

Recording Requested By and  
When Recorded Mail To:

City of Cupertino  
Attn: City Clerk  
10300 Torre Avenue  
Cupertino, CA 95014

Space above for Recorder's Use

## **SETTLEMENT AGREEMENT AND RELEASE**

This Settlement Agreement and Release, dated July 10, 2024 ("Agreement"), is entered into by and among Vallco Property Owner LLC ("VPO") and the City of Cupertino ("City"). VPO and the City are referred to herein as a "Party" or collectively referred to as the "Parties."

### **RECITALS**

- A. VPO is the owner of a 50.82-acre property ("Property") located at 10101-10330 North Wolfe Road in the City of Cupertino, more specifically described in Exhibit G; and
- B. Prior to approval of the Project, as defined below, the Property was occupied by a shopping center comprised of 1,450,927 gross square feet of retail space, as depicted in Exhibit A; and
- C. On September 21, 2018, the City approved an application for development of a mixed-use project on the Property under Government Code section 65913.4 ("SB 35"), hereinafter referred to as "the Approved Project"; and
- D. On August 20, 2019, the Cupertino City Council adopted Resolution Nos. 19-108, 19-109, and 19-110, and Ordinance Nos. 19-2187 and 19-2188 amending the City of Cupertino General Plan to alter development standards for the Property ("General Plan Amendment"); and

- E. On September 20, 2019, VPO filed a Verified Petition for Writ of Mandate in Santa Clara County Superior Court (Case No. 19CV355457) seeking to compel the City to set aside the adoption of the General Plan Amendment (“Writ Petition”); and
- F. On December 22, 2020, the court dismissed the Writ Petition without prejudice at VPO’s request; and
- G. On June 3, 2022 and subsequently on February 16, 2024, the City approved two modifications to the Project under SB 35 (“Modified Project”). Collectively, the “Approved Project” and “Modified Project” are referred to herein as “the Project”; and
- H. On March 24, 2022 and December 18, 2023, VPO submitted to the City requests for waiver of any below market rate housing mitigation fee (“BMR Fee”) applicable to the Project, pursuant to Section 2.3.3(D) of the BMR Housing Mitigation Program Procedural Manual.
- I. The Project is subject to certain “fees,” as defined in Government Code section 66000(b), charged by the City in connection with approval of the Project for the purpose of defraying all or a portion of the cost of public facilities related to the Project (“Impact Fees”), and is further subject to parkland dedication requirements and/or fees regulated under the Quimby Act, Government Code section 66477 (“Parkland Dedication Fee”); and
- J. VPO disputes the validity of the Impact Fees and Parkland Dedication Fee imposed on the Project in whole or in part; and
- K. On August 15, 2022, the Parties entered into a Tolling Agreement that tolled the statute of limitations for certain challenges to Impact Fees and Parkland Dedication Fee imposed on the Project, which, as amended, remains in effect and tolls the statute of limitations on those claims through July 31, 2024; and
- L. On May 14, 2024, the Cupertino City Council adopted Resolution No. 24-039, approving the 2023-2031 Housing Element (“6th Cycle Housing Element”) and making General Plan amendments in connection with the same. The 6th Cycle Housing Element identifies the Project as a “pipeline” project based on its currently approved entitlement to construct 2,669 units (890 of which would be affordable to lower-income households); and
- M. The Parties wish to resolve their disputes regarding the General Plan Amendment and regarding Impact Fees, Parkland Dedication Fees, and other fees that may be imposed on the Project.

Now therefore, with reference to the foregoing recitals, which are incorporated into this Agreement, and for good and valuable consideration, the sufficiency of which is hereby acknowledged, the Parties agree as follows.

## AGREEMENT

Section 1. Incorporation of Recitals. The foregoing Recitals are incorporated as if set forth fully herein as material terms of this Agreement.

Section 2. Term. This Agreement shall remain valid for the earlier of the following: a period of 20 years, or until the expiration of VPO's September 21, 2018 SB 35 entitlement for the Project, as has been or may be modified under Government Code section 65913.4 ("Term"). In the event the final building permit for the Project has not been issued within 20 years of the Effective Date, the Parties shall negotiate in good faith to extend the Term of the Agreement.

### Section 3. Impact Fees.

(a) Transportation Impact Fee. VPO shall pay a Transportation Impact Fee ("TIF") based on the trips generated by the Project, as may be modified, utilizing the per trip fee set by the fee schedule in place at the time of payment. The TIF shall be calculated according to the methodology set forth in Exhibit B to this Agreement ("TIF Methodology"), consistent with the findings of the City's August 2017 Transportation Impact Fee Nexus Study. As specified in more detail in Exhibit B, the TIF Methodology calculates the trip generation based on the Project's program and sets a per unit and per square foot fee based on the adjusted trip generation rate for the program, as it may be modified. VPO shall receive credit against the assessment of the TIF for the demolition of 1,450,927 gross square feet of retail space, and shall be entitled to exhaust the full amount of this credit before any TIF payment is due.

(b) Master Storm Drain Area Fee. VPO shall pay the Master Storm Drain Area Fee set forth in the fee schedule prior to the issuance of each building permit for vertical construction based on the fee schedule in place at the time of payment. VPO shall receive credit for the developed area of the former Vallco shopping mall according to the methodology and subject to the requirements set forth in Exhibit C to this Agreement ("Storm Drain Fee Methodology") and shall be entitled to exhaust the full amount of this credit before a Master Storm Drain Area Fee payment is due. Although the Master Storm Drain Area Fee is due at each core and shell building permit, VPO may elect to pay the entire Master Storm Drain Area Fee up front. If VPO elects to make this early payment and the Project is subsequently abandoned, any new project shall receive credit for the

Master Storm Drain Area Fee that has been paid that was in excess of what was owed at the time of payment.

(c) Zoning/Planning Municipal Code Fee. In lieu of payment of any Zoning/Planning Municipal Code Fee (aka Long-Range Planning Fee) (“Planning Impact Fee”) due for construction of the Project and subject to City Council approval pursuant to Section 6 of this Agreement, VPO agrees to fund future long range planning activities conducted by the City that have a substantial nexus to the Project site, including without limitation any updates to the Heart of the City Specific Plan or specific plan for an area that includes the Project site, up to a maximum amount of \$500,000. VPO shall reimburse reasonable costs incurred by the City for such long-range planning activities, including without limitation consultant costs and staff time. VPO shall provide such reimbursement within sixty (60) days of notice from City, which such notice shall include reasonable documentation that applicable long term planning costs have been incurred. If VPO makes this payment, and the Project is subsequently abandoned or the entitlement expires, if a future new project is assessed a Planning Impact Fee, it shall receive credit against any future Impact Fees that may be imposed for construction on the Property based on any payment already made on a pro rata basis. For example, if the Project is abandoned after it is 20% built, then a new project shall receive a credit of \$400,000 on any new Planning Impact Fee.

#### Section 4. Benefit Payments.

(a) VPO shall, in consideration of the release set forth herein, make payments to the City in the amount of \$4,442 per market rate dwelling unit and \$12.31 per gross square foot of office constructed (“Benefit Payments”), as the Project may be modified. Gross square foot of office shall be measured based on the “floor area” definition in the Cupertino Municipal Code, except that it shall not double count interior building area above fifteen feet in height between any floor level and the ceiling above.

(b) The Parties agree that in the event that Impact Fees or Parkland Dedication Fee owed by the Project increase by an amount greater than the applicable inflationary index, or in the event that the City adopts any new Impact Fees that are not addressed by this Agreement, then the Benefits Payments shall be reduced in an amount equivalent to such increase(s), new fee(s), or both, as applicable. If existing Impact Fees are increased greater than the applicable inflationary index, the Benefits Payments shall only be reduced at the time that the credit has been exhausted and payment of the increased or new Impact Fee is due. The intent of the Parties of this subsection is to maintain a predictable total payment and timing of such payment by the Project of Impact Fees and Benefits Payments and to avoid future disputes regarding the imposition or payment of



Impact Fees. The Parties agree to make adjustments to the Benefits Payments as necessary to reflect that intent.

(c) Benefits Payments shall be paid at the time of each core and shell building permit; provided, however, that if any state law allows that payment of Impact Fees be deferred until the time of the issuance of a certificate of occupancy, VPO may defer the payment of Benefits Payments until the issuance of the certificate of occupancy.

(d) The City shall use Benefit Payments to fund transportation improvement or maintenance projects, affordable housing (as defined in the City's Below Market Rate Housing Mitigation Procedures Manual, as may be amended from time to time), or parkland acquisition or improvements.

(e) The amount of Benefit Payments shall be adjusted annually on July 1 based on the Consumer Price Index– San Francisco Area ("CPI") published by the U.S. Bureau of Labor Statistics, or a successor index in the event that publication of the CPI ceases. In no circumstance shall the annual adjustment exceed five percent.

Section 5. Timing of Payments. Impact Fees imposed under this Agreement shall become due and payable, less any applicable credits, upon issuance of each core and shell building permit for non-residential uses, and upon issuance of certificates of occupancy for residential uses, or as otherwise required under state law, based on, as applicable, the trips generated, market rate units, and/or square footage of approved construction resulting from or permitted by each building permit. VPO may elect to pay Impact Fees for residential uses at core and shell building permit.

Section 6. Waiver of Planning and BMR Fees.

(a) Within 30 days of the execution of this Agreement, the City Attorney shall request that the City Council waive any applicable Planning Impact Fee, waive any BMR Fee applicable to the Project, and waive any BMR Fee applicable to any modified SB 35 Project that would otherwise be due during the Term of the Agreement, unless a BMR Fee would be due under the methodology set forth in Exhibit D to this Agreement ("BMR Housing Mitigation Fee Methodology"), as further described in Section 6(c), below. Upon the City Council's approval of the Impact Fee waivers described in this Section 6(a), VPO's compliance with the requirements of Sections 3 through 6 of this Agreement shall satisfy the requirement to pay all Impact Fees owed by the Project, which are specifically defined as the Transportation Impact Fee, the Master Storm Drain Area Fee, the Planning Fee, and the BMR Fee. Nothing in this Agreement shall prevent the City from assessing any lawfully imposed fee not expressly identified in this Section or in Section 7, and nothing

in this Agreement shall prevent VPO from contesting the imposition any such new fee as set forth in Section 16 (Release of City).

(b) If the City Council declines to approve a waiver of any applicable Planning Impact Fee or BMR Fee, this Agreement shall be null and void; in such case, the Parties shall negotiate in good faith to amend the Agreement and to extend the Tolling Agreement referenced in Recital J.

(c) In the event of a subsequent SB 35 modification to the Project within the Term of this Agreement, the modification shall be evaluated for impact on the demand for lower income housing based on the methodology set forth in Exhibit D, where such BMR Fee Methodology calculates the net induced demand for lower income housing based on the induced demand rates found in the Non-Residential Jobs-Housing Nexus Analysis prepared for the City by Keyser Marston Associates, Inc. ("Nexus Study"), dated April 2015. VPO shall pay any BMR Fee due under the BMR Fee Methodology prior to the issuance of each core and shell building permit for non-residential uses, based on the fee schedule in place at the time of payment.

#### Section 7. Parkland Dedication and Private Open Space.

(a) City agrees that based on the Project program as approved, the Project yields a parkland demand of 9.61 acres, as calculated based on the City's requirement of three acres of park per 1,000 residents and the average household size of 1.8 person per multifamily unit. When calculating this requirement, it is the policy of the City that any BMR units are not subject to the parkland dedication requirements. The parkland requirements reflected in this Section 7 are for the proposed Project as of the date of this Agreement, and the Parties acknowledge that parkland acreage requirements may change if the Project land uses are modified.

(b) VPO shall receive credit against the Parkland Dedication Fee for the dedication of up to 4.805 acres of private open space, subject to compliance with the requirements of Municipal Code Chapter 13.08 in effect at the time Project application was submitted, including the required optional and mandatory elements for private open space set forth in Municipal Code section 13.08.080. The mandatory element of a turfed playfield may be provided in areas dedicated to the public, including as depicted in Exhibit E to this Agreement ("Public Parkland and Open Space").

(c) The City agrees that the 7.48 acres of public parkland as shown in Exhibit E is approved for dedication as public parkland as described in subsection (a) above, subject to the terms of this Section 7. VPO may elect to dedicate less than 7.48 acres, if the public park dedication and the private open space include a total of 9.61 acres with no

more than 50% of such acreage provided as private open space. As the Project progresses, if the parkland and private open space do not satisfy the parkland requirement for the Project as completed through that particular phase, but additional parkland and/or private open space will be provided at a later phase, VPO may provide security, such as a performance bond, letter of credit or other form of security acceptable to the City in the amount of what Parkland Dedication Fee would have been for the outstanding parkland. The security shall be released upon satisfaction of the parkland requirement for which it is being provided. If the Project at completion or expiration of the entitlement, as it may have been modified, includes less than the total parkland required (up to 50% of which may be private open space), then the shortfall shall be satisfied by payment of the applicable Parkland Dedication Fee.

(d) In the event of a subsequent SB 35 modification to the Project within the Term of this Agreement, and where such modification includes material changes to the size, location, or configuration of the public parkland as shown in Exhibit E, the City's evaluation of the modified public parkland shall take into consideration the City's adopted policies and strategies favoring dedication of parkland, including the policies outlined in this subsection below. Based on these principles that favor dedication of parkland over payment of fees and that seek to minimize the burdens of parkland fees on residential development, the Parties shall work together in good faith with the mutual objective of dedicating sufficient public parkland and private open space to fully offset any Parkland Dedication Fee. The City's review of a modified public parkland strategy shall implement the direction in SB 35 to not exercise discretion in a way that inhibits, chills, or precludes the Project. The City's policies and strategies favoring dedication of parkland include the following:

(i) General Plan Strategy RPC-2.1.1 favoring dedication of parkland over payment of in-lieu fees ("New developments, in areas where parkland deficiencies have been identified, should be required to dedicate parkland rather than paying in-lieu fees"), where General Plan Table RPC-2 identifies "Area M" in which the Property is located as an area within the City where new parks should be developed;

(ii) General Plan Policy LU-19.1.8 imposing specific open space requirements within the Property ("Open space in the form of a central town square on the west and east sides of the district interspersed with plazas and "greens" that create community gathering spaces, locations for public art, and event space for community events");

(iii) Housing Element Strategy HE-2.3.7 establishing that the City will offer incentives to facilitate affordable housing development, including waiver of parkland dedication fees;

(iv) Housing Element Strategy HE-2.3.9 setting forth policy considerations allowing for privately owned publicly accessible open space areas, or allowing parkland credit for pedestrian connections and trails; and

(v) Housing Element Strategy HE-3.3.5 committing the City to reducing constraints on residential development, including through providing open space credits for higher-density residential projects.

(e) All public improvements shall be provided for in a Subdivision Improvement Agreement in a form substantially similar to that required by the City in connection with comparable development projects.

(f) The Parties shall negotiate and record a public access easement and maintenance agreement that provides for public access to all public parkland and the turfed playfield required under section 13.08.080, the latter of which shall be maintained as publicly accessible private open space. The agreement shall provide that VPO will maintain all public parkland and publicly accessible private open space to a standard acceptable to the City, in its reasonable exercise of discretion. If VPO fails to maintain public parkland or publicly accessible private open space to the maintenance standards specified in the public access easement and maintenance agreement, the City shall have the right, but not the obligation, to enter the easement for purposes of maintenance or repair of the facilities, subject to the reasonable notice and cure periods described in Section 12, below, or as otherwise mutually agreed by the Parties. The public access easement and maintenance agreement shall further document the Parties' respective rights and obligations with respect to the management and programming of public parkland and publicly accessible private open space. The agreement shall run with the land and be binding on VPO successors and assignees.

(g) Satisfaction of VPO's obligations under this Agreement shall satisfy VPO's requirements to provide at least 4.805 acres of public parkland and up to 4.805 acres of private open space, which shall be credited against any Parkland Dedication Fee otherwise owed by the Project. In the event of a subsequent SB 35 modification to the Project within the Term of this Agreement, and where such modification(s) results in additional requirements for the dedication of parkland, the City agrees that the additional 2.675 acres of public parkland (totaling 7.48 acres) shall be credited against any Parkland Dedication Fee that would otherwise be owed by the Project.

(h) By executing this Settlement Agreement, the City acknowledges and confirms that the Director of Community Development, as the City official designated with approval authority for purposes of SB 35, approves the dedication of public parkland and approves credit against Parkland Dedication Fees for private open space under Chapter 13.08 of the Cupertino Municipal Code, provided that the Settlement Agreement remains in effect.

Section 8. Housing Element Designation.

(a) The City hereby makes and affirms the following findings regarding the Property as true and correct statements for the duration of its 6<sup>th</sup> Cycle Housing Element period:

(i) The City is relying on the Property to meet its regional housing needs allocation (“RHNA”) for lower- and above-moderate income housing;

(ii) The Property is identified in the 6<sup>th</sup> Cycle Housing Element as a site suitable and available for the development of housing for very low, low-, or moderate-income households (as that term is defined under Government Code section 65589.5(h)(3));

(iii) The Property’s density as specified in the Housing Element is 35 dwelling units per acre; and

(iv) That each of the above statements set forth in (i) through (iii) are applicable to the entirety of the Property.

(b) The City agrees that it shall evaluate any subsequent SB 35 modification applications to the Project or other qualifying proposals for development on the Property consistent with the findings set forth in subsection (a), inclusive, above and the requirements of Government Code section 65589.5(d)(5), and subject to the specific limitations on the City’s ability to disapprove or conditionally approve a housing development project in Government Code section 65589.5(d)(5)(A).

This Section shall survive any termination of this Agreement due to the expiration of VPO’s September 21, 2018 SB 35 entitlement for the Project.

Section 9. Annual Report. By no later than March 1 of each year during the Term of the Agreement, VPO shall submit an annual report in a format substantially similar to Exhibit F to this Agreement (“Annual Report”). The annual report shall include the following information regarding the previous calendar year and cumulative amounts since Project commencement:

- (a) Total gross square footage covered by building permit applications by occupancy;
- (b) Total gross square footage covered by final certificates of occupancy by occupancy;
- (c) Total number of residential units that received certificates of occupancy based on affordability level; and
- (d) Total amount of Impact Fees and Benefit Payments paid by VPO.

Section 10. Indemnity. VPO shall indemnify, defend (with counsel reasonably acceptable to the City), and hold the City harmless from and against any and all claims or causes of action and in any all proceedings resulting or arising from or in any way connected with the Agreement. The City and VPO shall cooperate in the defense of any third-party challenge of the Agreement or to any subsequent entitlements or post-entitlement permits issued by the City. VPO shall reimburse the City's reasonable costs related to any such claim or cause of action and indemnify, defend, and hold harmless the City from any damages, including attorneys' fees, awarded. Any proposed settlement of any such claim or cause of action shall be approved by both the City and VPO, each in its reasonable discretion.

Section 11. Covenant Running with Land; Recordation of Agreement. This Agreement shall be binding upon and shall inure to the benefit of the Parties and the Parties' successors and shall be binding upon and shall inure to the benefit of the Parties' officers, officials, and agents acting in their official capacity; provided, however, that if a portion of the Property is transferred, such successor shall only be responsible for payment of the Impact Fees and Benefit Payments and dedication of public parkland or private open space associated with such transferred parcel. After the Impact Fees and Benefit Payments associated with a transferred parcel are paid and any required dedication of parkland is conveyed to the City, the City shall execute a release of this Agreement, in a form that is mutually acceptable to the Parties and/or their respective successors in interest, that shall be recorded against the parcel or parcels that satisfied such obligations. The provisions of this Agreement shall be covenants running with the land. Its provisions shall be binding, to the fullest extent permitted by law and equity, for the benefit and in favor of, and be enforceable by, the City, its successors and assigns, against VPO, its successors and assigns, and every successor in interest to the subject Property, or any part of it or any interest in it and any party in possession or occupancy of the Property or any part of it or any interest in it. Further, the benefits of this Agreement shall extend to VPO, its successors and assigns, and every successor in interest to the Property, or any part of it or any interest in it and any party in possession or occupancy

of the Property or any part thereof. Upon the execution of this Agreement, VPO shall record the Agreement with the Santa Clara County Clerk-Recorder's Office.

Section 12. Breach or Default. Upon the occurrence of a breach of this Agreement, the Party alleging the breach shall promptly provide written notice to the defaulting Party. The defaulting Party shall cure the breach within 30 days of delivery of notice of the breach. If a dispute arises regarding the interpretation of the Agreement, the Parties shall meet and confer in good faith to resolve their dispute. Nothing in this Section shall limit the Parties' remedies in law or equity in the event of a breach of this Agreement.

Section 13. Transfer or Assignment. The Agreement shall be executed and entered into by the City and VPO. VPO's rights and obligations under this Agreement may not be transferred or assigned without the written consent of the City, which shall not be unreasonably withheld; provided, however, VPO may transfer or assign its rights and obligations under this Agreement to an entity that is directly or indirectly under common ownership or control with VPO, provided that at the time of such transfer or assignment no event has occurred that, with notice and opportunity to cure, would constitute an event of default by VPO under the Agreement. The City may refuse to give consent only if, in light of the proposed transferee's reputation and financial resources, such transferee would not, in the City's reasonable opinion, be able to perform the obligations proposed to be assumed by such transferee. The City's determination of whether to give consent shall be made within thirty (30) days of notice requesting consent, and if consent is withheld, the City shall state the rationale in writing. Failure to provide consent in writing within this time period shall be deemed consent.

Section 14. Attorneys' Fees and Costs. Except as provided in Section 9, the Parties understand and agree that each Party shall bear its own attorneys' fees and costs incurred, and hereby waive and release each other from any claims for attorneys' fees and/or costs incurred in connection with this Agreement, the Property, or any action arising from the Agreement or the Property.

Section 15. Release of VPO. Excepts as otherwise expressly provided herein, the City and each of its officials, representatives, officers, directors, managers, employees, agents, contractors, affiliates, successors, assigns, creditors, heirs, executors, and administrators, hereby release and forever discharge VPO, and each of its partners, members, officers, managers, employees, agents, contractors, affiliates, successors, assigns, creditors, attorneys, heirs, executors, and administrators, specifically including Sand Hill Property Company, from any and all claims for damages, equitable relief, actions for a writ of mandate, demands, causes of action, damages, liabilities, and obligations, of whatever description or nature, arising out of, directly or indirectly, or relating in any manner to this Agreement, the Property, or any action related to the

Property. The Parties expressly agree that VPO's liability for any parkland dedication fees or Impact Fees shall be defined by this Agreement.


Section 16. Release of City. Excepts as otherwise expressly provided herein, VPO, and each of its partners, members, officers, managers, employees, agents, contractors, affiliates, successors, assigns, creditors, attorneys, heirs, executors, and administrators hereby release and forever discharge the City, and each of its officials, representatives, officers, directors, managers, employees, agents, contractors, affiliates, successors, assigns, creditors, heirs, executors, and administrators, from any and all claims for damages, equitable relief, actions for a writ of mandate, demands, causes of action, damages, liabilities, and obligations, of whatever description or nature, arising out of, directly or indirectly, or relating in any manner to this Agreement, the Property, or any action related to the Property. The Parties expressly agree that this release extends to any claim or cause of action challenging the adoption of the General Plan Amendment or the validity of any and all fees assessed for the Project, provided that VPO reserves the right to contest the imposition any new fee imposed not identified in the City fee schedule effective July 14, 2024 or any future increase of any fee effective on or before July 14, 2024 that exceeds the amount of the applicable inflation index.

Section 17. Civil Code Section 1542. The Parties intend this Agreement to be and to constitute a full general release and to constitute a full and final accord and satisfaction extending to all claims arising out of or relating to the Agreement. Accordingly, the City and VPO, by signing this Agreement, agree and warrant that they have read, understood, and expressly releases and waives the provisions of California Civil Code section 1542, which reads as follows:

A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT THE CREDITOR OR RELEASING PARTY DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE AND THAT, IF KNOWN BY HIM OR HER, WOULD HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR OR RELEASED PARTY.

The Parties acknowledge that by signing this Agreement they are knowingly waiving the provisions of section 1542.

Initials: The City: CDJ

VPO: 

Section 18. Notice. All notices, demands, or other communications which this Agreement contemplates or authorizes shall be in writing and shall be personally delivered, emailed, or mailed to the respective Party as follows:



If to the City: City Attorney  
City Attorney's Office  
10300 Torre Avenue  
Cupertino, CA 95014  
cityattorney@cupertino.gov

If to VPO: Vallco Property Owner LLC  
c/o Sand Hill Property Company  
2600 El Camino Real, Suite 410  
Palo Alto, CA 94306  
rmoulds@shpco.com

Any Party may change the address stated herein by giving notice in writing to the other Parties, and thereafter notices shall be addressed and transmitted to the new address.

Section 19. General Provisions.

(a) Nothing contained herein shall be construed as an admission or acknowledgment of any fact, legal issue, claim, or defense on the part of any Party; any such interpretation of this Agreement is hereby expressly disclaimed.

(b) The heading titles for each section of this Agreement are included only as a guide to the contents and are not to be considered as controlling, enlarging, or restricting the interpretation of the Agreement.

(c) Each Party to this Agreement has had an opportunity to review the Agreement, confer with legal counsel regarding the meaning of the Agreement and negotiate revisions to the Agreement. Accordingly, neither party shall rely upon Civil Code section 1654 to interpret any uncertainty in the meaning of the Agreement.

(d) This Agreement shall be governed by the laws of the State of California. Any suit, claim, or legal proceeding of any kind related to this Agreement shall be heard and filed in a court of competent jurisdiction in the County of Santa Clara.

(e) This Agreement contains all the representations and the entire agreement and understanding among the Parties with respect to the subject matter hereof, and supersedes all prior understandings, agreements (whether written, verbal, implied, or otherwise) and communications with respect thereto. None of the terms hereof shall be amended, waived, or otherwise modified except by written instrument duly executed by the Parties.

(f) Nothing in this Agreement, whether express or implied, is intended: (i) to confer any rights, benefits, or remedies under or by reason of this Agreement on any person or entity other than the Parties and their respective successors and permitted assigns; (ii) to relieve, terminate, or discharge any obligation or liability of any person or entity not a party to this Agreement to any Party hereto; or (iii) to give any third person or entity any right of subrogation or action against any party.

(g) Each Party covenants and represents that it is fully authorized to enter into this Agreement and to carry out the obligations provided for herein. Each signatory to this Agreement represents and covenants that the signatory possesses the necessary capacity and authority to sign and enter into this Agreement and to bind the Party on whose behalf they are a signatory.

(h) If any term of this Agreement (including any phrase, provision, covenant, or condition) is held by a court of competent jurisdiction to be invalid or unenforceable, the Agreement shall be construed as not containing that term, and the remainder of this Agreement shall remain in full force and effect; provided, however, this section shall not be applied to the extent that it would expressly conflict with the terms of the Agreement (including but not limited to Section 6(b)) or result in a frustration of the Parties' intent under the Agreement. In addition, the City and VPO shall work together in good faith to amend the Agreement in a manner that addresses any issues identified in the legal challenge and that maintains the intent of the Agreement. If the Agreement cannot be amended to reflect the intent of the Parties, either Party may terminate this Agreement.

(i) This Agreement may be executed in counterparts, each of which shall be deemed an original, but all of which shall constitute one and the Agreement. Signatures provided by facsimile shall have the same force and effect as original signatures.

IN WITNESS WHEREOF, the Parties hereby agree to the full performance of the terms set forth herein.

Dated: \_\_\_\_\_, 2024

CITY OF CUPERTINO

By: \_\_\_\_\_

Name: Christopher D. Jensen

Its: City Attorney

Dated: 7/10, 2024

VALLCO PROPERTY OWNER LLC

By: \_\_\_\_\_

Name:

Its:

*Handwritten signature: Peter Fav*  
*Handwritten title: MANAGER*

Enclosures:

Exhibit A – Vallco Shopping Mall Lease Areas & Common Areas

Exhibit B – Transportation Impact Fee (“TIF”) Methodology

Exhibit C – Master Storm Drain Area Fee Methodology

Exhibit D – Below Market Rate (“BMR”) Housing Mitigation Fee Methodology

Exhibit E – Parkland and Open Space

Exhibit F – Annual Report

Exhibit G – Legal Description

Dated: 7/10, 2024

CITY OF CUPERTINO

By: \_\_\_\_\_

  
Name: Christopher D. Jensen  
Its: City Attorney

Dated: \_\_\_\_\_, 2024

VALLCO PROPERTY OWNER LLC

By: \_\_\_\_\_

Name:  
Its:

Enclosures:

- Exhibit A – Vallco Shopping Mall Lease Areas & Common Areas
- Exhibit B – Transportation Impact Fee (“TIF”) Methodology
- Exhibit C – Master Storm Drain Area Fee Methodology
- Exhibit D – Below Market Rate (“BMR”) Housing Mitigation Fee Methodology
- Exhibit E – Parkland and Open Space
- Exhibit F – Annual Report
- Exhibit G – Legal Description

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 )

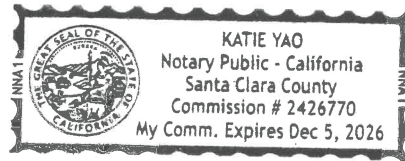
On 7/10/2024, before me, KATIE YAO, a Notary Public, personally appeared PETER PAU, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized 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

Katie Yao



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 )

On July 10, 2024, before me, Kirsten Squarcia, a Notary Public, personally appeared Christopher D. Jensen, 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 *Kirsten Squarcia*



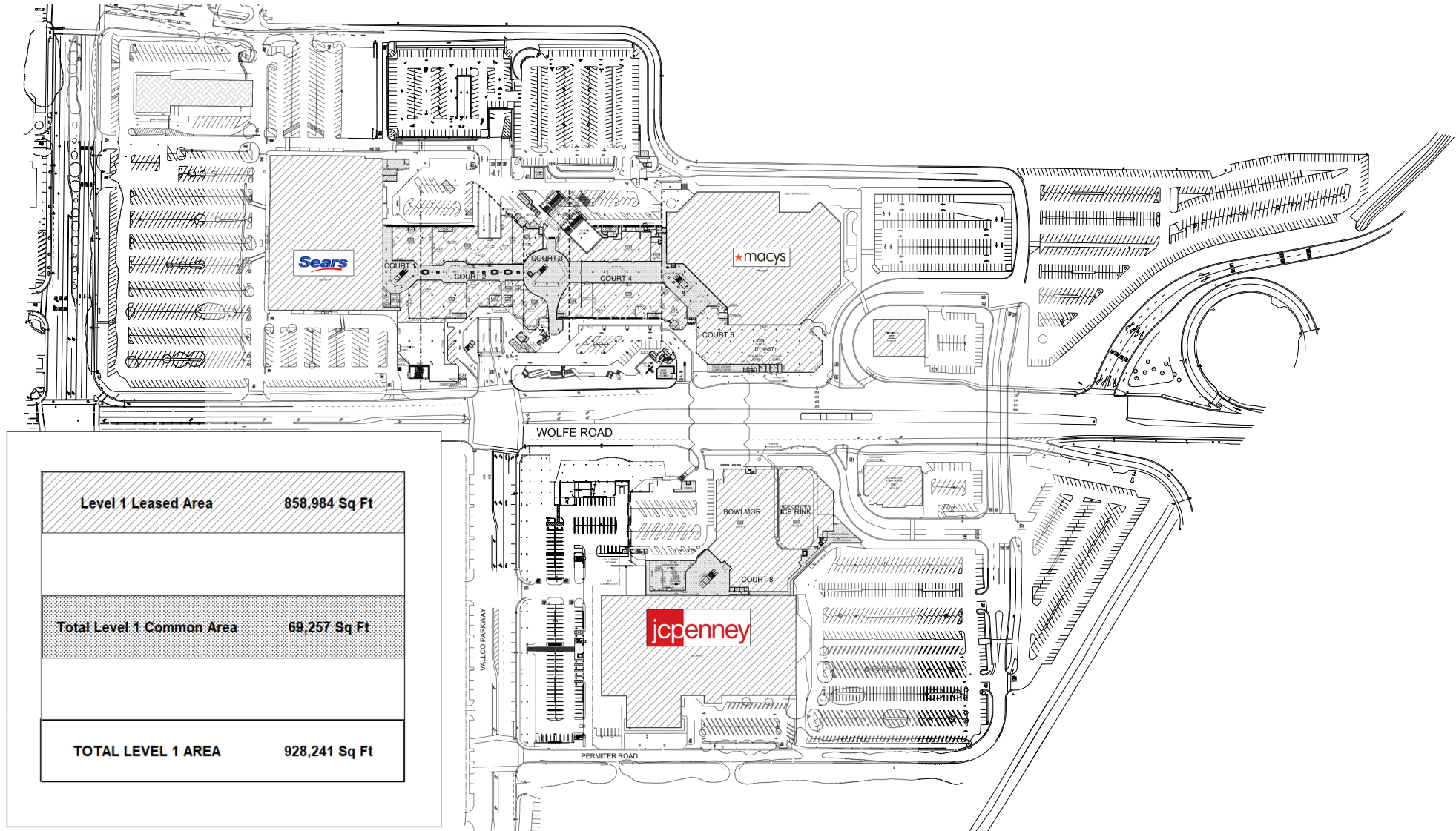
# VALLCO SHOPPING MALL LEASED AREAS & COMMON AREAS

Level 1		Level 3 - AMC	
	Sq Ft		Sq Ft
Leased Area	858,984	Leased Area	80,675
Common Area	69,257	Common Area	44,575
<b>Total Level 1 Area</b>	<b>928,241</b>	<b>Total Level 3 Area</b>	<b>125,250</b>
<b>Level 2</b>		<b>Total Leased Area</b>	
	Sq Ft		<b>1,217,420</b>
Leased Area	277,761	<b>Total Common Area</b>	<b>233,507</b>
Common Area	119,675		
<b>Total Level 2 Area</b>	<b>397,436</b>	<b>Total Mall Area</b>	<b>1,450,927</b>

**Level 1 Leased Area** includes all Major retailer first and second level floor area (Sears, Macy's, JCPenney). Alexander's and TGI Fridays restaurant spaces also included in Level 1 area total.

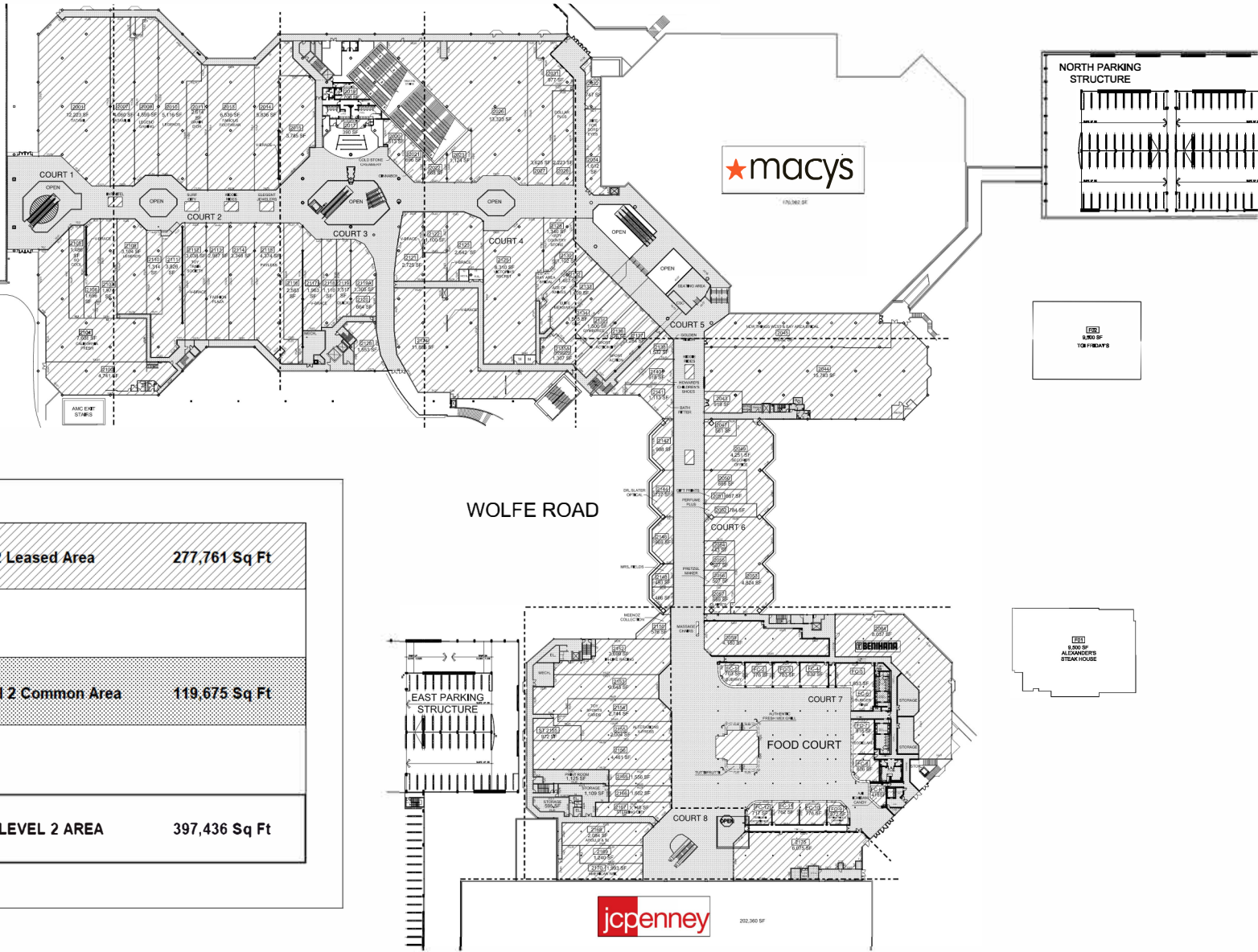
**Common Areas** includes Mall interior common areas, hallways, emergency exits and stairwells, storage areas, electrical rooms, mechanical rooms, housekeeping offices, security offices, janitorial closets, print rooms, freight elevators, common restrooms, and trash chute areas.

# VALLCO SHOPPING MALL - LEVEL 1 LEASED AREAS & COMMON AREAS





# VALLCO SHOPPING MALL - LEVEL 2 LEASED AREAS & COMMON AREAS



Level 2 Leased Area	277,761 Sq Ft
Total Level 2 Common Area	119,675 Sq Ft
<b>TOTAL LEVEL 2 AREA</b>	<b>397,436 Sq Ft</b>



**Exhibit B**  
**Transportation Impact Fee (“TIF”) Methodology**

The Parties agree that the following methodology shall be utilized to determine the TIF due for each phase of the Project. This methodology is consistent with the findings of the City’s *Transportation Impact Fee Nexus Study*, dated August 2017. As set forth in the Agreement, VPO shall first receive credit against the assessment of the TIF for the demolition of 1,450,927 gross square feet of retail space and shall be entitled to exhaust the full amount of this credit before any TIF payment pursuant to this methodology is due.

Part I establishes the methodology for calculating the net trip generation based on the Project’s program, and Part II then establishes a per unit and per square foot fee rate based on the adjusted trip generation outputs for the Project’s proposed program, and Part III establishes the approach to calculating the TIF due based on the specific scope and uses of the proposed program, as specified herein. Unless expressly defined herein, all terms shall be construed according to the definitions in the Settlement and Release Agreement between Vallco Property Owner LLC and the City of Cupertino dated July 10, 2024.

**PART I: CALCULATION OF NET PROJECT TRIP GENERATION**

The Project’s net trip generation, yielding an adjusted PM trip rate that accounts for the Project’s trip reduction benefits, shall be calculated by utilizing the following steps and assumptions.

**Step 1: Calculate daily, AM and PM vehicle trips based on all land use inputs for the proposed Project program.**

When calculating daily, AM and PM vehicle trips, the following assumptions shall be utilized:

- A. Land use size inputs shall be determined as follows:
  - i. *Residential* - Total unit count for both affordable and market rate units.
  - ii. *Retail* - Gross square footage as defined by the applicable Cupertino Municipal Code, excluding any double height or parking area.
  - iii. *Office* - Gross square footage as defined by the applicable Cupertino Municipal Code, excluding any double height or parking area.

## Exhibit B – TIF Methodology

- B. Baseline trip shall be based on the average of the ITE 11th Edition trip generation rates and Silicon Valley Office Rates, consistent with the rates used in the Vallco Specific Plan Draft Environmental Impact Report (May 2018).

### **Step 2: Apply trips reductions to determine the adjusted gross trips for the proposed Project program.**

To calculate the gross trips of the proposed Project program, the following trip reduction assumptions shall be utilized. Note that these reduction assumptions set forth below are dependent on the Project land use size inputs (as defined above) and shall be adjusted if Project program changes.

- A. Internal capture reduction from NCHRP methodology and associated data (Version 684 dated January 2011 or newer methodologies).
- B. Transportation Demand Management (TDM) reductions shall be applied using the Santa Clara County Valley Transportation Authority (VTA) Vehicle Miles Traveled (VMT) Evaluation Tool Version 2 (dated December 2021). Applicable reductions based on the proposed Project program shall include but are not necessarily limited to:
  - i. Infrastructure improvements, Project design features, and voluntary TDM measures based on the Project's proposed program, including as set forth in **Table 1** below, which are intended as enforceable obligations of the Project. However, modifications to such improvements, design features, and measures may be applied as agreed to by the Developer subject to the requirement that such modifications yield a comparable resulting trip reduction. If a comparable resulting trip reduction is not achieved, the TIF will be recalculated using the methodology in this Exhibit. Developer shall provide the City with a reasonable opportunity to review any modifications to infrastructure improvements, Project design features, or voluntary TDM measure which impact the adjusted gross trips for the proposed Project program, and the Parties shall meet and confer to resolve any disagreement as to whether the proposed modifications yield a comparable resulting trip reduction.
  - ii. Reduction percentages derived from the VTA model shall be capped at a maximum threshold as defined by the VTA Evaluation Tool Version 2 and as set forth in the Handbook for Analyzing Greenhouse Gas Emission Reductions, Assessing Climate Vulnerabilities, and Advancing Health and Equity (dated December 2021) prepared by the California Air Pollution

Exhibit B – TIF Methodology

Control Officers Association (CAPCOA), and account for multiplicative dampening to ensure reduction strategies are accurately counted.

- iii. Any application for a Project modification under Government Code section 65913.4 that affects the land use size inputs specified in Step 1 shall be accompanied by a revised trip generation calculation and an updated calculation of adjusted Project fee rates based on the methodology set forth in this Exhibit B. The revised trip generation calculation and updated calculation of adjusted Project fee rates shall be subject to the review and approval of the Director of Public Works, provided that such review shall be carried out consistent with the intent and terms of the Agreement and City’s obligations under Government Code section 65913.4(i)(2)(A), and approval shall not be unreasonably withheld.

**Table 1: TDM Reduction Strategies**

Strategy Tier	Reduction Type	ID	VTA VMT Reduction Strategy
Tier 1 Project Characteristics	Project Design / Upfront Infrastructure	PC01	Increase Residential Density
		PC02	Increase Residential Diversity
		PC03	Affordable Housing
		PC04	Increase Employment Density
Tier 2 Multimodal Infrastructure	Project Design / Upfront Infrastructure	MI01	Increase Bike Access
		MI02	Improve Connectivity
		MI03	Increase Transit Accessibility
		MI04	Traffic Calming
		MI05	Pedestrian Networks
Tier 3 Parking	Project Design / Upfront Infrastructure	PK01	Limit Parking Supply
		PK02	Provide Bike Facilities
Tier 4 TDM Programs	Additional TDM Program / Ongoing Monitoring	TP02	Bike Share Programs
		TP03	Car Share Programs
		TP04	CTR Marketing & Education
		TP08	Telecommuting and Alternative Work Schedules
		TP16	Partial Unbundle Parking Costs from Property

**Step 3: Calculate the adjusted PM trip rate for each proposed Project program use.**

The PM gross trips generated for each land use component shall be calculated by dividing the gross trips by the land use inputs for the proposed Project program for each use to obtain an adjusted PM trip rate for each use.

*Note:* The resulting adjusted PM trip rate (trip/unit) may be less than the ITE rates used in the City’s *Transportation Impact Fee Nexus Study* calculations as it accounts for the Project’s program-specific internal trip reductions.



**PART II: CALCULATION OF ADJUSTED PROJECT FEE RATES**

Part II below establishes a per unit and per square foot fee rate based on the adjusted trip generation rates for the Project’s program and City’s 2017 Nexus Study methodology and its current fee schedule.

**Step 4: Calculate Project-specific trip demand factor.**

Calculate the Project-specific trip demand factor by multiplying the adjusted PM trip rate [Step 3] by the applicable Adjustment Factor set forth in Table 3 of the City’s 2017 TIF Nexus Study to determine the Project-specific trip demand factor.

**Table 2** sets forth the demand factors for the proposed Project program.

**Table 2: Project-Specific Trip Demand Factors**

Land Use	City of Cupertino Calculation (2017 Nexus)					Project Calculation	
	Primary Trips	Diverted Trips	Total Trips (Excluding Pass-by)	Average Trip Length	Adjustment Factor	Project Adjusted PM Trip Rate	Project Trip Demand Factor
	%	%	%	Miles	-	Trips/Unit	Trips/Unit
<b>Residential Units</b>							
Multi-Family (DU)	86%	11%	97%	6.77	0.99	0.17	0.17
<b>Non-Residential</b>							
Retail (1 KSF)	47%	31%	78%	3.65	0.43	1.66	0.71
Office (1 KSF)	77%	19%	96%	12.93	1.87	0.82	1.54
Existing Credit => Retail (1 KSF)	47%	31%	78%	3.65	0.43	3.40	1.46

*Note:* The trip Adjustment Factor equals the percent of non-pass-by trips multiplied by the average trip length (from City’s 2040 travel demand model per the City’s TIF program), and then divided by the systemwide average trip length of 6.63 miles (trip length per the City’s 2040 travel demand model per the City’s TIF program).

**Step 5: Calculate adjusted Project fee rate per residential unit and/or per non-residential square foot.**

Calculate the adjusted Project fee rate per residential unit and/or per non-residential square foot by utilizing the Project-specific trip demand factor [Step 4] and the TIF fee schedule.

**Table 3** sets forth the adjusted Project fee rate for the proposed Project program.

**Table 3: Adjusted Project-Specific Fee Rates**

Land Use	City Escalated 2024 Fees		Project Adjusted Trip Factor (Gross)			
	Cost Per PM Trip	Cost Per PM Trip less Admin Charge [1]	Project Trip Demand Factor [2]	Raw Fee [1]x[2] = [3]	Admin Charge [4]	Project Total TIF per Unit [3] x (1+[4]) = [5]
	\$/Trip	\$/Trip	Trip/Unit	\$/Unit	%	\$/Unit
<b>Residential Units</b>						
Multi-Family (DU)	\$ 6,862	\$ 6,727	0.17	\$ 1,112.41	2%	\$ 1,134.66
<b>Non-Residential</b>						
Retail (1 KSF)	\$ 6,862	\$ 6,727	0.71	\$ 4,789.79	2%	\$ 4,885.58
Office (1 KSF)	\$ 6,862	\$ 6,727	1.54	\$10,381.13	2%	\$ 10,588.76
Existing Credit => Retail (1 KSF)	\$ 6,862	\$ 6,727	1.46	\$ 9,821.12	2%	\$ 10,017.54

**PART III: CALCULATION OF APPLICABLE TIF OWED**

Part III below establishes the final steps in calculating the TIF fee due.

**Step 6: Determine gross TIF based on the Project’s proposed program.**

The Project’s gross TIF is determined by multiplying the adjusted project fee rates [Step 5] by the Project’s land use program utilized in Step 1. Fees shall be calculated for each building based on the land use program and the adjusted project fee rates calculated in Step 5. **Table 4** below provides a tabulation of the calculated gross TIF based on the proposed Project program.

**Step 7: Determine applicable TIF based on fee credit for existing retail shopping center.**

A fee credit for the existing Vallco Mall is determined using average ITE 11<sup>th</sup> Edition trip rates and following the same methodology as set forth in Steps 1 through 6 above (except that Step 2(b) TDM reductions need not be taken). If the adjusted Project fee rate changes based on modifications to the approved Project program, then the TIF credit shall be recalculated as set forth in this Step 7. **Table 4** below provides a tabulation of the calculated TIF credit based on the proposed Project fee rates.

Note that for purposes of TIF credit, the Project shall receive credit for the total 1,450,927 gross square feet, as described in Exhibit A, prior to any TIF being due as set forth in the Agreement. As such, the remaining TIF credit available shall be subtracted from the TIF fee calculated in Step 6.

**Step 8: Determine net TIF per the Project’s proposed program.**

The net TIF owed by the Project’s proposed program shall be calculated by subtracting the TIF credit [Step 7] from the gross TIF amount [Step 6]. **Table 4** below provides a tabulation of the calculated net TIF based on the proposed Project program, which yields a total anticipated TIF of \$10,272,413, based on the City’s FY 2024-2025 fee schedule. The TIF due shall be adjusted based on the per trip fee in the City’s fee schedule at the time of payment, subject to the terms of the Agreement. The Developer shall cooperate with the City to provide any trip generation model outputs, based on the methodology and assumptions set forth above, necessary to assess any TIF due at the time of payment. The Director of Public Works shall review and approve any model output or calculations, provided that such approval shall not be unreasonably withheld and shall be carried out consistent with the intent and terms of the Agreement and the City’s obligations under Government Code section 65913.4(i)(2)(A).

**Table 4: TIF Calculations Based on Proposed Project Program**

#	Land Use	Land Use Size [1]	\$/Unit [2]	TIF (\$) [1] x [2] = [3]
1	Residential (MFR)	2669.00	\$ 1,134.66	\$ 3,028,402.92
2	Office	1954.61	\$ 10,588.76	\$ 20,696,919.85
3	Retail	221.43	\$ 4,885.58	\$ 1,081,809.77
<b>Approved Project Gross TIF</b>				<b>\$ 24,807,132.54</b>
<b>Existing Mall TIF Credit</b>		<b>1450.93</b>	<b>\$ 10,017.54</b>	<b>\$ (14,534,719.46)</b>
<b>Total Project Net TIF</b>				<b>\$ 10,272,413.08</b>



**Exhibit C**  
**Master Storm Drain Area Fee Methodology**

The Parties agree that the following methodology shall be utilized to determine the Master Storm Drain Area Fee (“Storm Drain Fee”) due for each phase of the Project.

**Step 1: Determine the total site acreage for purposes of calculating storm drain impact.**

The total site acreage used to assess the Project’s storm drain impact shall be the parcel size after deducting any public dedications of land to the City.

Based on the current Project program, the total site acreage following dedication is 49.57 acres.

**Step 2: Allocate site acreages per Project land use.**

The total site acreage shall then be allocated to each land use based on the total gross square footage for each land use. This calculation shall be done by dividing the specific land use gross square footage by the total Project program gross square footage and then multiplying that result by the post-dedication site acreage [Step 1].

Based on the current Project program, the allocated per-use acreages are as follows:

- *Residential*: 33.10 acres [(Post-Dedication Parcel Size) × [(Residential GSF)/(Total GSF)]]
- *Office*: 14.76 acres [(Post-Dedication Parcel Size) × [(Office GSF)/(Total GSF)]]
- *Retail*: 1.71 acres [(Post-Dedication Parcel Size) × [(Retail GSF)/(Total GSF)]]

**Step 3: Calculate the resulting gross Storm Drain Fee per land use.**

To calculate the gross Storm Drain Fee owed, each of the allocated acreages [Step 2] shall then be multiplied by the appropriate Storm Drain Fee based on the applicable City fee schedule.

Based on the current Project program, the fee calculations are as follows:

- *Residential*: \$495,728
  - Per Acre Fee: \$151,712 [33.10 acres × \$4,584]
  - Per Unit Fee: \$344,016 [49.570 acres × \$6,940]

## Exhibit C – Storm Drain Fee Methodology

*Note:* Per the City's fee schedule, the residential per unit fee shall be applied at a maximum 20 du/ac across the total post-dedication site acreage, resulting in \$6,940 per acre when converted based on the current Project program.

- *Office:* \$182,247 [14.76 acres x \$12,334]
- *Retail:* \$21,108 [1.71 acres x \$12,334]

### **Step 4: Calculate fee credit for existing retail shopping center.**

The City shall provide a Storm Drain Fee credit for the prior existing mall, which shall be based on the existing mall acreage of 50.822 acres and the retail fee rate under the City's fee schedule applicable at that time of core and shell building permit issuance.

Based on the City's 2024-2025 Fee Schedule B – Engineering, the Storm Drain Fee for retail use is \$12,344/acre, yielding a fee credit of \$627,347 [50.822 acres x \$12,344].

### **Step 5: Calculate net Storm Drain Fee**

The net Storm Drain Fee owed by the Project's proposed program shall be calculated by subtracting the Storm Drain Fee credit [Step 4] from the gross Storm Drain Fee amount [Step 3].

Based on the current Project program and utilizing the City's 2024-2025 Fee Schedule B – Engineering, the Project would yield a net Storm Drain Fee of \$71,736.

**Exhibit D**

**Below Market Rate (“BMR”) Housing Mitigation Fee Methodology**

The Parties agree that the following methodology set forth in this Exhibit D shall be utilized in the event of a subsequent SB 35 modification to the Project during the term of the Agreement to determine whether and to what extent such modification has an impact on the Project’s induced demand for BMR housing. Part I establishes the methodology to make such determination. If the Project yields an induced demand for BMR housing in excess of the BMR units provided onsite, Part II establishes the methodology to calculate the BMR Fee that would be owed, subject to the terms of the Agreement.

This methodology is based on the impact analysis set forth in the *Non-Residential Jobs-Housing Nexus Analysis*, as prepared for the City of Cupertino by Keyser Marston Associates, Inc. (“Nexus Study”), dated April 2015. Specifically, this methodology relies upon the *Table II-4: Housing Demand Nexus Factors per Sq. Ft. of Building Area* from the Nexus Study (copied in full below), which identifies the number of BMR housing units induced per square foot of building area per type of use.

	<b>Number of Housing Units per Square Foot of Building Area<sup>(1)</sup></b>		
	<b>OFFICE</b>	<b>HOTEL</b>	<b>RETAIL / RESTAURANT</b>
Up to 50% Median Income	0.00014967	0.00014385	0.00067586
50% to 80% Median Income	0.00025726	0.00005615	0.00023980
80% to 120% Median Income	0.00031040	0.00002050	0.00006795
<b>Total</b>	<b>0.00071733</b>	<b>0.00022049</b>	<b>0.00098361</b>

**PART I: DETERMINING BMR HOUSING IMPACT**

*Note: Part I uses the Project land use program as approved at the time of execution of the Agreement.*

**Step 1: Calculate induced BMR unit demand caused by Project non-residential portions.**

Multiply the Project’s non-residential square footages<sup>1</sup> by the respective housing demand nexus factors provided under Nexus Study Table II-4 above.

<b>Office:</b>	1,954,613 sf x 0.00071733 du/sf	1,402.10 BMR units
<b>Retail:</b>	221,429 sf x 0.00098361 du/sf	+ 217.79 BMR units
<b>Total:</b>		<b>1,619.89 BMR units</b>

Here, the non-residential portions of the Project yield a total induced demand of 1,620 BMR units (rounded up).

**Step 2: Calculate existing induced BMR unit demand caused by prior retail shopping center.**

Multiply the existing retail shopping center gross square footages by the respective BMR housing demand nexus factor for retail as provided under Nexus Study Table II-4 above.

**Existing Retail: 1,450,927 sf x 0.00098361 du/sf                      1,427.15 BMR units**

Existing gross retail shopping center square footages, as provided in Exhibit A, yield an existing induced demand of 1,427 units (rounded down).

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<sup>1</sup> Note that for purposes of this calculation, the Project’s non-residential square footages shall be measured based on the “floor area” definition in the Cupertino Municipal Code, except that it shall not double count interior building area above fifteen feet in height between any floor level and the ceiling above (“double height space”). Under the Project land use program as approved at the time of execution of the Agreement, the retail portion included 4,957 square feet of double height space located in Block 5, which has been deducted from this Step 1 calculation.

Exhibit D – BMR Housing Mitigation Fee Methodology

**Step 3: Calculate net new BMR unit demand caused by Project non-residential portions.**

Subtract prior existing BMR housing demand (Step 2) from new BMR housing demand generated by non-residential portions of the Project (Step 1).

New Induced BMR Demand:	1,619.89 BMR units
<u>Prior Induced BMR Demand:</u>	<u>- 1,427.15 BMR units</u>
	<b>193 BMR units</b>

Here, when accounting for the prior retail shopping center use, the non-residential portions of the Project yield a net induced demand of 193 BMR units.

**Step 4: Calculate number of Project BMR units that exceed the number of BMR units required to mitigate Project’s induced demand from its market-rate residential portion.**

The City’s inclusionary housing policy in place at the time of Project approval requires that market rate residential projects set aside 15% of the on-site units as affordable to offset the induced BMR demand of the market rate units. To the extent the Project includes greater than the City’s minimum 15% onsite BMR requirement, all such additional BMR units shall be credited against the net new induced BMR demand of the entire Project (i.e., including the demand caused by the non-residential portions of the Project).

Total Market Rate Units:	1,779 units
Total BMR Units:	890 BMR units
<u>15% Required BMR Units:</u>	<u>- 267 BMR units</u>
<b>BMR Above Inclusionary Requirement:</b>	<b>623 BMR units</b>

Here, the Project includes 1,779 market rate units, yielding a BMR requirement of 267 BMR units [1,779 units x 15%]. The Project provides 890 BMR units onsite, yielding a net excess of 623 BMR units that shall be credited against the Project’s total induced BMR housing demand.

**Step 5: Determine Project’s total BMR impact by comparing Project’s excess onsite BMR units that exceed City’s inclusionary housing policy (Step 4) against Project’s net new induced demand from non-residential portions (Step 3).**

The total BMR unit demand from non-residential portions (Step 3) shall be subtracted from the number of BMR units that are in excess to the market rate demand (Step 4) to determine whether the Project yields a net benefit or deficit of BMR units.

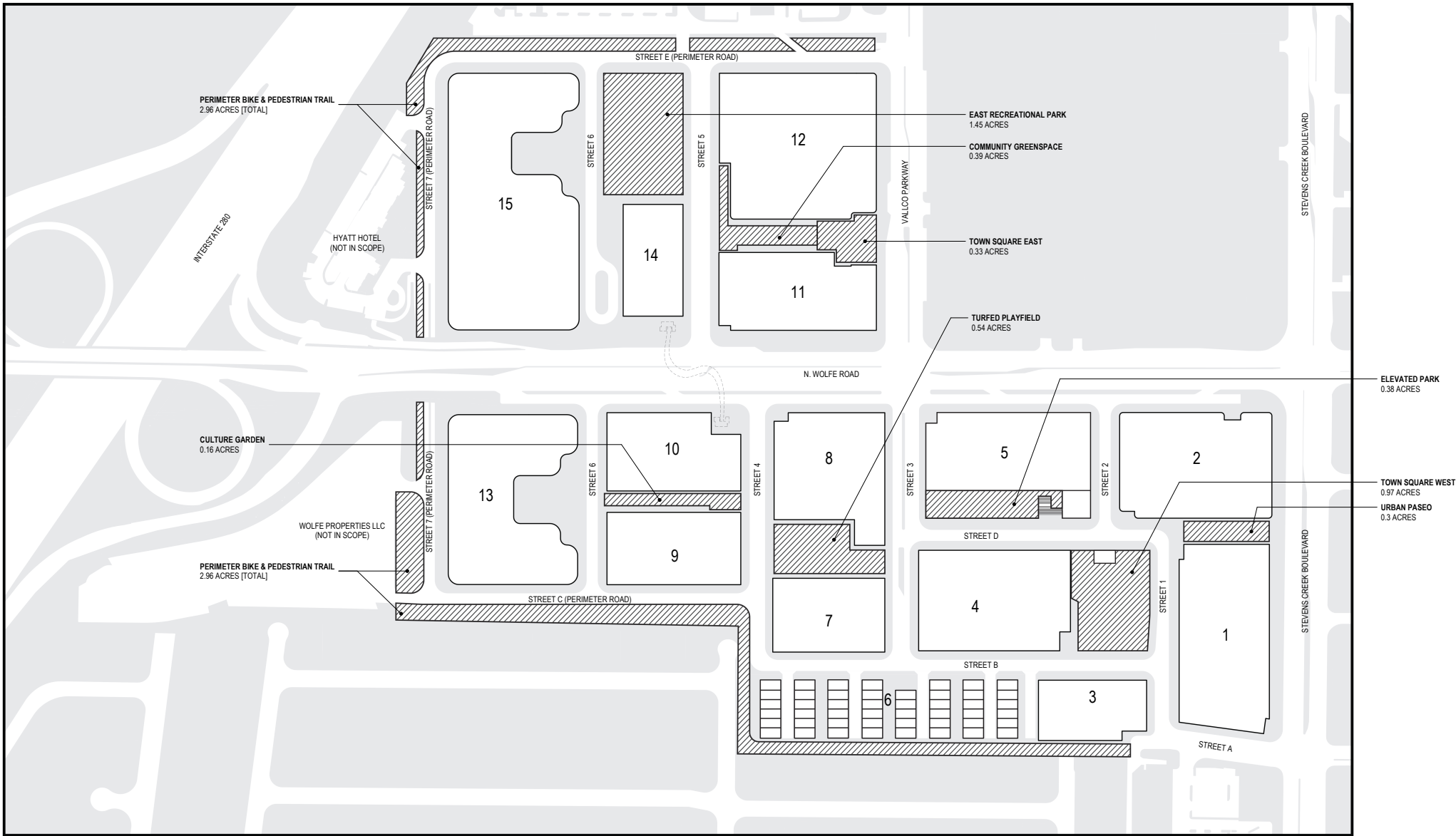
Total Excess BMR Units From Residential Uses:	623 BMR units
<u>Total Net BMR Demand From Non-Residential Uses:</u>	<u>– 193 BMR units</u>
<b>Total Excess BMR:</b>	<b>430 BMR units</b>

Here, the Project is providing a net excess of 623 BMR units onsite. The Project’s nonresidential portions yield an induced demand of 193 BMR units. Therefore, the Project has a net benefit of 430 BMR units and no BMR Fee is owed.

**PART II:  
BMR FEE OWED IF BMR DEMAND EXCEEDS ONSITE BMR SUPPLY**

In the event that the Project were to be modified during the Term of the Agreement such that the Project results in a net BMR unit demand in excess of the BMR units to be provided onsite, the resulting BMR Fee owed shall be \$48,163 per unit of resulting impact, which is the unit yield determined under Part I – Step 5 above.

This per unit fee of \$48,163 has been determined by utilizing the housing demand nexus factors provided under Nexus Study Table II-4 above, where each square foot of office use generates an induced demand of 0.00071733 new BMR units, and where the City’s current BMR Fee is \$34.55 per square foot of office use (per the City’s 2024-2025 Fee Schedule C - Planning). Therefore, since one square foot of office use has an induced demand of 0.00071733 new BMR units, then 1,394 square feet of office has an induced demand for 1 unit [ $1 / 0.00071733 = 1,394$  sq ft], and mitigating that square footage would require a BMR Fee of \$48,163 [ $1,394$  sq ft x \$34.55].



**LEGEND**

 PUBLIC PARKLAND AND OPEN SPACE

NOTE:  
- DIAGRAMS ARE ILLUSTRATIVE FOR INFORMATION ONLY.

OPEN SPACE SUMMARY	
	AREA (ACRES)
<b>PUBLIC PARKLAND AND OPEN SPACE</b>	
TOWN SQUARE WEST	0.97
TOWN SQUARE EAST	0.33
PERIMETER BIKE / PEDESTRIAN TRAIL	2.96
TURFED PLAYFIELD	0.54
ELEVATED PARK: BLOCK 5	0.38
URBAN PASEO: BLOCKS 1 - 2	0.3
CULTURE GARDEN: BLOCKS 9 - 10	0.16
COMMUNITY GREENSPACE: BLOCKS 11 - 12 (CONNECTED TO TOWN SQUARE EAST)	0.39
EAST RECREATIONAL PARK	1.45
<b>SUBTOTAL</b>	<b>7.48</b>

**Exhibit E – Pubic Parkland and Open Space**

Exhibit F – Annual Report

**Exhibit F**  
**Annual Report**  
**Reporting Calendar Year: \_\_\_\_\_**

<b>Building Activity</b>	<b>Building Permit Application #s</b>	<b>Gross Building Square Footage – Calendar Year</b>	<b>Gross Building Square Footage To Date All Permits</b>
Building Permit Issuance		Residential – Retail – Office –	Residential – Retail – Office –
Final Certificates of Occupancy		Residential – Retail – Office –	Residential – Retail – Office –

<b>Open Space Completed &amp; Accepted by City</b>	<b>Description / Location of Improvements</b>	<b>Acreage – Calendar Year</b>	<b>Total Acreage – To Date</b>	<b>Date(s) of City Acceptance of Improvements</b>
Public Open Space				
Private Open Space				

<b>Residential Units Production by Income Category</b>	<b>Units Constructed (Final COO) – Calendar Year</b>	<b>Total # of Units Constructed - To Date</b>
Very Low		
Low		
Market Rate		

<b>Impact Fees/ Benefit Payments</b>	<b>Amount of Payments– Calendar Year</b>	<b>Total Amount of Payment – To Date</b>
Transportation Impact Fee		
Master Storm Drain Fee		
Benefit Payments		
Other: _____		



Exhibit G – Legal Description

**Exhibit G –  
Legal Description**

THE LAND REFERRED TO HEREIN BELOW IS SITUATED IN THE CITY OF CUPERTINO, IN THE COUNTY OF SANTA CLARA, STATE OF CALIFORNIA, AND IS DESCRIBED AS FOLLOWS:

**TRACT ONE:**

**PARCEL I:**

Parcel A, pursuant to Lot Merger, Recorded January 14, 2019, [Instrument No. 24097490, of Official Records](#), described as follows:

All that certain real property situate in the City of Cupertino, County of Santa Clara, State of California, being all of Parcel 1-A(2) and Parcel 1C1(2) as shown on that certain Lot Line Adjustment recorded April 02, 2008 as [Document Number 19798059](#), together with Parcel One as described in that certain Deed recorded October 22, 2014, as [Document Number 22746588](#), all within the Official Records of Santa Clara County, more particularly described as follows:

Beginning at the Northwest corner of said Parcel 1-C1(2), said corner also being the Southwesterly corner of Parcel One as shown on that certain Parcel Map filed for record on January 09, 2013 in [Book 858 of Maps at Page 41](#), Santa Clara County Records;

Thence, along the Southerly line of said Parcel One (858 Maps 41) the following four (4) courses;

- (1) North 88° 50' 57" East 303.11 feet;
- (2) South 01° 09' 03" East 53.51 feet;
- (3) South 82° 53' 14" East 76.01 feet to the beginning of a tangent curve;
- (4) Along said curve to the left, having a radius of 1368.73 feet through a central angle of 05° 21' 12", for an arc distance of 127.88 feet to a point on the Easterly line of said Parcel 1-C1(2);

Thence, along said Easterly line the following four (4) courses, as said courses are shown on 858 M. 41;

- (1) South 01° 20' 50" West 29.75 feet; (formerly North 01° 22' 22" East 29.66 feet per said Lot Line Adjustment) to the beginning of a tangent curve;
- (2) Along said curve to the right, having a radius of 100.00 feet, through a central angle of 18° 22' 11", for an arc distance of 32.06 feet to a point of reverse curvature;
- (3) Along a curve to the left, having a radius of 100.00 feet, through a central angle of 20° 48' 15", for an arc distance of 36.31 feet to a point of tangency;
- (4) South 01° 05' 14" East 1019.74 feet (formerly 1019.49 feet per said Lot Line Adjustment) to a point on the Northerly line of said Parcel One (Doc. No. 22746588 O.R.);

Thence, along said Parcel One (Doc. No. 22746588 O.R.) the following four (4) courses;

- (1) North 88° 54' 46" East 40.00 feet to the Westerly line of Wolfe Road, 119 feet wide;
- (2) Along said Westerly line South 01° 05' 14" East 819.01 feet (formerly 819.02 feet per 22746588) to the point of beginning of a tangent curve;
- (3) Along said curve to the right having a radius of 60.00 feet, through a central angle of 90° 41' 14", for an arc distance of 94.97 feet (formerly 94.96 feet per 22746588) to a point of tangency on the Northerly line of Steven's Creek Boulevard, being 45 feet Northerly of the monument line thereof;
- (4) Along said Northerly line South 89° 36' 00" West, 792.04 feet (formerly 792.24 feet per 22746588) to the Easterly line of Parcel 1 as shown on that certain Parcel Map filed for record on May 26, 1988 in [Book 586 of Maps at Pages 43 and 44](#), Santa Clara County Records;

Thence, along the Westerly lines of said Parcel One (Doc. No. 22746588 O.R.), said Parcel 1-C1(2) and said Parcel 1-A(2), North 00° 43' 00" West, 1263.89 feet to a point on the Southerly line of Amherst Drive, being 27.27

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feet Southerly of the monument line thereof, as shown on that certain map entitled "Tract No. 2086", filed for record September 30, 1959 in [Book 112 of Maps, Pages 40](#) and 41, Santa Clara County Records;

Thence, continuing along said Parcel 1-A(2) and the Southerly line of said Amherst Drive North 89° 12' 40" East, 299.09 feet (formerly North 89° 13' 29" East, 299.01 feet per said Lot Line Adjustment);

Thence, along the Westerly lines of said Parcel 1-A(2) and said Parcel 1-C1(2) and the Easterly line of said Tract No. 2086 North 00° 05' 00" West, 799.89 feet (formerly North 00° 04' 30" East, 800.83 feet per said Lot Line Adjustment); to the point of beginning.

The bearing of North 88° 54' 46" East between two found 2" brass disk monuments along the centerline of Vallco Parkway, as shown on that certain parcel map filed for record in [Book 804 of Maps, Pages 22-23](#), was used as the basis of all bearings for this description.

[APN: 316-20-122](#)

### **PARCEL II-B:**

A perpetual and exclusive easement, for the construction, maintenance in place and maintenance, repair, replacement, re-construction and use of underground footings for buildings, structures and improvements to be located in Parcel V-A hereinafter described and other land over, in, under, along and across the following described real property:

All that air space bounded by planes projected vertically at the parcel limits, below the horizontal plane at elevation 173.00 feet, according to the datum of the City of Cupertino; (City of Cupertino Official Bench Mark BM-1 Elev. 179.40);

Beginning at the intersection of the monument Line of Vallco Parkway as shown on that certain Parcel Map recorded in [Book 325 of Maps, Page 12](#), Santa Clara County Records, with the monument line of Wolfe Road as shown on said Map; thence along said monument line of Wolfe Road, N. 1 deg 05' 14" W., 426.56 feet; thence N. 88 deg 54' 46" E., 103.43 feet to the True Point of Beginning; thence N. 1 deg 05' 14" W., 140.00 feet; thence N. 88 deg 54' 46" E., 10.00 feet; thence S. 1 deg 05' 14" E. 140.00 feet; thence S. 88 deg 54' 46" W., 10.00 feet to the True Point of Beginning.

### **PARCEL V-A:**

A perpetual and exclusive easement granted by the City of Cupertino, California by Agreement dated October 8, 1974, recorded October 17, 1974 in Official Records, Santa Clara County, Book B 135 at Page 370, as amended by Supplement to Agreement between the City of Cupertino, California and Vallco Park, Ltd., dated as of August 5, 1975, recorded on August 20, 1975 in the aforesaid Official Records in [Book B571 Page 724](#), to construct, maintain in place, maintain, repair, replacement re-construct and to use buildings, structures and improvements over the following described Parcel of Land.

All that certain real property situated in the City of Cupertino, County of Santa Clara, State of California, being a 140 foot wide strip, bounded by planes projected vertically at the Parcel limits, above the horizontal plane at elevation 195.50 feet, according to the datum of the City of Cupertino; (City of Cupertino Official Bench Mark BM-1 = Elev. 179.40) the centerline of which is described as follows:

Beginning at the monument at the centerline of Wolfe Road and Vallco Parkway, as shown on that certain Parcel Map, recorded in [Book 325 of Maps, Page 12](#), Santa Clara County Records; thence Northerly along the centerline of Wolfe Road as shown on said Parcel Map N. 1 deg 05' 14" W., 496.56 feet; thence at right angles S. 88 deg 54' 46" W., 94.00 feet to the True Point of Beginning; thence N. 88 deg 54' 46" E., 170.00 feet; The Easterly terminus being the Easterly Right-of-Way line of Wolfe Road and the Westerly terminus being the Westerly Right-of-Way line of Wolfe Road.



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### PARCEL V-B:

The perpetual and exclusive easement for the construction, maintenance in place, and maintenance, repair, replacement, reconstruction and use of columns, supports, footings and foundations for buildings, structures and improvements to be located in Parcel V-A above described, granted by The City of Cupertino, California, by Agreement dated October 8, 1974, recorded on October 17, 1974 in Official Records, Santa Clara County, [Book B135 at page 370](#), as amended by Supplement to Agreement between the City of Cupertino, California and Vallco Park, Ltd., dated as of August 5, 1975, recorded on August 20, 1975 in the aforesaid Official Records in [Book B571 at Page 724](#), over, in, under, along and across the following described real property.

Beginning at the intersection of the monument line of Vallco Parkway as shown on that certain Parcel Map, recorded in [Book 325 of Maps, Page 12](#), Santa Clara County Records, with the monument line of Wolfe Road as shown on said Map; thence leaving said monument line of Vallco Parkway along the Northerly projection of said monument line of Wolfe Road, N. 1 deg 05' 14" W., 426.56 feet to the True Point of Beginning; thence S. 88 deg 54' 46" W., 14.50 feet; thence N. 1 deg 05' 14" W., 140.00 feet; thence N. 88 deg 54' 46" E. 32.00 feet; thence S. 1 deg 05' 14" E., 140.00 feet; thence S. 88 deg 54' 46" W., 17.50 feet to the True Point of Beginning.

### PARCEL V-C:

The perpetual and exclusive easement for the construction, maintenance in place, and maintenance, repair, replacement, re-construction and use of columns, supports, footings and foundations for buildings, structures and improvements to be located in Parcel V-A above described, granted by the City of Cupertino, California by Agreement dated October 8, 1974, recorded on October 17, 1974 in Official Records, Santa Clara County, [Book B135 at Page 370](#), as amended by Supplement to Agreement between the City of Cupertino, California and Vallco Park, Ltd., dated as of August 5, 1975, recorded on August 20, 1975 in [Book B571 at Page 724](#), Official Records, and as amended by Second Amendment to Agreement, dated March 1, 1976 and recorded September 14, 1976 in [Book C280 at Page 236](#), Official Records, and as amended by Third Amendment to Agreement, dated October 7, 1991 and recorded July 24, 1992 in [Book M297 at Page 1860](#), Official Records, over, in, under along and across the following described real property:

All that space bounded by planes projected vertically at the Parcel limits, below the horizontal plane at elevation 173.00 feet, according to the datum of the City of Cupertino; (City of Cupertino Official Bench Mark BM-1 = Elev. 179.40);

Beginning at the intersection of the monument line of Vallco Parkway as shown on that certain Parcel Map, recorded in [Book 325 of Maps at Page 12](#), Santa Clara County Records, with the monument line of Wolfe Road as shown on said Map; thence leaving said monument line of Vallco Parkway along the Northeasterly projection of said monument line of Wolfe Road, N. 1 deg 05' 14" W., 426.56 feet; thence S. 88 deg 54' 46" W., 84.00 feet to the True Point of Beginning; thence continuing S. 88 deg 54' 46" W., 10.00 feet to the Westerly line of Wolfe Road; thence along said line N. 1 deg 05' 14" W., 140.00 feet; thence leaving said Westerly line, N. 88 deg 54' 46" E., 10.00 feet; thence S. 1 deg 05' 14" E., 140.00 feet to the True Point of Beginning.

### PARCEL V-D:

A perpetual and exclusive easement to construct, repair, replace, reconstruct and use a vehicular tunnel and appurtenances thereto not in excess of 70 feet in width to be constructed, granted by the City of Cupertino, California by Agreement dated October 8, 1974, recorded on October 17, 1974 in Official Records, Santa Clara County, [Book B135 at Page 370](#), as Amended by Supplement to Agreement between the City of Cupertino, California, and Vallco Park, Ltd., dated as of August 6, 1975, recorded on August 20, 1975 in the aforesaid Official Records in [Book B571 at Page 724](#), within the area described as follows:

Beginning at the monument at the intersection of the centerline of Wolfe Road and Vallco Parkway, as shown on that certain Parcel Map, recorded in [Book 325 at Page 12](#), Santa Clara County Records; thence along the

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Westerly prolongation of the centerline of Vallco Parkway as shown on said Parcel Map, S. 88 deg 54' 46" W. 94.00 feet; thence leaving said prolongation along a line parallel to and 94.00 feet Westerly of said centerline of Wolfe Road, N. 1 deg 05' 14" W., 924.22 feet to the True Point of Beginning; thence continuing along said parallel line N. 1 deg 05' 14" W., 95.26 feet; thence along a tangent curve to the right whose radius of 100.00 feet; through a central angle of 20 deg 56' 09", an arc length of 36.54 feet to a point of reverse curvature; thence along a tangent curve to the left, whose radius is 100.00 feet, through a central angle of 18 deg 28' 53" an arc length of 32.26 feet; thence tangent to said curve; N. 1 deg 22' 02" E., 71.50 feet to a point on the Right-of-Way line of the lands of the State of California; thence leaving said Right-of-Way line N. 88 deg 54' 46" E. 171.63 feet to a second point on said Right-of-Way line; thence Southerly along said Right-of-Way line S. 15 deg 06' 31" W., 63.83 feet; thence leaving said Right-of-Way line Southerly along a line parallel to and 76 feet Easterly of the centerline of Wolfe Road as shown on said Parcel Map, S. 1 deg 05' 14" E., 172.58 feet; thence at right angles S. 88 deg 54' 46" W., 170.00 feet to the True Point of Beginning.

Excepting therefrom that portion of Parcel V-D as was conveyed to the City of Cupertino by Deed recorded October 15, 1976 in [Book C348, Official Records, Page 714](#).

Also excepting therefrom that portion of Parcel V-D as was conveyed to the City of Cupertino by Deed recorded October 15, 1976 in [Book C348, Official Records, Page 723](#).

### **PARCEL XI:**

The reciprocal and non-exclusive easements, rights, privileges of use, ingress and egress, parking and for utility and other purposes created and granted as an appurtenance to said land, described in that certain Construction, Operation and Reciprocal Easement Agreement between Vallco Fashion Park Venture, Sears, Roebuck and Co. and Federated Department Stores, Inc., dated as of the 19th day of February 1975, Recorded the 7th day of March, 1975 in [Book B309, Page 1](#), Official Records, Santa Clara County, as amended by (1) First Amendment to Construction, Operation and Reciprocal Easement Agreement Dated as of the 1st day of August, 1975 Recorded August 29, 1975 in [Book B591 at Page 434](#) of said Official Records; (2) Second Amendment to a Restatement of Construction, Operation and Reciprocal Easement Agreement between Vallco Fashion Park Venture, Federated Department Stores, Inc., Sears Roebuck and Co., Inc., and J. C. Penney Properties, Inc., dated as to the 1st day of December, 1975 Recorded September 14, 1976 [Book C280 Official Records, Page 296](#) in said Official Records as Amended by Third Amendment to Reciprocal Easement Agreement Dated September 14, 1976, Recorded June 24, 1977 [File No. 5698586](#); (3) the unrecorded agreement dated as of the 19th day of February 1975, between Vallco Fashion Park Venture and Sears, Roebuck and Co., the unrecorded Agreement of the same date between Vallco Fashion Park Venture and Federated Department Stores, Inc. and the unrecorded Agreement dated as of March 1, 1976 between Vallco Fashion Park Venture and J. C. Penney Properties, Inc. and (4) the undated Agreement and Consent and Approval executed by Vallco Park, LTD., Vallco Fashion Park Venture, Federated Department Stores, Inc. and Sears, Roebuck and Co. Recorded in aforesaid Official Records in [Book B309, Page 241](#) as amended by a First Amendment and Consent and Approval Dated August 1, 1975, by and among the same parties Recorded in the aforesaid Official Records in [Book B591, Page 445](#) as further amended by another Agreement and Consent and Approval Dated as of December 1, 1975, by and among Vallco Center, Inc., Vallco Park Ltd., Federated Department Stores, Inc., Sears, Roebuck and Co. and J.C. Penney Properties, Inc., Recorded September 14, 1976 [Book C280 Official Records, Page 484](#), as amended by Agreement and Consent and Approval Dated September 14, 1976 Recorded June 24, 1977 in [Book C946 Page 001](#) and as amended by (5) Fourth Amendment to Construction, Operation and Reciprocal Easement Agreement between Vallco Fashion Park Venture, Federated Department Stores, Inc., Sears, Roebuck and Co. and J. C. Penney Properties, Inc. Dated May 1, 1979, Recorded October 15, 1980 in [Book F656 Official Records, Page 203](#), and as amended by (6) Fifth Amendment to Construction, Operation and Reciprocal Easement Agreement between Vallco Fashion Park Venture, Federated Department Stores, Inc., Sears, Roebuck and Co., and J. C. Penney Properties, Inc., Dated February 15, 1984 and Recorded February 16, 1984 in [Book I310 of Official Records, Page 001](#), (7) as further amended by Sixth Amendment to Construction, Operation and Reciprocal Easement Agreement between Vallco International Shopping Center, LLC, a California limited liability company; Macy's Development Stores, Inc., an Ohio corporation; Sears, Roebuck and Company, a New York corporation and J.C. Penney Properties, Inc., a Delaware corporation, dated July 14, 2006 and recorded August 25, 2006 as



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[Instrument No. 19079269 of Official Records](#), (said Construction, Operation and Reciprocal Easement Agreement, as amended, said Agreements as Amended and said Original Agreement and Consent and Approval, as amended are hereinafter referred to collectively as "Construction, Operation and Reciprocal Easement Agreement", in, on, over, upon and under certain adjoining real property therein, more particularly described, together with all of the rights, powers and privileges and benefits under said Construction, Operation and Reciprocal Easement Agreement, accruing to Vallco Fashion Park Venture, Vallco Park, Ltd., and Vallco Center, Inc., their successors, legal representatives and assigns.

Excepting therefrom said rights, powers, privileges and benefits which are not real property or interest in real property.

Also Excepting therefrom that portion Released by Release and Termination, Recorded January 9, 2017, [Instrument No. 23552485, of Official Records](#).

### **PARCEL XVI:**

An easement to construct, maintain, use and operate an automobile parking structure for automobile and other vehicle parking, and rights of access, ingress and egress for automobiles and other vehicles and for pedestrians and for utilities, landscaping and incidental uses, as reserved by Vallco Fashion Park Venture, a California partnership in the "Amendment to Ground Sublease" recorded March 1, 1985 as [Instrument No. 8340269](#), in Book J283 at Page 149, on the following described land:

All that certain parcel of land, being a portion of Parcel IA of the sublease between Vallco Fashion Park Venture and Federated Department Stores, Inc., Recorded March 7, 1975 in [Book B308 at Page 565](#) through 571, Santa Clara County Records, State of California and more particularly described as follows:

Beginning at the Southeast corner of Tract 2086 as shown on that certain Map Recorded in [Book 112 of Maps, at Pages 40](#) and 41, Santa Clara County Records; (1) thence Northwesterly along the Easterly line of said Tract North 0 deg. 43' West 742.60 feet to a point, said point being the southwest corner of the aforementioned Parcel IA; (2) thence Northeasterly leaving said Easterly line of said Tract, along the Southerly boundary of the aforementioned Parcel IA North 88 deg. 54' 46" East 69.00 feet to the True Point of Beginning; (3) thence continuing along said Southerly line of Parcel IA South 88 deg. 54' 46" East 230.55 feet; (4) thence North 1 deg. 05' 14" West 83.48 feet; (5) thence North 28 deg. 54' 46" East 12.77 feet; (6) thence Southwesterly, leaving the boundary line of the aforementioned Parcel IA, South 88 deg. 54' 46" West 263.31 feet; (7) thence South 0 deg. 42' 30" East 94.54 feet to the Point of Beginning.

Said easement shall terminate upon the termination of the Federated Department Stores lease and/or upon the demolition and removal of the parking structure as therein provided.

### **PARCEL XIV-A:**

A non-exclusive easement, for a term of 60 years, to terminate July 1, 2029, as granted to Sears, Roebuck and Co., a New York corporation, for the purpose of vehicular and pedestrian ingress and egress, by Easement Deed for term of years, recorded August 22, 2010, Book 8647, Page 492, [Instrument No. 3673181, of Official Records](#), over, across, and upon the following:

All that certain real property situate in the City of Cupertino, County of Santa Clara, State of California, and being more particularly described as follows:

Beginning at the point of intersection of the monument line of Stevens Creek Boulevard, said monument line being parallel with and 45.00 feet Southerly (measured at right angles) of the Northerly line of said Boulevard, with the centerline of Wolfe Road (108.00 feet wide) thence along said monument line, S 89° 36' 00" W 907.37 feet to its intersection with the Southerly projection of the most Easterly line of Tract No. 2086, recorded in [Book 112 of Maps at Page 40](#) and 41, Santa Clara County Records; thence leaving said monument line Northerly along

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said projected line, N 00° 42' 55" W 45.00 feet to the true point of beginning, said point being on the aforesaid Northerly line of Stevens Creek Boulevard; thence continuing along said projected line, N 00° 42' 55" W 249.00 feet; thence leaving said line at a right angle S 89° 17' 05" W 25.00 feet; thence at a right angle S 00° 42' 55" E 228.75 feet; thence on a tangent curve to the right having a radius of 20.00 feet; through a central angle of 90° 18' 55" an arc length of 31.53 feet to a point on said Northerly line of Stevens Creek Boulevard; thence along said Northerly line N 89° 36' 00" E 45.11 feet to the true point of beginning.

### **TRACT TWO:**

#### **PARCEL ONE:**

Parcel B, pursuant to Lot Merger, recorded January 14, 2019, [Instrument No. 24097492, of Official Records](#), described as follows:

All that certain real property lying in the City of Cupertino, County of Santa Clara, State of California, being all of Parcel One, Two and Three as shown on that certain Lot Line Adjustment recorded August 22, 2006 as [Document Number 19069106](#) in Santa Clara County Official Records, more particularly described as follows:

Beginning at the Northeasterly corner of said Parcel Three;

Thence, along said Parcel Three South 60° 16' 27" East 123.59 feet (formerly 123.46 feet per said Lot Line Adjustment);

Thence, continuing along said Parcel Three, South 01° 05' 14" East 1049.61 feet to a point on the Northerly line of Vallco Parkway lying 55.000 feet Northerly of and perpendicular to the monument line thereof;

Thence, along said Parcel Three and Two, South 88° 54' 46" West 678.04 feet (formerly 678.00 feet per said Lot Line Adjustment) to the beginning of tangent curve;

Thence, continuing along said Parcel Two on a curve to the right having a radius of 20.00 feet, through a central angle of 90° 00' 00", an arc length of 31.42 feet to a point of tangency;

Thence, continuing along said Parcels Two and One, said line being also the Easterly line of Wolfe Road, North 01° 05' 14" West 1021.53 feet (1021.65 feet per said Lot Line Adjustment);

Thence, continuing along said Parcel One the following four (4) courses:

- (1) North 15° 06' 31" East, 41.27 feet (formerly 41.30 feet per said Lot Line Adjustment); to the beginning of a non-tangent curve, concave to the North to which a radial line bears South 01° 39' 13" East;
- (2) Easterly along said curve having a radius of 528.00 feet, through a central angle of 02° 15' 02", an arc length of 20.74 feet;
- (3) North 86° 05' 45" East, 119.28 feet;
- (4) North 88° 54' 46" East, 55.94 feet to a point on the Westerly line of said Parcel 3;

Thence, along said Parcel 3, North 01° 05' 14" West, 25.28 feet;

Thence, continuing along said Parcel 3, North 88° 54' 46" East, 384.58 feet to the point of beginning.

The bearing of North 88° 54' 46" East between two found 2" brass disk monuments along the centerline of Vallco Parkway, as shown on that certain Parcel Map filed for record in [Book 804 of Maps, Pages 22-23](#), was used as the basis of all bearings for this description.

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The reciprocal and non-exclusive easements, rights, privileges of use, ingress and egress, parking and for utility and other purposes created and granted as an appurtenance to said land, described in that certain Construction, Operation and Reciprocal Easement Agreement between Vallco Fashion Park Venture, Sears, Roebuck and Co. and Federated Department Stores, Inc., dated as of the 19th day of February 1975, Recorded the 7th day of March, 1975 in [Book B309, Page 1](#), Official Records, Santa Clara County, as amended by (1) First Amendment to Construction, Operation and Reciprocal Easement Agreement Dated as of the 1st day of August, 1975 Recorded August 29, 1975 in [Book B591 at Page 434](#) of said Official Records; (2) Second Amendment to a Restatement of Construction, Operation and Reciprocal Easement Agreement between Vallco Fashion Park Venture, Federated Department Stores, Inc., Sears Roebuck and Co., Inc., and J. C. Penney Properties, Inc., dated as to the 1st day of December, 1975 Recorded September 14, 1976 [Book C280 Official Records, Page 296](#) in said Official Records as Amended by Third Amendment to Reciprocal Easement Agreement Dated September 14, 1976, Recorded June 24, 1977 [File No. 5698586](#); (3) the unrecorded agreement dated as of the 19th day of February 1975, between Vallco Fashion Park Venture and Sears, Roebuck and Co., the unrecorded Agreement of the same date between Vallco Fashion Park Venture and Federated Department Stores, Inc. and the unrecorded Agreement dated as of March 1, 1976 between Vallco Fashion Park Venture and J. C. Penney Properties, Inc. and (4) the undated Agreement and Consent and Approval executed by Vallco Park, LTD., Vallco Fashion Park Venture, Federated Department Stores, Inc. and Sears, Roebuck and Co. Recorded in aforesaid Official Records in [Book B309, Page 241](#) as amended by a First Amendment and Consent and Approval Dated August 1, 1975, by and among the same parties Recorded in the aforesaid Official Records in [Book B591, Page 445](#) as further amended by another Agreement and Consent and Approval Dated as of December 1, 1975, by and among Vallco Center, Inc., Vallco Park Ltd., Federated Department Stores, Inc., Sears, Roebuck and Co. and J.C. Penney Properties, Inc., Recorded September 14, 1976 [Book C280 Official Records, Page 484](#), as amended by Agreement and Consent and Approval Dated September 14, 1976 Recorded June 24, 1977 in [Book C946 Page 001](#) and as amended by (5) Fourth Amendment to Construction, Operation and Reciprocal Easement Agreement between Vallco Fashion Park Venture, Federated Department Stores, Inc., Sears, Roebuck and Co. and J. C. Penney Properties, Inc. Dated May 1, 1979, Recorded October 15, 1980 in [Book F656 Official Records, Page 203](#), and as amended by (6) Fifth Amendment to Construction, Operation and Reciprocal Easement Agreement between Vallco Fashion Park Venture, Federated Department Stores, Inc., Sears, Roebuck and Co., and J. C. Penney Properties, Inc., Dated February 15, 1984 and Recorded February 16, 1984 in [Book I310 of Official Records, Page 001](#), (7) as further amended by Sixth Amendment to Construction, Operation and Reciprocal Easement Agreement between Vallco International Shopping Center, LLC, a California limited liability company; Macy's Development Stores, Inc., an Ohio corporation; Sears, Roebuck and Company, a New York corporation and J.C. Penney Properties, Inc., a Delaware corporation, dated July 14, 2006 and recorded August 25, 2006 as [Instrument No. 19079269 of Official Records](#), (said Construction, Operation and Reciprocal Easement Agreement, as amended, said Agreements as Amended and said Original Agreement and Consent and Approval, as amended are hereinafter referred to collectively as "Construction, Operation and Reciprocal Easement Agreement", in, on, over, upon and under certain adjoining real property therein, more particularly described, together with all of the rights, powers and privileges and benefits under said Construction, Operation and Reciprocal Easement Agreement, accruing to Vallco Fashion Park Venture, Vallco Park, Ltd., and Vallco Center, Inc., their successors, legal representatives and assigns.

Excepting therefrom said rights, powers, privileges and benefits which are not real property or interest in real property.

Also Excepting Therefrom that portion Released by Release and Termination Recorded January 9, 2017, [Instrument No. 23552485, of Official Records](#).

### **PARCEL THREE:**

A non-exclusive easement for sewer purposes as created in Grant Deed recorded May 27, 1977, [Book C869, Page 202, Instrument No. 5665237, of Official Records](#), over a strip of land being 10 feet in width, the centerline of which is described as follows:

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Commencing at the most Southwesterly corner of said Parcel 2, shown upon the Parcel Map, recorded in [Book 325 of Maps at Page 12](#), Santa Clara County Records, being a point in the Northerly line of Vallco Parkway (100.00 feet wide) as shown on said Parcel Map;

Thence leaving said Northerly line along the Westerly line of said Parcel 2 N 1° 05' 14" W, 613.18 feet to the point of beginning;

Thence leaving said Westerly line N. 64° 49' 17" E, 435.66 feet to a point in the Northeasterly line of said Parcel 2, being a point in the Southwesterly line of the "Junipero Serra Freeway", as shown on said Parcel Map, and the terminus of this easement, from which the Southeasterly terminus of the course in said Southwesterly line bears S 57° 03' 45" E, 18.87 feet.