

**FIRST AMENDMENT TO  
CITY OF MILPITAS FEE CREDIT AGREEMENT  
FOR TRANSIT AREA SPECIFIC PLAN PUBLIC  
FACILITIES AND PUBLIC IMPROVEMENTS**

This First Amendment to Fee Credit Agreement for Public Facilities and Public Improvements (“Amendment”) is entered into as of \_\_\_\_\_, 2015, by and between the City of Milpitas, a municipal corporation of the State of California (“City”), and Milpitas Station (San Jose) Venture, L.L.P., a Delaware limited liability partnership (“Developer”), in connection with that certain Fee Credit Agreement for Transit Area Specific Plan Public Facilities and Public Improvements, dated June 17, 2014, between City and Developer (“Fee Credit Agreement”).

WHEREAS, due to no fault of Developer, it has become uncertain as to if and when Pacific Gas and Electric Company (“PG&E”) will consent to and approve the relocation of the existing Joint Poles Nos. 2, 3 and 4 and associated electrical transmission lines to the east frontage of South Milpitas Boulevard, the parties have agreed to amend the Fee Credit Agreement as set forth below;

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, City and Developer hereby agree to amend the Fee Credit Agreement as follows:

1. Construction of Improvements Section 3 of the Fee Credit Agreement entitled “Construction of Improvements” is deleted in its entirety and replaced with the following:

Construction of Improvements Developer shall complete construction of the Improvements in accordance with the plans and specifications approved by City and in accordance with City standard construction specifications and this Agreement. All Improvements shall be completed (determined by filing a notice of completion) prior to issuance of the certificate of occupancy for the final residential unit or building in Tentative Map No. 10037, unless the City determines in its sole discretion to waive such condition; except that the PG&E transmission line and pole relocation to the east side of Milpitas Boulevard Improvements shall be required to be completed prior to the issuance of the certificate of occupancy for the last residential unit in the Project. In the event that PG&E does not consent to and approve (or advises in writing that it will not consent to and approve) the relocation by the time of construction of the last residential unit within the Project, Developer’s PG&E transmission line and pole relocation Improvement obligations shall no longer be required and Developer shall receive no Improvement Fee Credit for this Improvement and City agrees to release performance and labor and material bonds described in the Subdivision Improvement

Agreement in connection with the "Joint Pole and Electrical Transmission Lines Relocation." In the event the Improvements are not fully constructed and accepted by City as set forth herein, Developer shall be in breach of this Agreement and in addition to all other legal remedies available at law or equity, City may seek reimbursement from Developer for all credits provided under this Agreement including interest at the legal rate. Additionally, City may withhold any and all certificate of occupancy, building permit, map approval, or any other City approval or permit relating to the Project.

2. Continued Effectiveness. Except as amended above, the Fee Credit Agreement shall remain in full force and effect.

3. Counterparts. This Amendment may be executed in counterparts, each of which shall be deemed an original, but all of which together shall constitute one instrument.

IN WITNESS WHEREOF, the parties hereto have executed this Amendment to be effective as of the day and year first above written.

CITY OF MILPITAS:

DEVELOPER:

MILPITAS STATION (SAN JOSE) VENTURE,  
L.L.L.P., a Delaware limited liability limited  
partnership

By: \_\_\_\_\_  
City Manager

By: Milpitas Station (San Jose) ASLI VI,  
L.L.L.P., a Delaware limited liability  
limited partnership, its sole general partner

Dated: \_\_\_\_\_, 2015

Attest:

By: Milpitas Station (San Jose) GP, LLC, a  
Delaware limited liability company, its sole  
general partner

By: \_\_\_\_\_  
City Clerk

By: Avanti Properties Group II, L.L.L.P., a  
Delaware limited liability limited  
partnership, its sole member and manager

Approved as to form:

By: Avanti Management Corporation, a Florida  
corporation, its sole general partner

By: \_\_\_\_\_  
City Attorney

By: \_\_\_\_\_  
Marvin M. Shapiro, President

Date of Execution: \_\_\_\_\_, 2015