding to enforce any provision hereof or for damages by reason of an alleged breach of any provision hereof, the prevailing party(ies) shall be entitled to receive from the losing party(ies) reasonable court costs or expenses incurred by the prevailing party(ies), including, without limitation, expert witness fees, document copying expenses, exhibit preparation costs, courier expenses and postage and communication expenses, and such amount as the court may adjudge to be reasonable attorneys' fees for the services rendered the prevailing party(ies) in such action or proceeding. Attorneys' fees under this Paragraph 7.1 include attorneys' fees on any appeal, and, in addition, a party entitled to attorneys' fees shall be entitled to all other reasonable costs and expenses incurred in connection with such action.

8.1.2 Reasonable Fees. For purposes of this Agreement, reasonable fees of attorneys and any in-house counsel for the City (including the City Attorney), Master Developer, or Phase Developer shall be based on the 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 party's 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.

8.2 Notices. A notice or communication under this Agreement by any party to any other party shall be sufficiently given or delivered if dispatched by hand or by registered or certified mail, postage prepaid, return receipt requested, addressed as follows:

8.2.1 in the case of a notice or communication to the City,

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

With A Copy To:

City of Santa Clara
1500 Warburton Avenue

Santa Clara, CA 95050
Attention: City Attorney

8.2.2 in the case of a notice or communication to Master Developer,

Related Santa Clara, LLC
c/o The Related Companies, L.P.
60 Columbus Circle
New York, New York 10023
Attn: Joshua Young

With A Copy To:

Gibson Dunn & Crutcher LLP
555 Mission Street, 30th Floor
San Francisco, California 94105
Attention: Neil H. Sekhri, Esq.

8.2.3 in the case of a notice or communication to Phase Developer,

[Insert Information]

With a copy to:

[Insert Information]

8.2.4 Content of Notice. Every notice given to a party hereto, pursuant to the terms of the Transferred Agreements, must state (or must be accompanied by a cover letter that states) substantially the following:

(a) the section of the Transferred Agreements (or this Agreement) pursuant to which the notice is given and the action or response required, if any;

(b) if applicable, the period of time, which shall not be less than fifteen (15) days following the party's receipt of the notice, within which the recipient of the notice must respond thereto;

(c) if applicable, that the failure to object to the notice within a stated time period, which shall not be less than fifteen (15) days following the party's receipt of the notice, will be deemed to be the equivalent of the recipient's approval or disapproval of or consent to the subject matter of the notice;

(d) if approval is being requested, shall be clearly marked "Request for Approval"; and

(e) if a notice of disapproval or an objection which requires reasonableness, shall specify with particularity the reasons therefor.

8.2.5 Effective Date of Notice. Any mailing address may be changed at any time by giving written notice of such change in the manner provided above at least ten (10) days prior to the effective date of the change. All notices under this Agreement shall be deemed given, received, made, or communicated on the date personal receipt actually occurs or, if mailed, on the delivery date or attempted delivery date shown on the return receipt.

8.3 Successors and Assigns. This Agreement shall be binding upon and inure to the benefit of each of the parties hereto and their respective executors, administrators, successors, and assigns.

8.4 Counterparts. This Agreement may be executed in one or more counterparts, each of which shall constitute an original and all of which shall constitute one instrument. It shall not be necessary in making proof of this Agreement to account for more than one counterpart.

8.5 Captions. Any captions to, or headings of, the Articles, Paragraphs, or subparagraphs of this Agreement are solely for the convenience of the parties hereto, are not a part of this Agreement, and shall not be used for the interpretation or determination of the validity of this Agreement or any provision hereof.

8.6 Amendment To Agreement. The terms of this Agreement may not be modified or amended except by an instrument in writing executed by each of the parties hereto.

8.7 Exhibits. The Exhibits attached hereto are hereby incorporated herein by this reference for all purposes.

8.8 Waiver. The waiver or failure to enforce any provision of this Agreement shall not operate as a waiver of any future breach of any such provision or any other provision hereof.

8.9 Applicable Law. This Agreement shall be governed by and construed and enforced in accordance with the internal laws of the State of California, without regard to principles of conflicts of law.

8.10 Fees and Other Expenses. Except as otherwise provided herein, each of the parties shall pay its own fees and expenses in connection with this Agreement.

8.11 Partial Invalidity. If any portion of this Agreement as applied to any party or to any circumstances shall be adjudged by a court to be void or unenforceable, such portion shall be deemed severed from this Agreement and shall in no way affect the validity or enforceability of the remaining portions of this Agreement.

8.12 Independent Counsel. Each party hereto acknowledges that: (a) it has been represented by independent counsel in connection with this Agreement; (b) it has executed this Agreement with the advice of such counsel; and (c) this Agreement is the result of negotiations between the parties hereto and the advice and assistance of their respective counsel. The fact that this Agreement was prepared by Master Developer's counsel as a matter of convenience shall have no import or significance. Any uncertainty or ambiguity in this

Agreement shall not be construed against Master Developer or any other party to this Agreement because Master Developer's or such party's counsel prepared portions of this Agreement in its final form.

[the remainder of this page has been intentionally left blank]

IN WITNESS WHEREOF, the City has caused this Agreement to be duly executed on its behalf as of the Effective Date.

CITY:

CITY OF SANTA CLARA, a municipal corporation

By: _____

_____
City Manager

1500 Warburton Avenue
Santa Clara, CA 95050
Telephone: (408) 615-2210
Fax Number: (408) 241-6771

Approved as to Form:

By: _____
Name:
Title:

MASTER DEVELOPER:

RELATED SANTA CLARA, LLC, a Delaware limited liability company

By: _____

Its: Authorized Signatory

PHASE DEVELOPER

_____

By: _____

Its: Authorized Signatory

State of California)
County of _____)

On _____ before me, _____, a Notary Public, personally appeared _____ who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature _____ (Seal)
Signature of Notary Public

State of California)
County of _____)

On _____ before me, _____, a Notary Public, personally appeared _____ who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature _____ (Seal)
Signature of Notary Public

State of California)
County of _____)

On _____ before me, _____, a Notary Public, personally appeared _____ who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature _____ (Seal)
Signature of Notary Public

EXHIBIT A

DESCRIPTION OF TRANSFERRED PROPERTY

EXHIBIT B

DEVELOPMENT ENTITLEMENTS

The following constitute the Development Entitlements:

- ☐ Certification of Environmental Impact Report, State Clearinghouse No. 2014072078 (City Council Resolution No. 16-8337) (includes Adoption of Mitigation Monitoring and Reporting Program, and CEQA Findings and Statement of Overriding Considerations
- ☐ Amendments to the Santa Clara General Plan to create a new "Urban Center Entertainment district" General Plan classification for the Property, amend Figure 2.3-1 ("Areas of Potential Development") and related minor text amendments, and amend its Climate Action Plan (City Council Resolution No. 16-8338)
- ☐ Amendment to the Santa Clara Zoning Code and Zoning Map rezoning the Project Site to PD-MC; and adopting the Master Community Plan for the Project (City Council Resolution No. 16-8339)
- ☐ Disposition and Development Agreement (City Council Resolution No. 16-8340)
- ☐ Development Agreement (City Council Ordinance No. 1956)
- ☐ Establishing Procedures for Compliance with Cal. Govt. Code Section 37380 for Leasing Property for a Cumulative Term in Excess of 55 Years (City Council Ordinance No. 1957)
- ☐ Adopting Overriding Findings Regarding Santa Clara County Airport Land Use Commission's Determination of Inconsistency for the Project (City Council Resolution No. 16-8341)
- ☐ **[any subsequent approvals to be added here:]**

EXHIBIT Q
FORM OF CITY COMPLETION GUARANTY

GUARANTY AGREEMENT (COMPLETION)

THIS GUARANTY AGREEMENT (COMPLETION) ("**Guaranty**") is made as of _____ __, 20__, by _____., a _____("**Related Guarantor**") [and _____, a _____] ("_____ **Guarantor**"; Related Guarantor and _____ Guarantor, collectively, the "**Guarantor**"), in favor of THE CITY OF SANTA CLARA, a public body, corporate and politic, of the State of California ("**City**").

RECITALS

A. City and Related Santa Clara, LLC, a Delaware limited liability company ("**Related**" or "**Master Developer**") are parties to that certain Disposition And Development Agreement (City Place Santa Clara), dated as of August 12, 2016 (the **"DDA"**). Among other things, the DDA sets forth the procedures governing disposition of the Airspace Parcels to Phase Developers under the terms of Ground Leases and the development rights and obligations of the Phase Developers thereunder. Each initially capitalized term used herein without definition has the meaning ascribed to such term in the DDA.

B. [_____] ("**Developer**") is the Developer of Phase [**1, 2 or 3 as applicable**] under that certain Ground Lease dated as of _____, 20__ (the "**Ground Lease**") and the assignee of the DDA as to that Phase pursuant to that certain Assignment and Assumption Agreement by and between Master Developer, City and Developer dated _____, 20__. Developer is installing certain Improvements described on Exhibit "A" appended hereto (the "**Phase Improvements**") on the premises demised by the Ground Lease (the "Premises"). Section 27.3.1 of the DDA obligates Developer to execute and deliver a Completion Guaranty to and in favor of the City for the Phase Improvements and otherwise in accordance with Section 27.3.1of the DDA as a condition to Commencing construction of any Phase Improvements in such Phase.

C. Guarantor owns an indirect interest in Developer and will benefit from the execution and delivery of the Ground Lease by the City.

NOW, THEREFORE, in consideration of the foregoing recitals and for other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged by the parties hereto, Guarantor unconditionally, absolutely and irrevocably guarantees and agrees as follows:

1. **GUARANTY**. Guarantor **, jointly and severally if there be more than one Guarantor**,] hereby unconditionally, absolutely and irrevocably guarantees in accordance with Section 3, the performance by Developer of all obligations of Developer as the "Phase Developer" under the DDA to "Complete" (as defined in the DDA) and pay the cost of Completing construction of the Phase Improvements. Without limiting the generality of the foregoing and in addition thereto, Guarantor guarantees that: the Phase Improvements shall be constructed and Completed in accordance with the DDA free and clear of any mechanic's liens, materialman's liens and equitable liens (other than Permitted Liens).

2. **TERMINATION**. Guarantor's obligations under Section 1 above shall remain in effect until the earliest to occur of (a) the date that the Phase Improvements have been Completed, as that term is defined in the DDA, provided, that Guarantor's obligations with respect to the release and discharge of all claims of stop notices, mechanic's liens, materialman's liens and equitable liens that may arise in connection with completion of the Phase Improvements shall survive until such time as the statutory period for filing such notices or liens with respect to the Phase Improvements shall have expired; or (b) Developer has delivered a Lender Guaranty to the City in accordance with Section 27.3.1 of the DDA or provided any other substitute Adequate Security which satisfies the requirements of the DDA.

3. **OBLIGATIONS OF GUARANTOR UPON EVENT OF DEFAULT BY BORROWER**. If the Phase Improvements are not Completed in the manner and within the time (if any time is specified in the DDA) required by the DDA, or if, prior to the Completion of the Phase Improvements, construction of the Phase Improvements should cease or be halted and such cessation or halt constitutes an Event of Default (as defined in the DDA), City may elect, at its sole discretion, to require Guarantors to: (A) Complete construction of the Phase Improvements, at Guarantors' sole cost and expense (provided, Guarantors shall be entitled to the benefit of any surety bonds or other security or collateral held to secure installation of the Phase Improvements, substantially in accordance with the DDA; (B)

fully pay and discharge all claims for labor performed and material and services furnished in connection with the construction of the Phase Improvements; and (C) release and discharge all claims of stop notices, mechanic's liens, materialman's liens and equitable liens that may arise in connection with the construction of the Phase Improvements.

4. **REMEDIES**. If Guarantor fails to promptly perform its obligations under this Guaranty, following written notice from City, in addition to any other remedies available to City, City will have the following remedies:

(a) If City in its sole discretion chooses to do so, City may perform or cause to be performed any or all of Guarantor's obligations under this Guaranty on Guarantor's behalf, and Guarantor shall reimburse City immediately on demand for all costs and expenses, including any attorneys' fees, that City may incur in performing those obligations.

(b) City may bring any action at law or in equity, or both, to compel Guarantor to perform its obligations under this Guaranty and to collect compensation for all loss, cost, damage, injury and expense which may be sustained or incurred by City as a consequence of Guarantor's failure to perform those obligations. City from time to time may bring such an action regardless of whether City has first required performance by Developer, or whether City has exhausted any or all security (if any).

(c) NOTWITHSTANDING ANYTHING CONTAINED OR IMPLIED IN THIS GUARANTY, CITY UNCONDITIONALLY AND IRREVOCABLY AGREES THAT IF GUARANTOR SHALL DEFAULT IN THE PERFORMANCE OF GUARANTOR'S OBLIGATIONS UNDER SECTIONS 1 AND 2 OF THIS GUARANTY, CITY SHALL, IN THE EXERCISE OF ANY REMEDIES HEREUNDER, BE AUTHORIZED TO RECOVER FROM GUARANTOR AN AMOUNT EQUAL TO THE DIFFERENCE BETWEEN (A) THE FAIR MARKET VALUE OF THE PREMISES AT THE DATE OF BREACH AS IF EACH AND ALL OF THE PHASE IMPROVEMENTS THEN REQUIRED TO HAVE BEEN COMPLETED HAD, IN FACT, BEEN COMPLETED AS AND WHEN REQUIRED UNDER THE DDA AND (B) THE ACTUAL FAIR MARKET VALUE OF THE PREMISES AT OF THE DATE OF BREACH AFTER GIVING EFFECT TO INSTALLATION OF ANY PORTION OF THE PHASE IMPROVEMENTS CONSTRUCTED ON THE PREMISES

(d) THE PARTIES ACKNOWLEDGE AND AGREE THAT, EXCEPT FOR INJUNCTIVE OR OTHER EQUITABLE RELIEF GRANTED IN FAVOR OF THE CITY IN CONNECTION WITH ANY BREACH BY GUARANTOR OF ITS OBLIGATIONS TO THE CITY UNDER THIS GUARANTY, THE FOREGOING FORMULA SHALL GOVERN AND CONTROL THE CALCULATION OF DAMAGES FOR ANY BREACH BY GUARANTOR OF ITS OBLIGATIONS TO CITY UNDER THIS GUARANTY TO THE EXCLUSION OF ANY OTHER REMEDY OR COMPENSATION OR REIMBURSEMENT TO THE CITY FOR ANY LOSSES, DAMAGES, COSTS AND EXPENSES INCURRED BY THE CITY. CITY EXPRESSLY AGREES THAT THE DAMAGE FORMULA SET FORTH HEREINABOVE IN SECTION 4(c) WILL ADEQUATELY COMPENSATE CITY FOR ANY AND ALL IMPAIRMENT OF VALUE AND ALL OTHER DAMAGES OF ANY TYPE OR NATURE ARISING FROM A FAILURE BY GUARANTOR TO COMPLETE THE PHASE IMPROVEMENTS AS AND WHEN REQUIRED BY THE DDA.

5. **RIGHTS OF CITY**. Guarantor authorizes City, without giving notice to Guarantor or obtaining Guarantor's consent and without affecting the liability of Guarantor, from time to time in City's sole discretion to do any one or more of the following: (a) approve modifications to the Plans and Specifications; (b) change the terms of the DDA or any part thereof; (c) renew, modify, compromise or extend all or any portion of Developer's obligations under the DDA; (d) take and hold security for the performance of Developer's obligations under the DDA and Guarantor's obligations under this Guaranty, accept additional or substituted security for either, and exchange, enforce, waive, subordinate, compromise, fail to perfect, and release, sell or otherwise dispose of any such security in whole or part; (e) apply such security and direct the order and manner of sale thereof as City in its sole discretion may determine; (f) apply payments or recoveries received by City from Developer, Guarantor or any other source to any obligations of Borrower to City, in such order, manner and priority as City shall determine in its sole discretion, whether or not any such obligations are covered by this Guaranty; (g) substitute, add or release any one or more guarantors; and (h) release Developer from all or any part of its obligations under the DDA.

6. **GUARANTOR'S WAIVERS**. To the extent permitted by applicable law, Guarantor waives any and all rights and defenses based upon or arising out of (a) any legal disability or other defense of Developer, any other guarantor or other person or by reason of the cessation or limitation of the liability of Developer from any cause other than full performance of all obligations under the DDA; (b) any lack of authority of the officers, directors, partners, managers, members or agents acting or purporting to act on behalf of Developer, Guarantor or any principal of Developer or Guarantor, or any defect in the formation of Developer, such Guarantor or any principal of Developer or such Guarantor; (c) any act or omission by City which directly or indirectly results in, or contributes to, the release of Developer or any other person or any collateral for any obligation to the City in respect of the

DDA; (d) the unenforceability or invalidity of any collateral assignment or guaranty with respect to any obligation to City in connection with the DDA, or the lack of perfection or continuing perfection or lack of priority of any lien which secures any obligation to City; (e) any failure of City to marshal assets in favor of Guarantor or any other person; (f) any modification of any obligation to City in connection with the DDA; (g) an election of remedies by City, even though that election of remedies (such as a non-judicial foreclosure, if available and/or permitted, with respect to security for a guaranteed obligation) has or may have destroyed such Guarantor's rights of subrogation, reimbursement and contribution against the principal by the operation of applicable law or otherwise; (h) City's failure to disclose to such Guarantor any information concerning Developer's financial condition or any other circumstances bearing on Developer's ability to pay and perform its obligations under the DDA; (i) any statute or rule of law which provides that the obligation of a surety or guarantor must be neither larger in amount nor in any other respects more burdensome than that of a principal or which reduces a surety's or guarantor's obligation in proportion to the principal obligation; (j) any failure of City to file or enforce a claim in any bankruptcy or other proceeding with respect to any person; (k) City's election, in any proceeding instituted under the Federal Bankruptcy Code, of the application of Section 1111(b)(2) of the Federal Bankruptcy Code or any successor statute; (l) any borrowing or any grant of a security interest under Section 364 of the Federal Bankruptcy Code; (m) any right of subrogation, any right to enforce any remedy which City may have against Developer and any right to participate in, or benefit from, any security for the DDA or any of Developer's obligations under the DDA now or hereafter held by City; (n) all presentments, demands for performance, notices of nonperformance, protests, notices of protest, notices of dishonor, notices of acceptance of this Guaranty and of the existence, creation, or incurring of new or additional obligations, and demands and notices of every kind except such notices as may be expressly required under this Guaranty; (o) any statute of limitations affecting the liability of Guarantor hereunder or the enforcement hereof; (p) use of cash collateral under Section 363 of the United States Bankruptcy Code; and (q) any agreement or stipulation with respect to the provision of adequate protection in any bankruptcy proceeding of any person. Guarantor further specifically waives any and all rights and defenses that Guarantor may have because the obligations of Developer are or may be secured by real property; this means, among other things, that: (1) City may collect from Guarantor without first foreclosing on any real or personal property collateral pledged by Developer; (2) if City forecloses on any real property collateral pledged by Developer, then (A) the amount of the debt may be reduced only by the price for which that collateral is sold at the foreclosure sale, even if the collateral is worth more than the sale price, and (B) City may collect from Guarantor even if City, by foreclosing on the real property collateral, has destroyed any right, including, without limitation, any right of subrogation or right of indemnity, Guarantor may have to collect from Developer. The foregoing sentence is an unconditional and irrevocable waiver of any rights and defenses Guarantor may have because Developer's debt is secured by real property. This understanding and waiver is made in addition to and not in limitation of any of the other terms and conditions of this Guaranty. These rights and defenses being waived by each Guarantor include, but are not limited to, any rights or defenses based upon deficiency limitation or anti-deficiency, redemption or other similar rights, if any. Guarantor agrees that the payment or performance of any act which tolls any statute of limitations applicable to the DDA shall similarly operate to toll the statute of limitations applicable to Guarantor's liability hereunder. Without limiting the generality of the foregoing or any other provision hereof, Guarantor further expressly waives to the extent permitted by law and for so long as the DDA is in effect any and all rights and defenses, including, without limitation, any rights of subrogation, reimbursement, indemnification and contribution, which might otherwise be available to Guarantor under any applicable law (other than the defense of due payment or performance) and any right or defense that Guarantor may have or be entitled to assert based upon or arising out of any one or more of Sections 580a, 580b, 580d or 726 of the California Code of Civil Procedure or Section 2848 of the California Civil Code and any rights and defenses that are or may become available to Guarantor by reason of Sections 2787 to 2855, inclusive, of the California Civil Code.

7. **GUARANTORS' WARRANTIES**. Guarantor warrants, represents, covenants and acknowledges to City that: (a) Guarantors acknowledges and agrees that City would not enter into the Ground Lease but for this Guaranty, and that this Guaranty and the agreements of Guarantor in this Guaranty is a material part of the consideration which City is receiving for entering into the Ground Lease; (b) Guarantor has reviewed and understands all of the terms and provisions of the DDA; (c) there are no conditions precedent to the effectiveness of this Guaranty; (d) the Guarantor has established adequate means of obtaining from sources other than City, on a continuing basis, financial and other information pertaining to Developer's financial condition, the Premises, the Phase Improvements and Developer's activities relating thereto and the status of Developer's performance of obligations under the DDA; (e) the most recent financial statements of Guarantor and all other financial information relating to Guarantor heretofore or hereafter delivered to City are true and correct in all material respects, and the financial statements have been, and any hereafter delivered will be, prepared in accordance with generally accepted accounting principles consistently applied ("**GAAP**") ("**Approved Accounting**") and fairly and accurately

represent the financial condition of Guarantor as of the respective dates thereof, and no material adverse change has occurred in the financial condition of Guarantor since the respective dates thereof; (f) Guarantor is not "insolvent" and will not be, as a consequence of the execution and delivery of this Guaranty, rendered "insolvent", as that term is defined in Section 101 of the Federal Bankruptcy Code, or otherwise rendered unable to pay Guarantor's debts as the same mature; and (g) the calculation of liabilities in any such financial statements do NOT include any fair value adjustments to the carrying value of liabilities to record such liabilities at fair value pursuant to electing the fair value option election under FASB ASC 825-10-25 (formerly known as FAS 159, *The Fair Value Option for Financial Assets and Financial Liabilities*) or other FASB standards allowing entities to elect fair value option for financial liabilities, and therefore, the amount of liabilities is the historical cost basis, which generally is the contractual amount owed adjusted for amortization or accretion of any premium or discount. Each Guarantor acknowledges and agrees that City may request and obtain public or non-confidential information from third parties regarding any of the above, including, without limitation, credit reports.

8. **FINANCIAL COVENANTS**.

8.1 **Financial Condition**. Guarantor shall maintain compliance with the following financial covenants applicable to Guarantor at all times that the DDA remains in effect and any of the Phase Improvements have not been Completed, using Approved Accounting principles consistently applied:

(a) Net Worth. Related Guarantor shall maintain Net Worth (as defined below) not at any time less than $300,000,000.

"**Net Worth**" shall mean net worth calculated in accordance with Approved Accounting.

(b) Minimum Liquidity of Guarantors. Guarantor shall maintain at all times Liquid Assets of at least $75,000,000 as determined by professionally prepared financial statements, tax returns, and other related financial documents of Guarantor.

"**Liquid Assets**" shall mean:

(i) with respect to Guarantor, cash or cash equivalents and any of the following, to the extent owned individually, free of all security interests, liens, pledges, charges or any other encumbrance: (A) U.S. dollar denominated time deposits and certificates of deposit (with a maturity of 270 days or less) issued by, or savings account with, an Approved Bank (as hereinafter defined) and capable of being sold, liquidated or converted into cash within ten (10) Business Days, (B) securities issued or directly and fully guaranteed or insured by the United States or any agency or instrumentality thereof (provided that the full faith and credit of the United States supports such obligation or guarantee) that are capable of being sold, liquidated or converted into cash within ten (10) Business Days, (C) marketable securities listed on a securities exchange recognized by the United States, Europe or Canada, or quoted on a securities quotation system recognized by the United States, Europe or Canada, in each case marked to market and reasonably determined by City, (D) liquid debt instruments that have a readily ascertainable value, are regularly traded in a recognized financial market and are capable of being sold, liquidated or converted into cash within ten (10) Business Days, and (E) without duplication, undrawn lines of credit available to Guarantor issued by a lending institution; and

"**Approved Bank**" means (x) any bank organized or existing under the laws of the United States of America or under the laws of any State and any branch of any foreign bank which is licensed to operate in the United States or in any State having capital and surplus in excess of $500,000,000 and having a long-term senior unsecured debt obligations credit rating of not less than A- from S&P and the equivalent rating from another recognized major credit ratings agency (or if not rated by S&P, the equivalent rating from two or more recognized major credit ratings agencies) or (y) any bank whose short-term commercial paper rating from S&P is at least A-1 or the equivalent thereof or from Moody's is at least P-1 or the equivalent thereof.

9. **FINANCIAL STATEMENTS**.

9.1 **Guarantor Financial Statements**.

Guarantor, or if there be more than one Guarantor, each Guarantor, shall deliver to City, as soon as available, but in no event later than (i) sixty (60) days after each of March 31, June 30 and September 30 of each year, current unaudited financial statements (including, without limitation, an income and expense statement, a cash flow statement and a balance sheet) certified to be true, complete and correct by an authorized officer of each such Guarantor and (ii) one hundred fifty (150) days after each calendar year-end, current financial statements (including, without limitation, an income and expense statement, a cash flow statement and a balance sheet) audited by KPMG or such other certified public accounting firm reasonably acceptable to City, in each case, together with any other financial information reasonably requested by City for each such Guarantor. Each such financial statement delivered with respect to each second calendar quarter and each calendar year-end shall be accompanied by a certificate of each such Guarantor confirming such Guarantor's compliance with Section 9.1 above.

9.2 **Reserved**.

9.3 **Additional Reports**. Guarantor, or if there be more than one Guarantor, each Guarantor, shall deliver to City, as soon as available, but in no event later than one hundred fifty (150) days after each calendar year-end, detailed reports of all real estate holdings and contingent liabilities of Guarantor.

9.4 **Form**. Each Guarantor agrees that all financial statements to be delivered to City pursuant to this Section 9 shall: (a) be complete and correct; (b) present fairly the financial condition of the party; (c) disclose all liabilities that are required to be reflected or reserved against; and (d) be prepared in accordance with GAAP consistently applied. Notwithstanding the foregoing, the calculation of liabilities shall NOT include any fair value adjustments to the carrying value of liabilities to record such liabilities at fair value pursuant to electing the fair value option election under FASB ASC 825-10-25 (formerly known as FAS 159, *The Fair Value Option for Financial Assets and Financial Liabilities*) or other FASB standards allowing entities to elect fair value option for financial liabilities. Therefore, the amount of liabilities shall be the historical cost basis, which generally is the contractual amount owed adjusted for amortization or accretion of any premium or discount. Each Guarantor acknowledges and agrees that City may request and obtain additional information from third parties regarding any of the above, including, without limitation, credit reports.

10. **SUBORDINATION**. Guarantor subordinates all present and future indebtedness owing by Developer to Guarantor, to the obligations at any time owing by Developer to City under the DDA. Guarantor assigns all such indebtedness to City as security for this Guaranty. Guarantor agrees to make no claim for such indebtedness by Developer to Guarantor until all obligations of Developer under the DDA have been fully and indefeasibly discharged. Guarantor further agrees not to assign all or any part of such indebtedness by Developer to Guarantor unless City is given prior notice and such assignment is expressly made subject to the terms of this Guaranty. If City so requests, (a) all instruments evidencing such indebtedness by Developer to Guarantor shall be duly endorsed and delivered to City, (b) all security for such indebtedness by Developer to Guarantor shall be duly assigned and delivered to City, (c) such indebtedness by Developer to such Guarantor shall be enforced, collected and held by each Guarantor as trustee for City and shall be paid over to City, and (d) Guarantor shall execute, file and record such documents and instruments and take such other action as City deems necessary or appropriate to perfect, preserve and enforce City's rights in and to such indebtedness and any security therefor. Notwithstanding anything to the contrary herein or elsewhere in the DDA, provided that at such time there is no Event of Default (as defined in the DDA) or Guarantor Default (as defined in this Guaranty) that has occurred and is continuing, Guarantor may collect and receive any dividends or distributions by Developer to its members, shareholders and other beneficial interest holders.

11. **BANKRUPTCY OF DEVELOPER**. In any bankruptcy or other proceeding in which the filing of claims is required by law, Guarantor shall file all claims which Guarantor may have against Developer relating to any indebtedness of Developer to Guarantor and shall assign to City (for the benefit of the City) all rights of Guarantor thereunder. If Guarantor does not file any such claim, City, as attorney-in-fact for Guarantor, is hereby authorized to do so in the name of Guarantor or, in City's discretion, to assign the claim to a nominee and to cause proof of claim to be filed in the name of City's nominee. The foregoing power of attorney is coupled with an interest and cannot be revoked. City or City's nominee shall have the right, in its reasonable discretion, to accept or reject any plan proposed in such proceeding and to take any other action which a party filing a claim is entitled to do. In all such

cases, whether in administration, bankruptcy or otherwise, the person or persons authorized to pay such claim shall pay to City the amount payable on such claim and, to the full extent necessary for that purpose, Guarantor hereby assigns to City (for the benefit of the City) all of Guarantor's rights to any such payments or distributions; provided, however, Guarantor's obligations hereunder shall not be satisfied except to the extent that City receives cash by reason of any such payment or distribution. If City receives anything hereunder other than cash, the same shall be held as collateral for amounts due under this Guaranty. If all or any portion of the obligations guaranteed hereunder are paid or performed, the obligations of Guarantor hereunder shall continue and shall remain in full force and effect in the event that all or any part of such payment or performance is avoided or recovered directly or indirectly from City as a preference, fraudulent transfer or otherwise under the Bankruptcy Code or other similar laws, irrespective of (a) any notice of revocation given by Guarantor prior to such avoidance or recovery, or (b) full payment and performance of all of obligations under the DDA.

12. **ADDITIONAL, INDEPENDENT AND UNSECURED OBLIGATIONS**. This Guaranty is a continuing guaranty of payment and performance, and not of collection and cannot be revoked by Guarantor and shall continue to be effective with respect to any and all obligations referenced in Section 1 hereof arising or created after any attempted revocation hereof or after the death of Guarantor (if Guarantor is a natural person, in which event this Guaranty shall be binding upon Guarantor's estate and Guarantor's legal representatives and heirs). The obligations of Guarantor hereunder shall be in addition to and shall not limit or in any way affect the obligations of Guarantor under any other existing or future guaranties unless said other guaranties are expressly modified or revoked in writing. Guarantor agrees that this Guaranty shall continue to be effective or shall be reinstated, as the case may be, if at any time any payment is made by Developer to City and such payment is rescinded or must otherwise be returned by City (as determined by City in its sole and absolute discretion) upon insolvency, bankruptcy, liquidation, reorganization, readjustment, composition, dissolution, receivership, conservatorship, winding up or other similar proceeding involving or affecting Developer. This Guaranty is independent of the obligations of Developer under the DDA. City may bring a separate action to enforce the provisions hereof against Guarantor without taking action against Developer or any other party or joining Developer any other party as a party to such action. Except as otherwise provided in this Guaranty, this Guaranty is not secured and shall not be deemed to be secured by any security instrument.

13. **CREDIT REPORTS**. Each legal entity and individual obligated on this Guaranty hereby authorizes City to order and obtain, from a credit reporting agency of City's choice, a third party credit report on such legal entity and individual.

14. **ENFORCEABILITY**. Guarantor hereby acknowledges that: (a) the obligations undertaken by Guarantor in this Guaranty are complex in nature, and (b) numerous possible defenses to the enforceability of these obligations may presently exist and/or may arise hereafter, and (c) as part of City's consideration for entering into this transaction and the Ground Lease, City has specifically bargained for the waiver and relinquishment by Guarantor of all such defenses (other than the defense that the Guarantor or Developer have paid and performed all obligations of the Guarantors hereunder), and (d) Guarantor has had the opportunity to seek and receive legal advice from skilled legal counsel in the area of financial transactions of the type contemplated herein. Given all of the above, Guarantor does hereby represent and confirm to City that Guarantor is fully informed regarding, and that Guarantor does thoroughly understand: (i) the nature of all such possible defenses, and (ii) the circumstances under which such defenses may arise, and (iii) the benefits which such defenses might confer upon Guarantor, and (iv) the legal consequences to Guarantor of waiving such defenses. Guarantor acknowledges that Guarantor makes this Guaranty with the intent that this Guaranty and all of the informed waivers herein shall each and all be fully enforceable by City, and that City is induced to enter into this transaction and the Ground Lease in material reliance upon the presumed full enforceability thereof.

15. **DEFAULT.** City may declare Guarantor to be in default under this Guaranty upon the occurrence of any of the following events (each a "Guarantor Default"): (a) Guarantor fails to perform any of its obligations under this Guaranty; (b) Guarantor revokes or attempts to revoke this Guaranty or this Guaranty becomes ineffective for any reason; (c) any representation or warranty made or given by Guarantor to City proves to be false or misleading in any material respect; (d) Guarantor is or becomes bankrupt or insolvent, makes an assignment for the benefit of creditors, or commences or has commenced against it a proceeding under the Federal Bankruptcy Code or any other law or statute providing for the relief of debtors; or (e) Guarantor dissolves or liquidates.

16. **INTENTIONALLY OMITTED.**

17. **MISCELLANEOUS.**

EXHIBIT Q
FORM OF CITY COMPLETION GUARANTY

17.1 **Notices**. All notices, demands, or other communications under this Guaranty shall be in writing and shall be delivered to the appropriate party at the address set forth below (subject to change from time to time by written notice to all other parties to this Guaranty). All notices, demands or other communications shall be considered as properly given if delivered personally or sent by first class United States Postal Service mail, postage prepaid, or by Overnight Express Mail or by overnight commercial courier service, charges prepaid, except that notice of default may be sent by certified mail, return receipt requested, charges prepaid. Notices so sent shall be effective three (3) Business Days after mailing, if mailed by first class mail, and otherwise upon delivery or refusal; provided, however, that non-receipt of any communication as the result of any change of address of which the sending party was not notified or as the result of a refusal to accept delivery shall be deemed receipt of such communication. For purposes of notice, the address of the parties shall be:

Guarantors:	Attention: _____
With a copy to:	Attention:
With a copy to:	Gibson, Dunn & Crutcher LLP Attention:
With a copy to:	
City:	
With a copy to:	

Any party shall have the right to change its address for notice hereunder to any other location within the continental United States by the giving of five (5) days' notice to the other party in the manner set forth hereinabove.

17.2 **Authorization; No Violation.** Guarantor is authorized to execute, deliver and perform under this Guaranty, which is a valid and binding obligation of Guarantor. No provision or obligation of Guarantor contained in this Guaranty violates any applicable law, regulation or ordinance or any order or ruling of any court or governmental agency to which Guarantor is subject or by which it is bound. No such provision or obligation conflicts with, or constitutes a breach or default under, any agreement or instrument to which Guarantor is a party or by which it is bound. No consent, approval or authorization of or notice to any person or entity is required in connection with Guarantor's execution, delivery and performance of its obligations under this Completion Guaranty.

17.3

17.4 **No Waiver.** Each waiver by City must be in a writing executed by a duly authorized officer of City, and no waiver shall be construed as a continuing waiver. No waiver shall be implied from City's delay in exercising or failure to exercise any right or remedy against Developer, Guarantor or any security. Consent by City to any act or omission by Developer or Guarantor shall not be construed as a consent to any other or subsequent act or omission, or as a waiver of the requirement for City's consent to be obtained in any future or other instance. All remedies of City against Guarantor are cumulative.

17.5 **Waiver of Right to Trial by Jury.** TO THE EXTENT PERMITTED BY APPLICABLE STATE LAW, GUARANTOR (AND BY ITS ACCEPTANCE OF THIS GUARANTY, CITY) HEREBY EXPRESSLY WAIVES ANY RIGHT TO TRIAL BY JURY OF ANY CLAIM, DEMAND, ACTION OR CAUSE OF ACTION (a) ARISING UNDER THIS GUARANTY, INCLUDING, WITHOUT LIMITATION, ANY PRESENT OR

FUTURE MODIFICATION THEREOF OR (b) IN ANY WAY CONNECTED WITH OR RELATED OR INCIDENTAL TO THE DEALINGS OF THE PARTIES HERETO OR ANY OF THEM WITH RESPECT TO THIS GUARANTY (AS NOW OR HEREAFTER MODIFIED) OR ANY OTHER INSTRUMENT, DOCUMENT OR AGREEMENT EXECUTED OR DELIVERED IN CONNECTION HEREWITH, OR THE TRANSACTIONS RELATED HERETO OR THERETO, IN EACH CASE WHETHER SUCH CLAIM, DEMAND, ACTION OR CAUSE OF ACTION IS NOW EXISTING OR HEREAFTER ARISING, AND WHETHER SOUNDING IN CONTRACT OR TORT OR OTHERWISE; AND GUARANTOR (AND BY ITS ACCEPTANCE OF THIS GUARANTY, CITY) HEREBY AGREES AND CONSENTS THAT ANY PARTY TO THIS GUARANTY MAY FILE AN ORIGINAL COUNTERPART OR A COPY OF THIS SECTION WITH ANY COURT AS WRITTEN EVIDENCE OF THE CONSENT OF THE PARTIES HERETO TO THE WAIVER OF ANY RIGHT THEY MIGHT OTHERWISE HAVE TO TRIAL BY JURY.

17.6 **Severability**. If any provision or obligation under this Guaranty shall be determined by a court of competent jurisdiction to be invalid, illegal or unenforceable, that provision shall be deemed severed from this Guaranty and the validity, legality and enforceability of the remaining provisions or obligations shall remain in full force as though the invalid, illegal, or unenforceable provision had never been a part of this Guaranty.

17.7 **Heirs, Successors and Assigns**. Except as otherwise expressly provided under the terms and conditions herein, the terms of this Guaranty shall bind and inure to the benefit of the heirs, executors, administrators, nominees, successors and permitted assigns of the parties hereto.

17.8 **Time**. Time is of the essence of each and every term herein.

17.9 **Governing Law And Consent To Jurisdiction**. This Guaranty and any claim, controversy or dispute arising under or related to this Guaranty, the relationship of the parties, and/or the interpretation and enforcement of the rights and duties of the parties will be governed by, and construed and enforced in accordance with, the laws of California without regard to any conflicts of law principles, except to the extent preempted by federal laws. Guarantor (and by its acceptance of this Guaranty, City) consent to the jurisdiction of any federal or state court within the State of California having proper venue and also consent to service of process by any means authorized by California or federal law.

17.10 **Headings**. All article, section or other headings appearing in this Guaranty are for convenience of reference only and shall be disregarded in construing this Guaranty.

17.11 **Powers Of Attorney**. The powers of attorney granted by Guarantor to City in this Guaranty shall be unaffected by the disability of the principal so long as any portion of the Phase Improvements remain incomplete. City shall have no obligation to exercise any of the foregoing rights and powers in any event.

17.12 **Defined Terms**. Unless otherwise defined herein, capitalized terms used in this Guaranty shall have the meanings attributed to such terms in the DDA.

17.13 The term "person" as used herein shall include any individual, company, trust or other legal entity of any kind whatsoever. If this Guaranty is executed by more than one person, the term "Guarantor" shall include all such persons. The word "City" as used herein shall include its respective successors and permitted assigns.

17.14 **Use Of Singular And Plural; Gender**. When the identity of the parties or other circumstances make it appropriate, the singular number includes the plural, and the masculine gender includes the feminine and/or neuter.

17.15 **Exhibits, Schedules And Riders**. All exhibits, schedules, riders and other items, if any, attached hereto are incorporated into this Guaranty by such attachment for all purposes.

17.16 **Integration; Interpretation**. This Guaranty contains the entire agreement of the parties with respect to the matters contemplated hereby and supersedes all prior negotiations or agreements, written or oral. This Guaranty shall not be modified except by written instrument executed by all parties.

EXHIBIT Q
FORM OF CITY COMPLETION GUARANTY

17.17 Joint and Several. If more than one Person executes this Guaranty as Guarantor, then the liability and obligations of such Person are joint and several.

17.18 Costs and Expenses. If any lawsuit, reference or arbitration is commenced by City or Guarantor which arises out of, or which relates to this Guaranty, the prevailing party shall be entitled to recover from the losing party or parties such sums as the court, referee or arbitrator may adjudge to be reasonable attorneys' fees (including allocated costs for services of in-house counsel) in the action or proceeding, in addition to costs and expenses otherwise allowed by law. In all other situations, including any bankruptcy or insolvency proceeding, Guarantor agrees to pay all of City's costs and expenses, including attorneys' fees (including allocated costs for services of City's in-house counsel) which may be incurred in any effort to enforce this Guaranty or any part of it.

[No further text on this page.]

EXHIBIT Q
FORM OF CITY COMPLETION GUARANTY

IN WITNESS WHEREOF, each Guarantor has executed this Guaranty as of the date appearing on the first page of this Guaranty.

"GUARANTOR":

THE RELATED COMPANIES, L.P.,
a New York limited partnership

By: The Related Realty Group, Inc.,
a Delaware corporation, its general partner

By: _____
Name:
Title:

EXHIBIT R

Addresses for Notices

If to City:

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

With a copy to:

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

If to Master Developer:

Related Santa Clara, LLC
c/o The Related Companies, L.P.
60 Columbus Circle
New York, New York 10023
Attn: Joshua Young

With a copy to:

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

EXHIBIT S

Form of Architect's Certificate

DATE: _____

TO: City of Santa Clara
1500 Warburton Avenue
Santa Clara, CA 95050
Attention: _____

FROM: _____

RE: [*Description of Building*] (the "**Building**")

This Architect's Certificate is being provided pursuant to Section 12.1 of that certain Disposition and Development Agreement, by and between Related Santa Clara, LLC, a Delaware limited liability company ("**Master Developer**") and the City of Santa Clara, a chartered municipal corporation ("**City**"), dated for reference purposes only as of August 12, 2016 and recorded in the Official Records of the City of Santa Clara on _____ __, 201_, as Document No. _____ at Reel ____, Image ____ (as may be amended from time to time and including all exhibits attachments thereto, the "**DDA**")[, and that certain AA&R related thereto dated as of _____ __, 20__ by and between the City, Master Developer and _____, a _____ ("**Third Party Phase Developer**")]. The capitalized terms used but not otherwise defined in this Architect's Certificate have the meanings given to them in the DDA.

As Architect for the design and construction of the Building, I visited the Building at intervals appropriate to the state of construction, or as otherwise agreed by me and the applicable [Master Developer][Third Party Phase Developer], to become generally familiar with the progress and quality of the construction completed and to determine in general if the construction was being performed in a manner indicating that the construction when completed would be in accordance with the applicable DAP approved by the City. I observed the Building from _____, 20__ to _____, 20__, and all the statements made below are made as of the date(s) of my observation(s). My opinions and statements provided in this certificate are limited to my on-site inspections. I am not required to make nor have I made exhaustive or continuous on-site inspections of the Building.

I neither retained nor exercised control over or charge of, nor am I responsible for construction means, methods, techniques, sequences or procedures, or for safety precautions and programs in connection with the construction of the Building.

I shall not be responsible for the contractor's schedules or failure to carry out the work in accordance with the DAP. I neither have nor have had control over or charge of acts or

omissions of any contractor, subcontractor or their agents or employees, or of any other person performing portions of the construction.

As Architect for the construction of the Building and subject to the limitations set forth above, I hereby certify to the best of my knowledge, information and belief, in my professional opinion, as follows:

1. I have observed the construction of the Building on the dates set forth above.

2. The DAP provides for the construction of the Building in accordance with all applicable laws, including laws relating to accessibility.

3. Construction of the Building has been performed in a good and work person-like manner and in accordance with the DAP, except as may be noted on Exhibit S-1 attached hereto.

4. All work performed and material and fixtures used in connection with the construction of the Building are in accordance with the DAP, except as may be noted on Exhibit S-1 attached hereto.

5. Construction of the Building has been Substantially Completed in accordance with all applicable building laws, regulations and ordinances.

6. The required certificates, approvals and permits of all governmental authorities having jurisdiction covering the work to date on the Building have been issued and are in force, and there is not an undischarged violation of applicable laws, regulations, or orders of any governmental authority having jurisdiction of which I have notice as of the date hereof, except as may be noted on Exhibit S-1 attached hereto.

[*Architect*]

By: _____
Name: _____
Title: _____

102027713.3

EXHIBIT S-1

Exceptions to Architect's Certificate

The statements made on the Architect's Certificate to which this Exhibit U-1 is attached are subject to the following exceptions:

EXHIBIT T

Form of Engineer's Certificate

DATE:_____

TO: City of Santa Clara
1500 Warburton Avenue
Santa Clara, CA 95050
Attention: _____

FROM: _____

RE: [*Description of Infrastructure*] (the "**Infrastructure**")

This Engineer's Certificate is being provided pursuant to Section 12.1 of that certain Disposition and Development Agreement, by and between Related Santa Clara, LLC, a Delaware limited liability company ("**Master Developer**") and the City of Santa Clara, a chartered municipal corporation ("**City**"), dated for reference purposes only as of August 12, 2016 and recorded in the Official Records of the City of Santa Clara on _____ __, 201_, as Document No. _____ at Reel ____, Image ____ (as may be amended from time to time and including all exhibits attachments thereto, the "**DDA**")[, and that certain AA&R related thereto dated as of _____ __, 20__ by and between the City, Master Developer and _____, a _____ ("**Third Party Phase Developer**")]. The capitalized terms used but not otherwise defined in this Architect's Certificate have the meanings given to them in the DDA.

As the Engineer for the design and construction of the Infrastructure, I visited the Infrastructure site at intervals appropriate to the state of construction, or as otherwise agreed by me and [Master Developer][Third Party Phase Developer], to become generally familiar with the progress and quality of the construction completed and to determine in general if the construction was being performed in a manner indicating that the construction when completed would be in accordance with the applicable DAP approved by the City. I observed the Infrastructure construction from _____, 20__ to _____, 20__, and all the statements made below are made as of the date(s) of my observation(s). My opinions and statements provided in this certificate are limited to my on-site inspections. I am not required to make nor have I made exhaustive or continuous on-site inspections of the Infrastructure.

I neither retained nor exercised control over or charge of, nor am I responsible for construction means, methods, techniques, sequences or procedures, or for safety precautions and programs in connection with the construction of the Infrastructure.

I shall not be responsible for the contractor's schedules or failure to carry out the work in accordance with the DAP. I neither have nor have had control over or charge of acts or omissions of any contractor, subcontractor or their agents or employees, or of any other person performing portions of the construction.

As Engineer for the construction of the Infrastructure and subject to the limitations set forth above, I hereby certify to the best of my knowledge, information and belief, in my professional opinion, as follows:

1. I have observed the construction of the Infrastructure on the dates set forth above.

2. The DAP provides for the construction of the Infrastructure in accordance with the all applicable laws.

3. Construction of the Infrastructure has been performed in a good and work person-like manner and in accordance with the DAP, except as may be noted on Exhibit T-1 attached hereto.

4. All work performed and material and fixtures used in connection with the construction of the Infrastructure are in accordance with the DAP, except as may be noted on Exhibit T-1 attached hereto.

5. Construction of the Infrastructure has been Substantially Completed in accordance with all applicable building laws, regulations and ordinances.

6. The required certificates, approvals and permits of all governmental authorities having jurisdiction covering the work to date on the Infrastructure have been issued and are in force, and there is not an undischarged violation of applicable laws, regulations, or orders of any governmental authority having jurisdiction of which I have notice as of the date hereof, except as may be noted on Exhibit T-1 attached hereto.

[*Engineer*]

By: _____
Name: _____
Title: _____

EXHIBIT T-1

Exceptions to Engineer's Certificate

The statements made on the Engineer's Certificate to which this Exhibit T-1 is attached are subject to the following exceptions:

EXHIBIT U

Provisions Relating to Construction Sales and Use Tax Allocations

These requirements are intended to ensure that local sales and use taxes generated in connection with all eligible purchases of materials, fixtures, furniture, machinery, equipment and supplies for the work to be performed by Master Developer's and each Phase Developer's general construction contractors, vendors and Building occupants (as used in this Exhibit U, the "**Contractors**") are allocated directly to the City

1. In each contract with a Contractor that exceeds $5,000,000, Master Developer and each Phase Developer (as applicable) shall require the Contractor to comply with the following requirements:

   a. To apply for a sub-permit for the jobsite with the California State Board of Equalization (the "**CBOE**") prior to the purchase of any materials, fixtures, furniture, machinery, equipment and supplies for the work to be performed hereunder (a "**Jobsite Sub-Permit**"); following the provisions of the CBOE Compliance Policy and Procedures Manual, Chapter 2, Section 260.020 and Publication 28, Exhibit A (a copy of which is attached hereto as Attachment 1), for this purpose;

   b. To furnish to the City a copy of its application for Jobsite Sub-Permit;

   c. Promptly following contractor's receipt of a Jobsite Sub-Permit from the CBOE, to provide the City and Master Developer or Phase Developer, as applicable, with a copy of its Jobsite Sub-Permit.

2. Master Developer and each Phase Developer shall provide the City, upon the City's reasonable request, with:

   a. A list of any of Master Developer's and each Phase Developer's subcontractors providing services or materials in excess of $5,000,000 in connection with the work to be performed hereunder, which list shall include:

      (i) Name of subcontractor;

      (ii) Address and telephone number of headquarters or office;

      (iii) Name and telephone number of contact person;

      (iv) Estimated value of contract;

      (v) Estimated completion date;

      (vi) Scope of work; and

(vii) A copy of the subcontract;

b. Such additional information as may be reasonably requested in writing by the City to ensure compliance with the foregoing provisions.

Attachment 1

CBOE Publication 28, Exhibit A

Sales Tax Jobsite Sub-Permits for Construction Contractors

Some construction contractors are liable for sales or use tax on materials and fixtures consumed or sold on construction contracts. A portion of that tax, the local tax, is distributed to the county government, and city governments within the county, of the jobsite location.

Effective January 1, 1995, construction contractors may elect to allocate the local sales and use tax derived from construction contracts of $5,000,000 (five million dollars) or more directly to the local jurisdiction where the jobsite is located. This is accomplished by obtaining a sub-permit of their seller's permit for a specific jobsite and allocating the local tax to that jobsite on Schedule C of their sales and use tax return. This qualifying contract price applies to each contract or sub-contract for work performed at the jobsite. Contractors who are already fulfilling a construction contract on January 1, 1995, must have work remaining with a value of $5,000,000 or more. The sub-permit will be automatically closed-out six months after the estimated completion date of the contract. If delays extend the completion date, contractors should contact us to extend the active period of the sub-permit.

Permits will not be issued to contractors who are not normally sellers of materials. Contractors may not purchase tangible personal property for resale, including materials, which they will install or consume at the jobsite.

Contractors may not purchase machinery and equipment, to be used on the construction job, without payment of sales tax in order to allocate the use tax to the specific jobsite.

Local tax on sales of machinery and equipment by the contractor as part of the contract should continue to be allocated to the contractor's permanent place of business where the principal negotiations of the contract take place in accordance with Regulation 1802.

In accordance with Regulation 1806, *where the contractor has not elected to obtain a sub-permit,* local tax must still be allocated countywide using Schedule B for jobsites that have contracts of $5,000,000 or more along with smaller contracts of less than $5,000,000.