

RECORDING REQUESTED BY AND
WHEN RECORDED MAIL TO:

City of Milpitas
Department of Planning and Neighborhood Services
455 East Calaveras Boulevard, Second Floor
Milpitas, CA 95035

RECORDING FEES EXEMPT
PURSUANT TO GOVERNMENT
CODE SECTION 27383

DEVELOPMENT AGREEMENT

BY AND BETWEEN

THE CITY OF MILPITAS

AND

SCS DEVELOPMENT CO., AMALFI MILPITAS, LLC, AND

DPD INVESTMENTS, LLC

REGARDING

**THE CITATION I (AMALFI I AND AMALFI II) AND CITATION II (THE EDGE)
RESIDENTIAL AND MIXED-USE DEVELOPMENT PROJECTS**

This Development Agreement ("**Agreement**") is entered into on the below-stated "**Effective Date**" by and between the City of Milpitas, a California municipal corporation, (hereinafter "**City**"), and SCS DEVELOPMENT CO., a California corporation, Amalfi Milpitas, LLC, a California limited liability company, DPD Investments, LLC, a California limited liability company, and all of their successors and assigns (hereinafter, collectively, "**Developer**"), pursuant to section 65864 *et seq.* of the Government Code of the State of California and City's police powers. City and Developer are, from time to time, also hereinafter referred to individually as a "**Party**" and collectively as the "**Parties.**"

NOW, THEREFORE, in consideration of the mutual covenants and promises contained herein and other considerations, the value and adequacy of which are hereby acknowledged, the Parties hereby agree as follows:

RECITALS

A. To strengthen the public planning process, encourage private participation in comprehensive planning and reduce the economic risk of development, the Legislature of the State of California adopted Government Code sections 65864 *et seq.* ("**Development Agreement Statute**"), which regulates development agreements with any person having a legal or equitable interest in real property providing for the development of that property and establishes certain development rights in the property. In accordance with the Development Agreement Statute, and by virtue of its police powers, City has the authority to enter into development agreements, and has reflected that authority in its City Council Resolution No. 6642 adopted on May 6, 1997 ("**Enabling Resolution**"). This Agreement has been drafted and processed pursuant to the Development Agreement Statute and the Enabling Resolution.

B. Developer currently has a legal and/or equitable interest in the Property.

C. Developer proposes to plan, develop, construct, operate and maintain the Project on the Property (as such terms are defined herein).

D. As of the Effective Date, various land use regulations, allotments, entitlements, grants, permits and other approvals have been adopted, issued, and/or granted by City relating to the Project (collectively "**Existing Approvals**"), including without limitation, all of the following:

1. City Council Resolution No. 7830 adopted on February 17, 2009 approving Major Tentative Map No. MT08-0004, Site Development Permit No. SD08-0002, and Conditional Use Permit No. UP08-0049 for the development of up to Six Hundred and Thirty-Nine (639) residential units located near 1200 Piper Drive within the Piper-Montague Subdistrict of the Transit Area Specific Plan.

2. City Council Resolution No. 8132 adopted on November 1, 2011 approving Major Tentative Map Amendment No. TM11-0001, Site Development Permit Amendment No. SA11-0005, and Conditional Use Permit Amendment No. UA11-0008 for the development of up to seven-hundred and thirty-two (732) residential units located in the Piper-Montague Subdistrict of the Transit Area Specific Plan ("Citation I Project"). The Citation I

Project includes the “Amalfi I Building” consisting of Three Hundred and Seventy-Eight (378) apartment units, “Amalfi II Building” consisting of Two Hundred and Sixty (260) apartment units, and ninety-four (94) townhomes. The ninety-four (94) townhomes is under construction on the Effective Date and is not a part of this Agreement; and

3. City Council Resolution No. 8382 adopted on June 17, 2014 approving Major Tentative Map No. TM13-0006, Site Development Permit No. SD13-0012, and Conditional Use Permit No. UP13-0011 for the development of up to three hundred and eighty-one (381) apartment units, 8100 square feet of commercial and office space, and associated site improvements on approximately 5.6 acres located at 765 Montague Expressway (the “Edge Project” or “Citation II Project”).

E. For the reasons recited herein and in the accompanying staff report, Developer and City have determined that the Project is the type of development for which this Agreement is appropriate. This Agreement will help to eliminate uncertainty in planning, provide for the orderly development of the Project consistent with the planning goals, policies, and other provisions of the City’s General Plan and City’s Municipal Code, and otherwise achieve the goals and purposes for which the Development Agreement Statute was enacted.

F. On January 14, 2015, following a duly noticed and conducted public hearing, the Milpitas Planning Commission (“**Planning Commission**”), the hearing body for purposes of the Development Agreement Statute and the Enabling Resolution, adopted Resolution **No. 15-003** that affirmed the CEQA exemption for this Agreement, adopted findings that this Agreement is consistent with the City’s General Plan and the Existing Approvals and recommended that this Agreement be approved by the City Council.

ARTICLE 1

ADMINISTRATION

1.01 Effective Date. On February 3, 2015, following a duly noticed and conducted public hearing, the Milpitas City Council (“**City Council**”) introduced Ordinance No. 38.819, an ordinance that affirms CEQA compliance, that adopts findings that this Agreement is consistent with the City’s General Plan and the Existing Approvals, that approves this Agreement, and that directs this Agreement’s execution by City (“**Approving Ordinance**”). The City adopted the Approving Ordinance on February 17, 2015, the Approving Ordinance became effective thirty (30) days later, and the Parties signed the Agreement. The “Effective Date” in this Agreement shall be the date that the Approving Ordinance became effective.

1.02 Definitions.

(a) The following terms, phrases and words shall have the meanings and be interpreted as set forth in this Section:

(1) “**Existing Approvals**” shall have that meaning set forth in Recital Paragraph D of this Agreement.

(2) **"Existing City Laws"** shall mean all City ordinances, resolutions, rules, regulations, guidelines, motions, practices and official policies governing land use, zoning and development, permitted uses, density and intensity of use, maximum height, bulk and size of proposed buildings, and other City land use regulations in force and effect on the Effective Date of this Agreement.

(3) **"Impact Fees"** shall mean those fees, excluding Transit Area Specific Plan Development Impact Fee, imposed so that developments bear a proportionate share of the cost of public facilities and service improvements that are reasonably related to the impacts and burdens of the Project, adopted pursuant to Milpitas Municipal Code Title VIII, Chapter 4 and California Government Code Section 66001 et seq.

(4) **"Legal Effect"** shall mean the ordinance, resolution, permit, license or other grant of approval has been adopted by City and has not been overturned or otherwise rendered without legal and/or equitable force and effect by a court of competent jurisdiction, and all applicable administrative appeal periods and statutes of limitations have expired.

(5) **"New City Laws"** shall mean any and all City ordinances, resolutions, orders, rules, official policies, standards, specifications and other regulations, whether adopted or enacted by City, its staff or its electorate (through their powers of initiative, referendum, recall or otherwise) that is not a Subsequent Approval, that takes **"Legal Effect"** after the Effective Date of this Agreement, and that applies City wide.

(6) **"Project"** shall mean the developments as described in (i) City Council Resolution No. 8132 adopted on November 1, 2011 approving Major Tentative Map Amendment No. TM11-0001, Site Development Permit Amendment No. SA11-0005, and Conditional Use Permit Amendment No. UA11-0008 for the development of up to seven-hundred and thirty-two (732) residential units located in the Piper-Montague Subdistrict of the Transit Area Specific Plan ("TASP"), excluding the ninety-four (94) townhomes residential units as further depicted in **Exhibit A**; and (ii) City Council Resolution No. 8382 adopted on June 17, 2014 approving Major Tentative Map No. TM13-0006, Site Development Permit No. SD13-0012, and Conditional Use Permit No. UP13-0011 for the development of up to three hundred and eight-one (381) apartment units, 8100 square feet of commercial and office space, and associated site improvements on approximately 5.6 acres located at 765 Montague Expressway. Any reference in this Agreement to the "Project" shall mean and include the "Property"; provided however, that the Project to which this Agreement applies may be only occupying a part of the Property and may be only a phase of a larger development on the Property.

(7) **"Project Approvals"** shall mean, collectively, the Project's Existing Approvals and the Subsequent Approvals.

(8) **"Property"** shall mean that certain real property consisting of approximately 12.6 acres located within the City, as more particularly described and shown on **Exhibit A** to this Agreement.

(9) "**Subsequent Approvals**" and "**Subsequent Approval**" shall mean those City permits, entitlements, approvals or other grants of authority (and all text, terms and conditions of approval related thereto), that may be necessary or desirable for the development of the Project, that are sought by Developer, and that are granted by City after the City Council adopts the Approving Ordinance (defined below), including without limitation, a City Resolution of Application for Annexation and subdivision maps and any subdivision document.

(10) "**Transit Area Specific Plan Development Impact Fee**" shall mean the impact fee established by the City Council as set forth in City Council Resolution No. 7778 adopted on September 2, 2008, as may subsequently be updated or amended, to pay for public infrastructure within the Transit Area Specific Plan Area.

(b) To the extent that any defined terms contained in this Agreement are not defined above, then such terms shall have the meaning otherwise ascribed to them elsewhere in this Agreement, or if not in this Agreement, by controlling law.

1.03 Term.

(a) The term of this Agreement shall commence on the Effective Date, and then shall continue (unless this Agreement is otherwise terminated as provided in this Agreement) until the date of March 20, 2020 ("**Initial Term**"), provided the Parties may mutually agree to extend this Agreement for an additional five (5) years by written amendment to this Agreement ("**Extended Term**").

ARTICLE 2

RIGHTS AND OBLIGATIONS

2.01 Transit Area Specific Plan Development Impact Fees and Continued and Future Obligations.

(a) During the Initial Term or Extended Term of this Agreement, Developer shall pay the Transit Area Specific Plan Development Impact Fee for each residential unit located within the Project to the City as follows:

(1) Prior to the issuance of any Certificate of Occupancy (temporary or final) for any residential unit located in Amalfi I Building during the Initial Term of the Agreement, Developer shall fully pay the City the amount of Twenty-Nine Thousand and Twelve Dollars (\$29,012.00) for each residential units constructed in the Amalfi I Building. If this Agreement is mutually extended beyond the Initial Term of five (5) years, Developer agrees and acknowledges that the Transit Area Specific Plan Development Impact Fee of Twenty-Nine Thousand and Twelve Dollars (\$29,012.00) shall immediately be adjusted by the City for inflation and park land value as set forth in City Council Resolution No. 7778, as may be amended, and shall further be adjusted on an annual basis thereafter for the remaining duration of the Extended Term. Developer shall then be obligated to fully pay the City the adjusted amount prior to any Certificate of Occupancy (temporary or final) for the Amalfi I Building during the

Extended Term. Full payment of the Transit Area Specific Plan Development Impact Fee for all residential units located in the Amalfi I Building is a condition precedent to the issuance of any Certificate of Occupancy (temporary or final) for that building.

(2) Prior to the issuance of any Certificate of Occupancy (temporary or final) for any residential unit located in Amalfi II Building during the Initial Term of the Agreement, Developer shall fully pay the City the amount of Twenty-Nine Thousand and Twelve Dollars (\$29,012.00) for each residential units constructed in the Amalfi II Building. If this Agreement is mutually extended beyond the Initial Term of five (5) years, Developer agrees and acknowledges that the Transit Area Specific Plan Development Impact Fee of Twenty-Nine Thousand and Twelve Dollars (\$29,012.00) shall immediately be adjusted by the City for inflation and park land value as set forth in City Council Resolution No. 7778, as may be amended, and shall further be adjusted on an annual basis thereafter for the remaining duration of the Extended Term. Developer shall then be obligated to fully pay the City the adjusted amount prior to any Certificate of Occupancy (temporary or final) for the Amalfi II Building during the Extended Term. Full payment of the Transit Area Specific Plan Development Impact Fee for all residential units located in the Amalfi II Building is a condition precedent to the issuance of any Certificate of Occupancy (temporary or final) for that building.

(3) Prior to the issuance of any Certificate of Occupancy (temporary or final) for any residential unit located in the Edge Building during the Initial Term of the Agreement, Developer shall fully pay the City the amount of Twenty-Nine Thousand and Twelve Dollars (\$29,012.00) for each residential units constructed in the Edge Building. If this Agreement is mutually extended beyond the Initial Term of five (5) years, Developer agrees and acknowledges that the Transit Area Specific Plan Development Impact Fee of Twenty-Nine Thousand and Twelve Dollars (\$29,012.00) shall immediately be adjusted by the City for inflation and park land value as set forth in City Council Resolution No. 7778, as may be amended, and shall further be adjusted on an annual basis thereafter for the remaining duration of the Extended Term. Developer shall then be obligated to fully pay the City the adjusted amount prior to any Certificate of Occupancy (temporary or final) for the Edge Building during the Extended Term. Full payment of the Transit Area Specific Plan Development Impact Fee for all residential units located in the Edge Building is a condition precedent to the issuance of any Certificate of Occupancy (temporary or final) for that building.

(b) Developer agrees that the terms and conditions of this Agreement and conditions of approval issued pursuant to this Agreement shall govern and dictate the vesting of the Developer's right to the Transit Area Specific Plan Development Fee amount for the Project in lieu of any other instrument of vesting, including any vesting tentative map or any other agreement, instrument or document purporting to vest any right of development. Developer agrees to waive any vesting rights by operation of any otherwise applicable city, state or federal law. Further, Developer agrees acknowledges that other than the vesting of the Transit Area Specific Plan Development Impact Fee for the Project as set forth in Section 2.01(a) above, this Agreement shall *not* vest any **Existing Approvals, Existing City Laws, Impact Fees, New City Laws, Project Approvals, Subsequent Approvals**, or shall in any way whatsoever vest any other rights, interests, fees, laws, policies or otherwise related to the Project.

2.02 Construction Codes.

With respect to the development of any or all of the Project or the Property, Developer shall be subject to the then currently adopted California Building Code and all those other State-adopted construction, fire and other codes applicable to improvements, structures, and development, and the applicable version or revision of said codes by local City action (collectively referred to as "**Construction Codes**") in place at that time that a plan check application for a building, grading or other permit subject to such Construction Codes is submitted to City for approval, provided that such Construction Codes have been adopted by City and are in effect on a City-wide basis and the plan check application has not expired.

2.03 Timing of Development.

(a) Securing Building Permits and Beginning Construction. The Amalfi I Building is under construction as of the Effective Date of this Agreement. In exchange for the vesting of the Transit Area Specific Plan Development Impact Fee and public benefit to the City to enter into this Agreement, Developer agrees to secure building permits, begin construction, and receive Certificate of Occupancy (temporary or final) for all residential units and commercial-retail space located in the Edge Building prior to receiving Certificate of Occupancy (temporary or final) for any residential unit located in the Amalfi II Building.

ARTICLE 3

PROCESSING

3.01 Processing.

(a) This Agreement does not provide Developer with any right to the approval of Subsequent Approvals nor to develop or construct the Project beyond that which is authorized in the Existing Approvals. For any Subsequent Approvals necessary for the Project, Developer shall comply with the City's Municipal Code, rules, regulations, policies, guidelines or customary practice for such Subsequent Approvals. Nothing in this Agreement shall be construed to limit the authority or obligation of City to hold necessary public hearings, or to limit the discretion of City or any of its officers or officials with regard to the Project Approvals that legally require the exercise of discretion by City. City's discretion as to the granting of Subsequent Approvals shall be the discretion afforded by law.

3.02 Amendments.

Any request by Developer for an amendment or modification to this Agreement shall be subject to the applicable substantive and procedural provisions of the City's General Plan, zoning, subdivision, and other applicable land use ordinances and regulations (i.e., City review and approval) in effect when such an amendment or modification application is deemed complete.

ARTICLE 4

DEFAULT, VALIDITY PROVISIONS, ASSIGNMENT

4.01 Defaults.

(a) Any failure by Developer to perform any material term or provision of this Agreement, which failure continues uncured for a period of thirty (30) days following written notice of such failure from the City (unless such period is extended by written mutual consent) ("**Notice of Default**"), shall constitute a default under this Agreement ("**Default**"). Any Notice of Default shall specify the nature of the alleged failure and, where appropriate, the manner in which such alleged failure satisfactorily may be cured. If the nature of the alleged failure is such that it cannot reasonably be cured within such 30-day period, then the commencement of the cure within such time period, and the diligent prosecution to completion of the cure thereafter, shall be deemed to be a cure within such 30-day period. If the alleged failure is cured, then no Default shall exist and the City shall take no further action. If the alleged failure is not cured, then a Default shall exist under this Agreement and the City may exercise any of the remedies available under law.

(b) No failure or delay in giving notice of default shall constitute a waiver of default; provided, however, that the provision of written notice and opportunity to cure shall nevertheless be a prerequisite to the enforcement or correction of any default. Waiver of a breach or default under this Agreement shall not constitute a continuing waiver or a waiver of a subsequent breach of the same or any other provision of this Agreement.

4.02 Resolution of Disputes.

(a) In the event Developer is in Default under the terms of this Agreement and fails to cure as set forth in Section 4.01 above, the City may elect, in its sole and absolute discretion, to pursue any of the following courses of action: (i) waive such default; (ii) pursue administrative remedies as provided under law; (iii) pursue judicial remedies as provided for under law; and/or (iv) terminate this Agreement.

4.03 Force Majeure Delay, Extension of Times of Performance.

(a) Performance by any Party hereunder shall be excused, waived or deemed not to be in default where delays or defaults are due to acts beyond a Party's control such as war, insurrection, strikes, walkouts, riots, floods, earthquakes, fires, casualties, acts of God, unexpected acts of governmental entities other than City, including revisions to capacity ratings of the wastewater plant by the Regional Water Quality Control Board, the State Water Resources Board, enactment of conflicting State or Federal laws or regulations, or litigation (including without limitation litigation contesting the validity, or seeking the enforcement or clarification of this Agreement whether instituted by the Developer, City, or any other person or entity) (each a "**Force Majeure Event**").

(b) Any Party claiming a delay as a result of a Force Majeure Event shall provide the other Party with written notice of such delay and an estimated length of delay. Upon

the other Party's receipt of such notice, an extension of time shall be granted in writing for the period of the Force Majeure Event, or longer as may be mutually agreed upon by the Parties, unless the other Party objects in writing within ten (10) days after receiving the notice. In the event of such objection, the Parties shall meet and confer within thirty (30) days after the date of objection to arrive at a mutually acceptable solution to the disagreement regarding the delay. If no mutually acceptable solution is reached, any Party may take action as permitted in this Agreement.

4.04 Assignment/Covenants Run with the Land.

(a) Right to Assign. Developer shall have the right to sell, assign, or transfer this Agreement with all its rights, title and interests therein to any person, firm or corporation acquiring an interest in the Project or Property (or portion thereof associated with the Project) at any time during the term of this Agreement ("**Assignee**"). Developer shall provide City with written notice of any proposed assignment or transfer of all or a portion of the Property no later than thirty (30) days prior to such action, which notice shall include specific portions of the Project or Property to be assigned and the proposed form of assignment. Any proposed assignment shall be subject to the express written consent of City, which consent shall not be unreasonably withheld, delayed or conditioned. City's approval of a proposed assignment or transfer shall be based upon the proposed assignee's reputation, experience, financial resources and access to credit and capability to successfully carry out the development of the Property to completion. The written assignment, assumption or release of rights or obligations with respect to a portion of the Project or of the Property shall specify the portion of the Project or Property and the rights assigned and obligations assumed, and shall be subject to approval by the City Attorney.

(b) Covenants Run with the Land. This Agreement and all of its provisions, agreements, rights, powers, standards, terms, covenants and obligations shall be binding upon the Parties and their respective heirs, successors (by merger, consolidation, or otherwise) and assigns, devisees, administrators, representatives, lessees, and all other persons or entities acquiring the Project and/or Property, any lot, parcel or any portion thereof, or any interest therein, whether by sale, operation of law or in any manner whatsoever, and shall inure to the benefit of the Parties and their respective heirs, successors (by merger, consolidation or otherwise) and assigns. All of the provisions of this Agreement shall be enforceable during the Term as equitable servitudes and constitute covenants running with the land pursuant to applicable law, including, but not limited to Civil Code section 1468. This Agreement shall not be binding upon any consumer, purchaser, transferee, devisee, assignee, or any other successor of Developer acquiring a completed residential unit comprising all or part of the Project ("**Consumer**") unless such Consumer is specifically bound by a provision of this Agreement or by a separate instrument or Agreement.

4.05 Compliance with Government Code Section 65867.5.

In accordance with the requirements of Government Code section 65867.5, City and Developer agree that any tentative subdivision map(s) for the Project is hereby made subject to a condition that a sufficient water supply shall be available. Proof of the availability of a sufficient

water supply shall be secured in accordance with the provisions of Government Code section 66473.7.

4.06 Termination.

This Agreement shall terminate upon the expiration of the Term, as set forth in Section 1.03(a), or at such other time as this Agreement is terminated in accordance with the terms hereof, whichever occurs first. Upon termination of this Agreement, the City shall record a notice of such termination, in a form satisfactory to the City Attorney that the Agreement has been terminated.

ARTICLE 5

GENERAL PROVISIONS

5.01 Miscellaneous.

(a) Preamble, Recitals, Exhibits. References herein to "this Agreement" shall include the Preamble, Recitals and all of the exhibits of this Agreement.

(b) Governing Law and Attorneys' Fees. This Agreement shall be construed and enforced in accordance with the laws of the State of California and legal actions commenced under or pursuant to this Agreement shall be brought in Santa Clara County Superior Court. Should any legal action be brought by a Party for breach of this Agreement or to enforce any provision herein, the prevailing party of such action shall be entitled to reasonable attorneys' fees, court costs, and such other costs as may be fixed by the court.

(c) Project as a Private Undertaking. No partnership, joint venture, or other association of any kind between Developer, on the one hand, and City on the other hand, is formed by this Agreement. The development of the Property is a separately undertaken private development. The only relationship between City and Developer is that of a governmental entity regulating the development of private Property and the owners of such private Property.

(d) Indemnification. Developer shall hold City, its elective and appointive boards, commissions, officers, agents, and employees, harmless from any liability for damage or claims for damage for personal injury, including death, as well as from claims for property damage which may arise from Developer's contractors, subcontractors', agents' or employees' operations on the Project, whether such operations be by Developer or by any Developer's contractors, subcontractors, or by any one or more persons directly or indirectly employed by, or acting as agent for Developer or any of Developer's contractors or subcontractors. Developer shall indemnify and defend City and its elective and appointive boards, commissions, officers, agents and employees from any suits or actions at law or in equity for damages caused, or alleged to have been caused, by reason of any of the aforesaid operations and Developer shall pay all reasonable attorney's fees and costs that the City may incur. City does not, and shall not, waive any rights against Developer which it may have by reason of the aforesaid hold-harmless requirement of Developer because of the acceptance of improvements by City, or the deposit of security with City by Developer. The aforesaid hold-harmless requirement of Developer shall

apply to all damages and claims for damages of every kind suffered, or alleged to have been suffered, by reason of any of the aforesaid operations referred to in this subsection, regardless of whether or not City has prepared, supplied or approved of, plans and/or specifications for the subdivision. Notwithstanding anything herein to the contrary, Developer's indemnification of City shall not apply to the extent that such action, proceedings, demands, claims, damages, injuries or liability is based upon the sole active negligence of the City. Developer shall, during the life of this Agreement take out and maintain insurance coverage with an insurance carrier authorized to transact business in the State of California as will protect the Developer or any Contractor or any Subcontractor or anyone directly or indirectly employed by any of them or by anyone for whose acts any of them may be liable, from claims for damages because of bodily injury, sickness, disease, or death of their employees or any person other than their employees, or for damages because of injury to or destruction of tangible property, including loss of use resulting therefrom. The minimum limits of liability for such insurance coverage which shall include comprehensive general and automobile liability, including contractual liability assumed under this agreement, shall be as follows:

Limit of Liability for Injury or Accidental Death:

Per Occurrence \$2,000,000

Limit of Liability for Property Damage:

Aggregate Liability for Loss \$2,000,000

Such liability insurance policies shall name the City as an additional insured, by separate endorsement, and shall agree to defend and indemnify the City against loss arising from operations performed under this Agreement and before permitting any Contractor or Subcontractors to perform work under this Agreement, the Developer shall require Contractor or Subcontractors to furnish satisfactory proof that insurance has been taken out and is maintained similar to that provided by the Developer as it may be applied to the Contractor's or Subcontractor's work.

(e) Interpretation/Construction. This Agreement has been reviewed and revised by legal counsel for both Developer and City, and any rule or presumption that ambiguities shall be construed against the drafting Party shall not apply to the interpretation or enforcement of this Agreement. The standard of review of the validity and meaning of this Agreement shall be that accorded legislative acts of City. As used in this Agreement, and as the context may require, the singular includes the plural and vice versa, and the masculine gender includes the feminine and neuter and vice versa.

(f) Notices.

(1) All notices, demands, or other communications that this Agreement contemplates or authorizes shall be in writing and shall be personally delivered or mailed to the respective Party as follows:

If to City: City Manager

455 East Calaveras Boulevard
Milpitas, CA 95035
Tel: (408) 586-3003

With a Copy To: City Attorney
455 East Calaveras Boulevard
Milpitas, CA 95035
Tel: (408) 586-3041

If to Developer:

(2) 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.

(g) Recordation. The Clerk of the City shall record, within ten (10) days after the Effective Date, a copy of this Agreement in the Official Records of the Recorder's Office of Santa Clara County. Developer shall be responsible for all recordation fees, if any.

(h) Severability. If any term or provision of this Agreement, or the application of any term or provision of this Agreement to a specific situation, is found to be invalid, void, or unenforceable, the remaining terms and provisions of this Agreement, or the application of this Agreement to other situations, shall continue in full force and effect.

(i) Jurisdiction. The interpretation, validity, and enforcement of the Agreement shall be governed by and construed under the laws of the State of California.

(j) Entire Agreement. This Agreement, including these pages and all the exhibits (set forth below) inclusive, and all documents incorporated by reference herein, constitute the entire understanding and agreement of the Parties.

(k) Signatures and Joint Liability. The individuals executing this Agreement represent and warrant that they have the right, power, legal capacity, and authority to enter into and to execute this Agreement on behalf of the respective legal entities of Developer and City. This Agreement may be executed in multiple originals, each of which is deemed to be an original. Developer, individually, agrees and acknowledges, that each Developer Party is jointly and severally responsible and liable for all terms, conditions and obligations under this Agreement.

(l) Counterparts. This Agreement may be executed in several counterparts, each of which shall be deemed an original, and all such counterparts shall together constitute one and the same instrument.

(m) Exhibits. The following exhibits are attached to this Agreement and are hereby incorporated herein by this reference for all purposes as if set forth herein in full:

Exhibit A Legal Description of Project and Plat Maps.

5.02 **Limitations on Time to Challenge Validity of this Agreement**. Developer shall have ninety (90) days from the date that the City Council approved this Agreement to commence and effect service of summons of any action or proceeding to attack, review, set aside, void or annul this Agreement or any part of this Agreement. Thereafter, all persons are barred from any action or proceeding or any defense of invalidity or unreasonableness of the decision of the proceedings, acts or determinations, including any provision of this Agreement or the enforcement hereof.

5.03 **Notice of 90-day Right to Protest**. Developer is hereby notified that Developer shall have ninety (90) days from the date of the imposition of any fees, dedications, reservations, or other exactions, to file a protest of the imposition of any such fees, dedications, reservations or other exactions; provided however that any challenge to the validity of any provisions of this Agreement, including Project Mitigations, or Project Specific Requirements, shall be subject to Section 5.02 and that this notice of the right to protest shall not supplant, extend or start anew any protest period already commenced pursuant to previous notices.

IN WITNESS WHEREOF, City and Developer have executed this Agreement as of the date first hereinabove written.

CITY OF MILPITAS:

DEVELOPER:

Tom Williams
City Manager

Name/Title [print]

Date: _____

Corporate entities must provide a second signature:

Attest:

Name/Title [print]

City Clerk

Date: _____

Approved as to Form:

Michael J. Ogaz
City Attorney

Date: _____

**(ALL SIGNATURES, EXCEPT CITY CLERK AND CITY ATTORNEY,
MUST BE ACKNOWLEDGED BY A NOTARY)**

EXHIBIT A

LEGAL DESCRIPTION OF PROJECT AND PLAT MAPS