

**COYOTE VALLEY MASTER TRANSFER AND CONSERVATION
AGREEMENT**

by and among

**PENINSULA OPEN SPACE TRUST, A CALIFORNIA NONPROFIT PUBLIC
BENEFIT CORPORATION;**

CITY OF SAN JOSE, A CALIFORNIA MUNICIPAL CORPORATION;

and

**SANTA CLARA VALLEY OPEN SPACE AUTHORITY, A CALIFORNIA
INDEPENDENT SPECIAL DISTRICT**

**COYOTE VALLEY MASTER TRANSFER AND CONSERVATION
AGREEMENT**

THIS COYOTE VALLEY MASTER TRANSFER AND CONSERVATION AGREEMENT (“**Agreement**”) is dated as of November __, 2019 (“**Effective Date**”), and is entered into by and between the CITY OF SAN JOSE, a California municipal corporation (“**City**”), the PENINSULA OPEN SPACE TRUST, a California nonprofit public benefit corporation (“**POST**”), and the SANTA CLARA VALLEY OPEN SPACE AUTHORITY, a California independent special district. (“**OSA**”) (each of City, POST, and OSA a “**Party**,” and collectively “**Parties**”).

RECITALS

A. The Coyote Valley, Silicon Valley’s largest remaining groundwater recharge area, freshwater wetland, and undeveloped floodplain below Anderson Dam, is a priority for conservation. It is a critical landscape, containing important floodplains and aquifers, productive agricultural lands, and one of the last remaining wildlife linkages between the Santa Cruz Mountains and Diablo Range. Protection of the Coyote Valley provides an unparalleled opportunity to conserve and enhance land in ways that will safeguard the groundwater aquifer, preserve local floodplains, and protect wildlife and rare habitats within San José.

B. Coyote Valley provides invaluable services to the public, protecting San José’s water resources and downstream residents through its natural infrastructure. Conservation and restoration along Fisher Creek and Laguna Seca would allow these lands to hold more water during storms and floods, slowly releasing these waters through riparian areas, wetlands, and into the aquifer, improving water quality flowing into Coyote Creek. Investment in floodplain preservation and restoration to capture and store excess stormwater upstream of San José has the potential to reduce the likelihood, severity, and extent of downstream flooding, helping to buffer communities from increasingly intense storm events.

C. Coyote Valley includes existing water supply facilities of the City that the City requires be preserved for the benefit of the City’s existing and future water customers.

D. In November, 2018, the City of San José electorate approved the San José Disaster Preparedness, Public Safety, and Infrastructure Bond (“**Measure T**”), which authorized the issuance \$650 million in general obligation bonds for the purpose of acquiring land and constructing public improvements related to public safety and disaster preparedness, including the prevention of flooding and water supply contamination. The City Council adopted an allocation plan proposing an allocation of \$50 million of the Measure T bond funds for water supply, flood control, open space and environmental protection of lands such as Coyote Valley. On June 25, 2019, the City Council authorized the sale of over \$500 million in general obligation bonds, including the first \$239.9 million in general obligation bonds under the Measure T authorization. On July

25, 2019, the City closed on the sale of its issuance of \$502,020,000 in general obligations including \$50 million in taxable general obligation bonds under the Measure T authorization allocated by the City Council for environmental protection purposes.

E. The Parties have recently negotiated for the purchase from willing sellers of three significant open space properties in the north Coyote Valley totaling approximately 914 acres. The Parties desire to permanently conserve these as open space for purposes of providing natural flood control, groundwater protection, climate resilience, and habitat connectivity, while preserving the City’s existing water supply facilities. Concurrently with this Agreement, POST and City have entered into the following purchase and sale agreements (“**PSAs**”) for acquisition of the properties:

1. The City and POST have entered into a PSA (“**Brandenburg PSA**”) with Brandenburg Properties of Florida, LLC and related parties (collectively, “**Brandenburg**”) for the City’s acquisition of the property described in **Exhibit A** (“**Brandenburg Property**”).

2. The City and POST have entered into a PSA (“**Sobrato North PSA**”) with SI 5, LLC, an affiliate of the Sobrato Organization (“**Sobrato**”), for the City’s acquisition of the property described in **Exhibit B** (“**Sobrato North**”).

3. POST has entered into a PSA (“**Sobrato South PSA**”) with Sobrato Interests 3, LLC, another affiliate of Sobrato, for POST’s acquisition of the property described in **Exhibit C** (“**Sobrato South**”).

F. There are two open space inholdings within the Brandenburg Property: the 16-acre property described in **Exhibit D** (“**Weyhe Property**”) and the 29.92-acre property described in **Exhibit E** (“**Fisher Flats**”). The Brandenburg PSA requires Brandenburg to assign its rights under an option to purchase the Weyhe Property (“**Weyhe Option**”) to POST as part of the closing under that agreement. POST currently owns Fisher Flats. The Parties desire to consolidate the Weyhe Property and Fisher Flats with the Brandenburg Property.

G. By this Agreement, the Parties seek to establish their respective rights and obligations with respect to the Brandenburg Property, Sobrato North, Sobrato South, the Weyhe Property, and Fisher Flats (collectively, “**Conservation Properties**”) so as to:

1. Facilitate the successful acquisition of the Brandenburg Property, Sobrato North, and Sobrato South (collectively, “**Acquisition Properties**”) pursuant to the PSAs.

2. Address certain matters pertaining to title, agreements, special taxes, and related matters affecting certain of the Conservation Properties that will require special coordination among the Parties to resolve.

3. Establish the respective financial and (as provided in the attached conservation easement) land management obligations of the Parties.

4. Subject to the terms and conditions of this Agreement, acquire the Weyhe Property for conservation.

5. Align the boundaries of the Brandenburg Property, Fisher Flats, and (if acquired) the Weyhe Property, to follow the division created by Fisher Creek and existing improvements along such creek. The Parties desire that:

(a) The portions of the Brandenburg Property generally west of the creek (“**Brandenburg West**,” as more particularly described in **Exhibit F**) be transferred to POST, with the intention that the property be later transferred to OSA by separate agreement once fundraising for the acquisition by OSA is completed;

(b) The portion of the Weyhe Property generally west of the creek (“**Weyhe West**,” as more particularly described in **Exhibit G**), if the Weyhe Property is acquired by POST, be held by POST for future conveyance to OSA and consolidation with Brandenburg West once fundraising for the acquisition by OSA is completed; and

(c) The portions of the Brandenburg Property and Weyhe Property generally east of the creek (“**Brandenburg East**,” as more particularly described in **Exhibit H**, and “**Weyhe East**,” as more particularly described **Exhibit I**), together with Fisher Flats, be consolidated under City ownership.

6. Place a perpetual conservation easement, held by OSA, over the lands to be owned by the City (Brandenburg East, Fisher Flats, and (if acquired) Weyhe East properties), that will ensure the lands are permanently conserved and used for purposes consistent with Measure T, and allow for common management of those properties by OSA.

7. Facilitate the permanent conservation of the remaining Conservation Properties (Brandenburg West, Weyhe West, Sobrato North, and Sobrato South).

AGREEMENT

NOW, THEREFORE, incorporating the foregoing Recitals and in consideration of the mutual covenants and conditions contained in this Agreement, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties agree as follows:

ARTICLE I PURCHASE OF ACQUISITION PROPERTIES

1.1. Contributions of the Parties

(a) City Purchase Price Contributions. Subject to and when required by the Brandenburg PSA, the City shall contribute \$32,840,000.00 in cash (less the amount of the credit provided in Section 5.13(a) of the Brandenburg PSA), obtained from

the issuance of Measure T taxable bonds toward the purchase price of \$37,500,000 for the Brandenburg Property by timely depositing that amount (as adjusted) into the escrow established by the Brandenburg PSA.

(b) POST Purchase Price Contributions. Conditioned on the City's deposit of funds in accordance with paragraph (a) above and with Section 2.2 below, POST shall contribute a total of \$42,160,000.00 in cash toward the purchase price for the Acquisition Properties as follows when required by the applicable purchase agreement:

(A) POST shall timely deposit amounts totaling \$21,500,000.00 into the escrow established by the Sobrato North PSA.

(B) POST shall timely deposit amounts totaling \$16,000,000.00 into the escrow established by the Sobrato South PSA.

(C) POST shall timely deposit amounts totaling \$4,660,000.00 into the escrow established by the Brandenburg PSA.

1.2. Responsibility for PSA Deposits and Other Costs

(a) Deposits. The City shall be responsible for timely paying any deposits required under the Brandenburg PSA, and POST shall be responsible for timely paying any deposits required under the Sobrato North PSA and the Sobrato South PSA. A deposit made by a Party, together with any accrued interest that is applied to the purchase price, shall be credited to that Party's required contribution under Section 1.1. If any deposit is to be returned under the terms of a PSA, the deposit, together with any accrued interest, shall be returned to the Party who made the deposit.

(b) Closing Costs. In addition to the contributions required by Section 1.1, the Parties shall pay all costs of closing (including the cost of any title insurance policy) that, under the PSAs, are the responsibility of the buyer ("**Closing Costs**") as follows:

(i) City shall pay the Closing Costs for the Brandenburg Property closing.

(ii) POST shall pay the Closing Costs for the Sobrato North and Sobrato South closings.

(c) Other Costs. The following costs are not Closing Costs for purposes of this Agreement and shall be the sole responsibility of the City ("**City Costs**"): (i) any prorated special taxes required under the Brandenburg PSA or the Sobrato North PSA to be paid by a buyer, or any special tax payment required to be paid on the Brandenburg Property or Sobrato North in the event outstanding bonds issued through CFD 9 (defined below) are not redeemed before such payment is due; (ii) any tenant relocation costs paid by City related to the Brandenburg Property (whether or not required by law) not paid or payable by Brandenburg; (iii) closing and title insurance costs payable by the City in connection with the transfer of Weyhe East to the City; and

(iv) any costs necessary to demolish and remove existing structures on the Brandenburg Property, to the extent not paid or payable by Brandenburg. The City may pay these costs out of the City Reserve Fund defined below.

(d) Buyer Default; Loss of Deposit.

(i) If an uncured buyer default occurs under the Brandenburg PSA or the Sobrato North PSA, caused solely by a failure of POST to timely deposit the full amount of its required contribution under Section 1.1, and the default results in the forfeit of the deposit made by the City, then POST shall reimburse the City in the amount of the forfeited deposit (but POST shall not be required to reimburse the City for any accrued interest on the deposit).

(ii) If an uncured buyer default occurs under the Brandenburg PSA, the Sobrato North PSA, or the Sobrato South PSA, caused solely by a failure of the City to timely deposit the full amount of its required contribution under Section 1.1, and the default results in the forfeit of the deposit made by POST, then City shall reimburse POST in the amount of the forfeited deposit (but City shall not be required to reimburse the POST for any accrued interest on the deposit).

1.3. Obligations of the Parties Related to Closing

(a) Consummation of the Closings.

(i) The City shall perform its obligations under the Brandenburg PSA and the Sobrato PSA; provided, however, that in no event shall the City be obligated to use funds other than Measure T bond proceeds to satisfy its contribution to the purchase price and Closing Costs for those properties. Nothing in this paragraph shall limit any obligation of the City to reimburse POST under Section 1.2(d).

(ii) POST represents and warrants to the City that it currently has funds that are sufficient to fund its share of the purchase price of the Brandenburg Property (\$4,660,000), the purchase price of the Sobrato North Property (\$21,500,000), and the purchase price of the Weyhe Property (\$2,410,000). OSA represents and warrants to the City that it has \$5,000,000 to fund the consideration for the Conservation Easement as defined herein (“**Conservation Easement Consideration**”).

(b) No Waiver of Buyer Closing Conditions. The City shall not waive any buyer closing condition under the Brandenburg PSA or the Sobrato North PSA without the written consent of POST.

(c) POST Right to Cure. If at any time the City anticipates it may be unable to meet a seller closing condition, or is (or may become) in default, under the Brandenburg PSA or Sobrato North PSA, it shall promptly notify POST of that circumstance in writing. The City shall reasonably cooperate with POST to ensure that the buyer closing conditions are met, or a default is avoided or timely cured. If the City is unable to timely deposit Measure T funds in the amount necessary to cover its required contributions, POST may, in its sole absolute discretion, elect to procure the additional

funds necessary for the closing, and the City shall accept those funds and proceed with the closing. In such event, City shall be liable to POST for the full amount of the City's contribution that was paid by POST. This section 1.3(c) shall survive the closings and any termination of this Agreement.

(d) Enforcement of Seller Obligations.

(i) The City agrees to provide POST immediate written notice of any threatened or actual default by seller under the Brandenburg PSA or Sobrato North PSA, and the City shall take all reasonable actions to ensure that sellers perform their obligations thereunder. The City shall coordinate with POST on any actions taken to enforce the PSAs.

(ii) The City shall not elect the liquidated damages remedy under the Brandenburg PSA or Sobrato North PSA without the written consent of POST, unless City has reasonably determined not to pursue an action for specific performance, and POST has declined in writing to exercise its enforcement rights under the PSA. In the event liquidated damages are pursued and obtained in accordance with this paragraph, the damages payment shall be split evenly between City and POST.

(iii) In the event of an uncured default by seller under the Brandenburg PSA or the Sobrato North PSA, if the City does not timely pursue an action for specific performance, the City shall grant its consent for POST to bring an enforcement action for specific performance. If the City has not filed an action for specific performance and has not given POST timely notice of its consent, and if further delay would prejudice POST's ability to bring such action, then City's consent shall be deemed given. If the City does pursue an action for specific performance, City shall not dismiss or settle such action without the written consent of POST; provided, however, that City may offer to assign its rights to such action to POST, and, if POST declines such assignment, City may dismiss or settle such action. For purposes of this paragraph, "dismiss" shall include failure to pursue an appeal of an adverse judgment in an action for specific performance.

ARTICLE II MASTER AGREEMENT CLOSINGS

2.1. Master Agreement Escrows. Promptly following the Effective Date, the Parties shall open with Chicago Title ("**Escrow Agent**" or "**Title Company**"), at its office at 675 North First Street, Suite 300, San Jose, California 95112 (Attn: Sherri Keller), escrows for the purpose of effectuating the transfers required by Section 2.2 ("**Fisher Flats Escrow**") and Section 2.3 ("**Master Escrow**").

2.2. Fisher Flats Closing.

(a) Property Transfer. Subject to the conditions and procedures set forth in this section, POST shall transfer to the City fee title in Fisher Flats through the Fisher Flats Escrow.

(b) Deposits to Escrow. On or before the date of closing, the City and POST shall make the following deposits to the Fisher Flats Escrow:

(i) City Deposits. The City shall deposit the following:

(A) Funds in the amount of \$5,860,000.00.

(B) A duly executed certificate of acceptance accepting title to Fisher Flats.

(ii) POST Deposits. POST shall deposit a duly executed and acknowledged grant deed conveying Fisher Flats to City (“**Fisher Flats Deed**”), and if required by Escrow Agent or applicable law, a Natural Hazard Disclosure Statement, a FIRPTA Certificate/Affidavit and a Cal FIRPTA Certificate/Affidavit for delivery to City at close of escrow.

(c) Conditions of Closing.

(i) Each of the following conditions is a condition precedent to the City’s obligation to close escrow:

(A) The deposits required to be made by POST under paragraph (b)(ii) above has been made.

(B) Except to the extent expressly waived by the City in writing:

(1) Title Company is prepared to issue title insurance for Fisher Flats, as evidenced in pro forma title commitments, subject only to the permitted exceptions for Fisher Flats as set forth in **Exhibit J**; and

(2) There has been no material adverse change in the condition of Fisher Flats since the Effective Date.

(ii) It is a condition precedent to POST’s obligation to close escrow that the City shall have made the deposits required by paragraph (b)(i) above.

(iii) It is a condition precedent to the obligation of the City and POST to close escrow that all of the deposits to escrow required to be made by sellers under the Brandenburg PSA, the Sobrato North PSA, and the Sobrato South PSA shall have been made, and all Seller conditions of closing under the PSAs not within the control of the City or POST have been satisfied.

(d) Timing of Closing. Closing shall occur promptly after satisfaction of the conditions in paragraph (c) above, and shall occur prior to the closing under the Brandenburg PSA.

(e) Close of Escrow; Recordation. When each of the items described in paragraph (b) have been deposited into escrow and Escrow Agent receives notice from the City and POST that the conditions of closing described in paragraph (c) have been met, Escrow Agent shall close escrow by delivering to POST the amounts deposited by the City, assembling the deed with the certificate of acceptance, and recording the assembled deed; provided, however, that Escrow Agent shall refrain from recording the assembled deed until after close of escrow under the Brandenburg PSA, which deed shall not be deemed delivered to City until recordation. POST may direct Escrow Agent to deposit some or all of the amounts due to POST directly into the escrow established by the Brandenburg PSA and/or the escrow established by the Sobrato North PSA. If there is a failure to close under the Brandenburg PSA, POST shall promptly re-deposit into the Fisher Flats Escrow funds returned to it from the Brandenburg PSA escrow, in the amount originally deposited by the City, and upon receipt of the returned funds Escrow Agent shall promptly return to POST, without recording, the Fisher Flats Deed.

2.3. Master Closing.

(a) Property Transfers. Subject to the conditions and procedures set forth in this section, the Parties shall effectuate the following transfers through the Master Escrow:

- (i) The City shall quitclaim to POST fee title in Brandenburg West.
- (ii) The City shall grant to OSA a conservation easement in Brandenburg East and Fisher Flats.
- (iii) The City shall quitclaim to POST fee title in Sobrato North.

(b) Deposits to Escrow. On or before the date of closing, the Parties shall make the following deposits to the Master Escrow:

- (i) City Deposits. The City shall deposit the following:
 - (A) A duly executed and acknowledged quitclaim deed transferring Brandenburg West and Sobrato North to POST, in the form of **Exhibit K** (“**Brandenburg West/Sobrato North Deed**”).
 - (B) A duly executed and acknowledged deed of conservation easement granting to OSA a conservation easement in Brandenburg East and Fisher Flats, in substantially the form of **Exhibit L** (“**Conservation Easement**”).
 - (C) Counterparts of the Termination Agreement (as defined herein), duly executed by the City, and by the City as successor-in-interest to Coyote Valley Research Park LLC (“**CVRP**”).

- (ii) OSA Deposits. OSA shall deposit the following:

(A) A duly executed certificate of acceptance accepting the Conservation Easement.

(B) A duly executed counterpart of the Termination Agreement.

(iii) POST Deposits. POST shall deposit the following:

(A) A duly executed counterpart of the Termination Agreement.

(c) Conditions of Closing. Each of the following conditions is a condition precedent to a Party's obligation to close escrow:

(i) The closings under Brandenburg PSA, the Sobrato North PSA, and the Fisher Flats Escrow shall have occurred.

(ii) All of the deposits required to be made by the other Parties under paragraph (b) shall have been made, and OSA shall have deposited the Conservation Easement Consideration into the CFD 9 Escrow (as defined herein).

(iii) Except to the extent expressly waived by the Party in writing:

(A) Title Company is prepared to issue title insurance for any property or interest in property to be conveyed to the Party, as evidenced in pro forma title commitments, subject only to the permitted exceptions corresponding to that property as set forth in Exhibit J; and

(B) There has been no material adverse change in the condition of any property to be conveyed to the Party since the Effective Date.

(d) Timing of Closing. Subject to the conditions of closing set forth in paragraph (c), the Parties shall close escrow on the same date as, and immediately following, the concurrent closings under the Brandenburg PSA and the Sobrato North PSA, except as the Parties may otherwise agree in writing.

(e) Close of Escrow; Recordation. When each of the items described in paragraph (b) have been deposited into escrow and Escrow Agent receives notice from the Parties that the conditions of closing described in paragraph (c) have been met, Escrow Agent shall close escrow by (i) assembling the Conservation Easement with its corresponding certificate of acceptance, (ii) recording the assembled Conservation Easement, the Brandenburg West Deed, and the Sobrato North Deed, and (iii) assembling the executed counterparts of the Termination Agreement, and (iv) delivering the original, fully executed Termination Agreement to POST, with copies to the City and OSA. Escrow Agent shall record the Conservation Easement, Brandenburg West Deed, and Sobrato North Deed after the Fisher Flats deed and the deeds and other instruments in the closings under the Brandenburg PSA and Sobrato North PSA have been recorded.

Escrow Agent shall deliver conformed copies of the recorded documents to each of the Parties.

2.4. Closing Costs. POST shall be responsible for all closing costs (including the costs of title insurance) for the closing of the Fisher Flats Escrow. City shall be responsible for all closing costs for the Master Escrow, excepting the cost of any title insurance. POST shall be responsible for the cost of title insurance for Brandenburg West and Sobrato North (to the extent not already covered by sellers under the Brandenburg PSA and Sobrato North PSA), and OSA shall be responsible for the cost of title insurance for the Conservation Easement.

2.5. Vacation of Irrevocable Offer. By that certain parcel map recorded in the official records of Santa Clara County in Book 777 of Maps pages 20-22, CVRP offered for dedication to public use a street called Arroyo De Fuego Ct., together with easements for public uses under, upon and over the street (“**Offer of Dedication**”). On the same parcel map, the City rejected the Offer of Dedication. The Parties desire to permanently terminate the Offer of Dedication. Accordingly, on the Effective Date, the City Council adopted its resolution vacating the Offer of Dedication. The City agrees not to accept the Offer of Dedication, and, following the closing of the Master Escrow, the City shall promptly record a certified copy of the resolution of vacation, if not already recorded.

2.6. Notice of Expiration – Sobrato South PD Permits. Prior to the closing of the Master Escrow, the City shall execute, notarize and record a notice of expiration of all planned development permits previously granted in connection with Sobrato South, in the form of **Exhibit N**.

2.7. Survey, Environmental Site Assessment Costs. On the day that the Master Escrow closes, following the closing, the City shall pay POST \$69,442 as reimbursement for the City’s share of the survey and environmental assessment costs incurred by POST in connection with the transaction. In order to process payment to POST, City will require documentation evidencing POST’s payment of the expenses to be reimbursed. If requested by City, POST shall provide City a receipt for the payment.

ARTICLE III Weyhe Property

3.1. Right of Entry; Acquisition Costs. Concurrently with the execution of this Agreement, POST and City shall enter into right of entry agreement in the form attached hereto as **Exhibit P** for purposes of the City conducting due diligence with respect to the Weyhe Property. POST shall use good faith efforts to consummate the purchase of the Weyhe Property pursuant to the Weyhe Option, and POST shall be solely responsible for the costs of purchasing the property from Weyhe, including the costs of obtaining title insurance, except that if POST is able to secure a binder, the City agrees to pay the binder premium.

3.2. Notice To Close Escrow; Commitment to Acquire. POST shall not waive any rights to acquire the Weyhe Property, and shall provide Weyhe a notice of intent to

close escrow no later than December 2, 2019 (unless Weyhe has previously tendered a notice of its election to accelerate closing). POST shall promptly provide City and OSA a copy of the notice of intent to close (or Weyhe's notice of election to accelerate). If POST has not received by January 15, 2020 (or, if a notice of election to accelerate is received, within 45 days after the date of the notice) written confirmation that (a) OSA and the City have each committed to take title to their respective portions of the Weyhe Property (Weyhe West to OSA and Weyhe East to the City), or if OSA has not so committed, City has committed to take title to the entire Weyhe Property, and (b) the commitment to take title is for the property in as-is condition, subject only to a material change in the physical condition of the property ("**Material Change**") or a material exception to title not disclosed in Schedule B of the preliminary title report prepared by _____ dated _____, attached hereto as **Exhibit O** ("**Weyhe Exceptions**"), then POST shall have no further obligation to consummate the purchase of the Weyhe Property.

3.3. Transfer of the Weyhe Property; Conservation Easement. If the commitment to accept title has been received in accordance with Section 3.2, the transfer of Weyhe East to City shall be effectuated as follows:

(a) POST shall convey Weyhe East by grant deed to the City (and City shall provide a Certificate of Acceptance for that deed) and POST shall provide a Natural Hazard Disclosure Statement and FIRPTA and Cal FIRPTA Certificate if required by the Escrow Agent or by applicable law.

(b) City and OSA shall execute and record an amendment to the Conservation Easement to include Weyhe East in the form of **Exhibit Q** (with an OSA Certificate of Acceptance).

(c) The Parties shall establish an escrow with Escrow Agent and prepare mutually agreeable escrow instructions for the purpose of consummating the transfers. Except to the extent the City and POST mutually agree in writing, closing shall be contingent solely on the absence of a Material Change and on Escrow Agent's willingness to insure title subject only to the Weyhe Exceptions.

(d) POST shall be responsible for all closing costs associated with the closing under this section, except that POST shall have no responsibility for the cost of title insurance for the City or OSA. The City shall be solely responsible for any title insurance for the City's interest in Weyhe East, and OSA shall be solely responsible for the costs of any title policy insuring the amended Conservation Easement.

(e) If OSA has not committed to take title to Weyhe West, but the City has so committed, then the closing shall proceed in accordance with the above, except that the Weyhe East deed (but not the Conservation Easement amendment) shall be revised to include the entire Weyhe Property.

3.4. Failure to Transfer. If the commitments to accept title have been received in accordance with Section 3.2, but there is a failure to close on the transfer to the City

caused solely by POST's default, the City may, in its sole discretion, pursue all remedies available to it, including, but not limited to, specific performance.

ARTICLE IV

CFD 9

4.1. Purpose.

(a) The Brandenburg Property and Sobrato North lie within the boundaries of City of San José Community Facilities District No. 9 (“**CFD 9**”) and are subject to the “**Annual Special Tax**” and (if certain conditions are met) the “**City Advance Special Tax**,” each as defined in a Notice of Special Tax Lien recorded December 19, 2002 as Instrument No. 16697131 of Official Records (“**CFD 9 Lien**”). The Annual Special Tax is collected to pay annual debt service on special tax bonds issued through CFD 9 (“**CFD 9 bonds**”) and certain administrative costs. The City Advance Special Tax is levied to satisfy an obligation of the property owners (“**City Advance Obligation**”) to repay monies advanced by the City pursuant to the First Amended and Restated Bailey Extension Cooperation Agreement, dated as of July 17, 2003 (“**Bailey Agreement**”), by and among the City, CVRP and the Santa Clara Valley Transportation Authority.

(b) The Parties desire that, following acquisition of the Brandenburg Property and Sobrato North for conservation, the special tax obligations imposed by CFD 9 be terminated by (i) redemption of the outstanding CFD 9 bonds, (ii) termination of the Bailey Agreement and release of the City Advance Obligation, (iii) dissolution of CFD 9, and (iv) removal of the CFD 9 Lien.

(c) To accomplish this, the City has agreed to redeem the CFD 9 bonds using Measure T funds (at an estimated cost of \$7,600,000), and OSA has agreed to pay to the City the Conservation Easement Consideration (\$5,000,000), which the City shall accept for the full release of the City Advance Obligation, all in accordance with the procedure set forth in Section 4.2, and subject to the conditions therein.

4.2. Procedure

(a) CFD 9 Escrow. Immediately following the Effective Date, the Parties shall open an Escrow with Escrow Agent (“**CFD 9 Escrow**”) for the purpose of effectuating the actions required by this Article.

(b) OSA Deposit. No later than the closing of the Master Escrow, OSA shall deposit the Conservation Easement Consideration (\$5,000,000) in the CFD 9 Escrow.

(c) Bailey Agreement Termination; Release of City Advance Obligation. Upon close of the Master Escrow, the Bailey Agreement shall be deemed terminated in accordance with the Termination Agreement as provided in Section 5.2 and the City Advance Obligation shall be deemed released as to POST and OSA, as provided in Section 5.6.

(d) Redemption of CFD 9 Bonds; Responsibility for Special Taxes.

(i) City agrees to redeem the CFD 9 Bonds at City's sole cost and expense from Measure T funds following the closing of the Master Escrow. City shall use its good faith efforts to redeem the CFD 9 Bonds prior to the date on which the next payment of the Annual Special Tax becomes delinquent.

(ii) City shall be solely responsible for paying any Annual Special Tax that comes due on Brandenburg East or Brandenburg West after the Brandenburg PSA closing, or that comes due on Sobrato North following the Sobrato North PSA closing, until the CFD 9 Bonds are fully redeemed. POST and OSA shall have no responsibility for such taxes, regardless of the ownership of any fee interest, conservation easement interest, or rights of possession in the property. If POST or OSA are required to pay any CFD 9 special taxes to avoid delinquency in the event of City non-payment, City shall be fully liable for the amounts paid, including the cost of any penalties or interest incurred. This Section 4.2(d)(ii) shall survive termination of this Agreement.

(e) Notice of Cessation. Within ten (10) days after the later of (i) the date on which OSA makes payment of the Conservation Easement Consideration into the CFD 9 Escrow and (ii) full redemption of the CFD 9 Bonds, the City shall record a duly executed and acknowledged notice of cessation of special tax ("**Notice of Cessation**") for CFD 9 in the form of Exhibit R, and shall deposit a conformed copy of the recorded notice into the CFD 9 Escrow.

(f) Dissolution of CFD 9. On the Effective Date, the City Council approved its ordinance dissolving CFD 9, which ordinance will become operative on the date that is the later of: (i) the date on which OSA makes payment of the Conservation Easement Consideration into the CFD 9 Escrow; and (ii) the date of redemption of the CFD 9 Bonds. Following dissolution, the City shall promptly record a notice of dissolution of CFD 9 in the form of Exhibit S ("**Notice of Dissolution**") and deposit a conformed copy of the recorded notice into the CFD 9 Escrow.

(g) City Reserve Fund; Withdrawals. Escrow Agent shall hold the monies deposited by OSA in escrow as a reserve fund ("**City Reserve Fund**") until all of the withdrawals in subparagraphs (ii) through (iv) below have been made, and for such additional time thereafter as the City in its discretion determines may be necessary or prudent for purposes of paying any anticipated costs described in subparagraph (i) below ("**Reserve Period**"). Withdrawals may be made during the Reserve Period in accordance with the following, and any supplemental escrow instructions to which the Parties mutually agree in writing:

(i) The City may withdraw funds at any time to pay the City Costs. The City shall provide OSA and POST written notice of the amount and purpose of the withdrawal at least two (2) business days prior to the withdrawal. If any Annual Special Tax comes due for property owned by POST or OSA, and the City is not prepared to timely pay the Annual Special Tax on behalf of POST or OSA, then POST or

OSA, as applicable, with written notice to the City, may withdraw the funds necessary to pay the Annual Special Tax.

(ii) Following close of the Master Escrow and delivery of the fully executed Termination Agreement to POST, Escrow Agent shall deliver to the City \$1,000,000.00 from the City Reserve Fund.

(iii) When City has deposited the conformed copy of the recorded Notice of Cessation for CFD 9 into escrow, Escrow Agent, at the direction of the Parties, shall deliver copies to the Parties, and shall deliver to the City \$1,000,000.00 from the City Reserve Fund.

(iv) When City has deposited the conformed copy of the recorded Notice of Dissolution, Escrow Agent, at the direction of the Parties, shall deliver copies to the Parties, and shall deliver to the City \$1,000,000 from the City Reserve Fund.

(v) Any remaining monies in the City Reserve Fund shall stay in escrow for the remainder of the Reserve Period (which, after all of the withdrawals in subparagraphs (ii) through (iv) have been made, may continue or be terminated in the discretion of the City as provided above), to be used for the purposes described in subparagraph (i). If there are insufficient monies in the City Reserve Fund to pay the full amount of any of the authorized withdrawals in subparagraphs (ii) through (iv), Escrow Agent shall deliver to the City the amount remaining in the City Reserve Fund. Exhaustion of the City Reserve Fund shall not affect the City's responsibility for any costs under this Agreement, including, without limitation, its obligation to pay Annual Special Taxes. At the end of the Reserve Period, the Escrow Agent shall deliver to the City any monies remaining in the Reserve Fund.

(h) Escrow Fees. City shall be responsible for payment of any fees of Escrow Agent in connection with the CFD 9 escrow.

ARTICLE V Infrastructure Agreements

5.1. CFD 5A. On the Effective Date the City Council adopted its ordinance, repealing the ordinance levying special taxes within Community Facilities District No. 5A ("**CFD 5A**") (which levy was disclosed by Notice of Special tax Lien Recorded July 5, 2001, Document No. 15757636, Official Records and document(s) declaring modifications thereof Recorded July 31, 2001 as Instrument No. 15800018 of Official Records ("**CFD 5A Lien**")), and approved its ordinance dissolving CFD 5A. The operative date of both ordinances is conditioned on closing of the Master Escrow. The City shall use its good faith efforts to complete the dissolution of CFD 5A and to record a Notice of Cessation and a Notice of Dissolution for CFD 5A, which may be combined in a single notice, in conformance with statutory requirements promptly following the closing of the Master Escrow.

5.2. Termination of Assigned Agreements. The City and CVRP entered into a number of other agreements relating to the development of a proposed industrial park project and construction of project-related infrastructure. Under the Brandenburg PSA and the Sobrato North PSA, sellers, as successors to the interests of CVRP, are required to assign their assignable interests in certain of these agreements (collectively, the “**Assigned Agreements**”) to the City. The Assigned Agreements consist of the following:

(a) The Bailey Agreement;

(b) That certain Master Cooperation Agreement dated as of April 19, 2001 (as amended, the “**Master Cooperation Agreement**”), providing that CVRP and the City shall construct and/or pay for the construction of certain infrastructure improvements, including certain flood control and fire station facilities to be financed by CFD 5A;

(c) That certain Land Transfer and Maintenance Agreement, dated as of February 20, 2001 (as amended, the “**Land Transfer Agreement**”), by and among the City, CVRP and the Santa Clara Valley Water District (“**SCVWD**”), providing, among other things, that, subject to certain conditions, CVRP shall convey certain lands to the SCVWD or the City following completion of facilities called for by the Master Cooperation Agreement;

(d) That certain Agreement for Bailey Avenue Overcrossing Easements, by and between the County of Santa Clara (“**County**”), the City, and CVRP, dated as of July 9, 2001, as amended December 18, 2002 and December 10, 2004 (as amended, the “**Overcrossing Agreement**”), providing, among other things, that CVRP construct and dedicate a public trail in connection with the construction of the flood control facilities for the project; and

(e) Those certain other agreements described in **Exhibit T**.

The Parties desire to terminate or modify the Assigned Agreements following their assignment to the City. The City, POST, and OSA shall deposit into the Master Escrow executed counterparts of an agreement terminating all of the Assigned Agreements except the Land Transfer Agreement (which shall be terminated in accordance with Section 5.3), and the Overcrossing Agreement (which shall be terminated or resolved in accordance with Section 5.4), in substantially the form of **Exhibit U** (“**Termination Agreement**”).

5.3. Land Transfer Agreement. The Parties believe that, with the abandonment of the proposed CVRP project, any remaining obligations of CVRP under the Land Transfer Agreement have terminated. The Parties desire to formally terminate the Land Transfer Agreement. SCVWD has approved a termination of the Land Transfer Agreement in substantially the form of **Exhibit V** (“**Land Transfer Agreement Termination**”). At the closing of the Master Escrow, the City shall execute the Land Transfer Agreement Termination. As soon as practicable thereafter, the City shall obtain

the SCVWD's executed counterpart and assemble and deliver to POST and OSA copies of the fully executed Land Transfer Agreement Termination.

5.4. Overcrossing Agreement. The Parties believe that, with the abandonment of the proposed CVRP project, any remaining obligations of CVRP under the Overcrossing Agreement have terminated. The Parties desire to formally terminate the Overcrossing Agreement. If, as of the Effective Date, the County has not approved a termination of the Overcrossing Agreement or otherwise resolved matters pertaining to that agreement in a form and substance acceptable to the Parties ("**Overcrossing Agreement Resolution**"), the Parties shall use their good faith efforts to obtain any necessary authorization from the County for the Overcrossing Agreement Resolution as soon as practicable; provided that such authorization does not require the expenditure of City funds. At the closing of the Master Escrow, or, if any necessary authorization from the County has not been obtained by then, as soon as practicable after such authorization has been obtained, the Parties will take such actions as may be necessary to execute such documents as may be necessary to memorialize the Overcrossing Agreement Resolution.

5.5. No Assignment to POST/OSA. The Parties acknowledge and agree that the City will not assign any rights or obligations under the Assigned Agreements to POST or OSA, notwithstanding any transfer of Brandenburg West or Sobrato North to POST or OSA, and that the City is accepting the assignment of the agreements from sellers for the sole purpose of terminating or modifying the agreements in accordance with this Article. Nothing in this Agreement, the City's acceptance of any assignment from sellers, or the City's agreement to terminate or modify the Assigned Agreements shall be construed as an admission by the Parties that any of those agreements is valid or currently in effect.

5.6. City Waiver and Release. **EFFECTIVE AS OF THE CLOSE OF THE MASTER ESCROW, AS TO POST AND OSA, AND IRRESPECTIVE OF WHETHER THE ASSIGNED AGREEMENTS HAVE BEEN TERMINATED OR MODIFIED, THE CITY HEREBY IRREVOCABLY WAIVES ANY AND ALL OF ITS RIGHTS AND REMEDIES UNDER THE ASSIGNED AGREEMENTS, INCLUDING WITHOUT LIMITATION ANY RIGHTS TO SPECIFIC PERFORMANCE OR MONETARY DAMAGES OR REIMBURSEMENT, AND RELEASES POST AND OSA AND THEIR RESPECTIVE PRINCIPALS, AFFILIATES, OFFICERS, DIRECTORS, MEMBERS, MANAGERS, PARTNERS, AGENTS, EMPLOYEES, SUCCESSORS AND ASSIGNS, FROM AND AGAINST ANY AND ALL CLAIMS, COUNTERCLAIMS, AND CAUSES OF ACTION THAT THE CITY MAY NOW OR IN THE FUTURE HAVE UNDER AGAINST POST OR OSA ARISING FROM THE ASSIGNED AGREEMENTS, INCLUDING WITHOUT LIMITATION ANY OBLIGATION TO (A) PAY THE CITY ADVANCE OBLIGATION PURSUANT TO THE ASSIGNED AGREEMENTS (BUT EXCLUDING OSA'S OBLIGATION PURSUANT TO SECTION 4.2), OR ANY ACCRUED INTEREST THEREON, (B) CONSTRUCT OR COMPLETE ANY FACILITIES, WATER SYSTEM IMPROVEMENTS, OR ROADWAY IMPROVEMENTS, (C) CONVEY OR ACQUIRE LAND FOR ANY FACILITIES, IMPROVEMENTS, RIGHTS OF**

WAY, OR OTHER PURPOSE, (D) REIMBURSE THE CITY FOR COSTS OR OTHER LIABILITY UNDER THE ASSIGNED AGREEMENTS, OR (E) MAINTAIN ANY INSURANCE POLICY.

THE CITY HEREBY ACKNOWLEDGES THAT IT HAS READ AND IS FAMILIAR WITH THE PROVISIONS OF CALIFORNIA CIVIL CODE SECTION 1542 (“SECTION 1542”), WHICH IS SET FORTH BELOW:

“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.”

BY INITIALING BELOW, CITY HEREBY WAIVES THE PROVISIONS OF SECTION 1542 IN CONNECTION WITH THE MATTERS WHICH ARE THE SUBJECT OF THE FOREGOING WAIVERS AND RELEASES. CITY FURTHER AGREES AND ACKNOWLEDGES THAT, IN GIVING THE FOREGOING WAIVER AND RELEASE, IT HAS WITH ITS LEGAL COUNSEL, CONSIDERED ANY STATUTE OR OTHER LAW THAT MIGHT APPLY TO AND LIMIT THE EFFECT OF CITY'S WAIVER AND RELEASE HEREIN AND HEREBY KNOWINGLY WAIVES THE BENEFITS OF ANY SUCH LAW AND INTENDS THAT IT NOT BE APPLICABLE HERE.

City’s Initials: _____

This section 5.6 shall survive the closings and any termination of this Agreement.

**ARTICLE VI
Measure T Use Restrictions for Brandenburg West**

6.1. Anticipated Transfer of Brandenburg West to OSA. POST and OSA anticipate entering into a purchase and sale agreement for the transfer of Brandenburg West to OSA prior to the close of the Master Escrow, which transfer is contingent on POST obtaining title to Brandenburg West pursuant to this Agreement and on OSA securing funding for the acquisition. If POST transfers Brandenburg West to OSA, POST and OSA shall include in the deed or in a separate instrument recorded at the closing a covenant prohibiting the use of Brandenburg West for purposes inconsistent with Measure T, which covenant shall be effective until September 1, 2049.

6.2. City Right of First Refusal.

(a) POST shall not sell or convey, and shall not agree to sell or convey, Brandenburg West to a buyer other than OSA without first offering to sell the property to the City in accordance with this section.

(b) POST shall provide written notice to the City (a) at least 30 days prior to marketing Brandenburg West for sale to any buyer (other than OSA), or (b) within five (5) business days of POST's receipt of a bona fide third party offer (other than from OSA) to purchase Brandenburg West that POST intends to accept.

(c) The City shall have 30 days after receipt of POST's notice to deliver to POST written notice of election to exercise its right of first refusal and purchase Brandenburg West.

(d) If the City delivers a timely acceptance notice, the City shall have a due diligence period of 45 days from the date of the notice, during which period POST shall provide the City reasonable access to the property.

(e) If, before the expiration of the due diligence period, City gives written notice to POST of its election to proceed with the purchase, City and POST shall open an escrow and, within 20 days of delivery of the notice of election, shall close on a sale in accordance with mutually agreed escrow instructions. The sale shall be as-is, subject to all then-existing encumbrances (except as the City and POST may mutually agree in writing), for a purchase price of that is the lesser of (i) \$4.66 Million, escalated at an annual rate of 3% from the Effective Date) or (ii) the amount of a bona fide offer that POST is prepared to accept, with closing costs paid in accordance with City custom.

(f) If, following POST's delivery of notice in accordance with paragraph (a), the City does not deliver to POST a timely notice of acceptance or a timely notice of election to proceed with the purchase, or fails to timely close on the purchase (unless the failure is caused solely by POST's default), the City's right of first refusal shall terminate, and POST shall thereafter be free to sell or convey Brandenburg West to any third party.

(g) The City's right of first refusal, and any limitation on POST's ability to sell or convey Brandenburg West, shall terminate and no longer be effective as of September 1, 2049 if not earlier terminated pursuant to paragraph (f).

(h) Following close of the Master Escrow, at the City's request, POST shall cause to be recorded against Brandenburg West a memorandum of this agreement, in a form reasonably satisfactory to POST and the City, for the purpose of providing record notice of the City's right of first refusal. The City and POST shall reasonably cooperate in good faith to finalize, execute, acknowledge and record the memorandum. Following termination of the City's right of first refusal, at the request of POST or other then-current owner of Brandenburg West ("**Brandenburg West Owner**"), the City shall provide Brandenburg West Owner with a duly executed and acknowledged quitclaim deed in a form reasonably satisfactory to Brandenburg West Owner and suitable for recording, for purposes of evidencing in the public records the termination of the right of

With a copy to: Shute, Mihaly & Weinberger LLP
396 Hayes Street
San Francisco, California 94102
Attn: William J. White
Telephone No. (415) 552-7272
Electronic Mail Address: white@smwlaw.com

If to OSA: Santa Clara Valley Open Space Authority
33 Las Colinas Lane
San Jose, CA 95119
Attn: _Linda Kwong Telephone No. (408) 224-7476
Electronic Mail Address: lkwong@openspaceauthority.org

With a copy to: Wittwer Parkin LLP
335 Spreckels Drive, Suite H
Aptos, CA 95003
Attn: William P. Parkin
Telephone No. (831) 429-4055
Electronic Mail Address: wparkin@wittwerparkin.com

7.4. Relocation Costs. POST shall have no responsibility for any tenant relocation costs voluntarily paid, or required by law or court order to be paid, by the City or OSA in connection with the acquisition of any of the Conservation Properties. OSA shall have no responsibility for aforementioned tenant relocation costs related to Brandenburg East, and the City agrees to be solely responsible for any such relocation costs related to terminated residential tenancies of Brandenburg East. If City agrees to accept Weyhe East, it shall be solely responsible for any relocation costs related to that property. This Section 7.4 shall survive termination of this Agreement.

7.5. Demolition Costs. POST and OSA shall have no responsibility for any costs associated with the demolition of the three residences existing on the Brandenburg Property. City shall reimburse POST and OSA for any such costs expended by them for such purpose. This Section 7.5 shall survive termination of this Agreement.

7.6. POST Payment of Property Taxes. The Parties acknowledge that POST, as a nonprofit corporation, is generally exempt from payment of property taxes. However, if, following transfer of Brandenburg East to POST, a payment of property taxes (other than the Annual Special Tax) assessed on Brandenburg West, or any portion thereof, is required to avoid placement of a lien on Brandenburg East, or any portion thereof, POST shall timely make such payment, reserving in all events its rights to appeal or otherwise contest the assessment.

7.7. Assignment. No Party may assign the Party's interest in this Agreement without the written consent of the other Parties, which may be granted or withheld in the sole discretion of those Parties

7.8. Indemnification. POST and OSA acknowledge that, at close of Master Escrow, title to Sobrato North and Brandenburg West will be subject to a recorded “**Buyer Remediation Covenant**” as that term is defined, respectively, in the Sobrato North PSA and the Brandenburg PSA. POST and OSA acknowledge and agree that POST and its successors-in-interest to those properties (or any portion thereof) shall, upon close of Master Escrow, assume the obligations of Buyer under each Buyer Remediation Covenant, as and to the extent those obligations apply to Sobrato North and Brandenburg West only. Following close of Master Escrow, POST shall indemnify, defend and hold City and City’s councilmembers, officers, employees, agents, and contractors (collectively “**City Parties**”) harmless from and against any and all liabilities, losses, claims, costs, demands, penalties, orders, charges, liens, costs and expenses (including reasonable attorneys’ fees and costs) (collectively, “**Claims**”) with respect to Sobrato North and Brandenburg West, where such Claim is based on the City’s ownership of, or its entry into the Buyer Remediation Covenant with respect to, Sobrato North or Brandenburg West pursuant to the Sobrato North PSA and the Brandenburg PSA, and arises from: (i) a failure by POST (or its successors-in-interest) to perform the obligations of Buyer under the Remediation Covenant; (ii) any past, present or future migration of any Hazardous Materials from Sobrato North or Brandenburg West onto adjacent properties; and (iii) the presence of Hazardous Materials on the Sobrato North or Brandenburg West to the extent not covered by clauses (i) and (ii). As used herein, the term Hazardous Materials shall have the meaning set forth in the Buyer Remediation Covenant. Notwithstanding the foregoing, POST shall have no obligation to defend or indemnify City Parties as to the presence or release of any Hazardous Materials on or from Sobrato North or Brandenburg West caused by a City Party. OSA agrees to assume the indemnification obligations of POST under this paragraph as to any portion of Sobrato North or Brandenburg West transferred to OSA, effective upon such transfer. The provisions of this Section shall survive all closings under this Agreement.

7.9. Effective Date. This Agreement shall become effective upon its execution by all Parties, and shall not be binding until signed by all parties.

7.10. Miscellaneous.

(a) Assignment; Successors and Assigns. No Party shall assign its rights or obligations under the Agreement without the prior written consent of the other Parties. Subject to the foregoing, the terms and provisions of this Agreement are to apply to and bind the permitted successors and assigns of the Parties.

(b) Modifications. This Agreement cannot be changed orally, and no executory agreement shall be effective to waive, change, modify, or discharge it in whole or in part unless such executory agreement is in writing and is signed by the Parties against whom enforcement of any waiver, change, modification, or discharge is sought.

(c) Entire Agreement. This Agreement, including the exhibits hereto, contains the entire agreement between the Parties pertaining to the subject matter hereof and fully supersedes all prior written or oral agreements and understandings between the Parties pertaining to such subject matter.

(d) Further Assurances. Each Party agrees that it will execute and deliver such other reasonable documents and take such other action, whether before or after a closing, as may be reasonably requested by the other Party to consummate the transactions contemplated by this Agreement.

(e) Counterparts. This Agreement may be executed in counterparts, all such executed counterparts shall constitute the same agreement, and the signature of any Party to any counterpart shall be deemed a signature to, and may be appended to, any other counterpart.

(f) Severability. If any provision of this Agreement is determined by a court of competent jurisdiction to be invalid or unenforceable, the remainder of this Agreement shall nonetheless remain in full force and effect; provided that the invalidity or unenforceability of such provision does not materially adversely affect the benefits accruing to any Party.

(g) Applicable Law. This Agreement shall be governed by and construed in accordance with the laws of the State in California. The exclusive venue for any legal action arising out of this Agreement shall be in Santa Clara County, California.

(h) No Third-Party Beneficiary. The provisions of this Agreement will be for the benefit of the and are not for the benefit of any third party, and, accordingly, no third party shall have the right to enforce the provisions of this Agreement.

(i) Captions. The Section headings appearing in this Agreement are for convenience of reference only and are not intended, to any extent or for any purpose, to limit or define the text of any Section or any subsection of this Agreement.

(j) Construction. The Parties acknowledge that the Parties and their counsel have reviewed and revised this Agreement and that the normal rule of construction to take effect that any ambiguities are to be resolved against the drafting Party shall not be employed in the interpretation of this Agreement or any exhibits or amendments hereto.

(k) Incorporation of Recitals and Exhibits. The Recitals set forth above and all exhibits attached to this Agreement are incorporated herein by reference.

(l) Date of Performance. If the date on which any performance required hereunder is other than a business day, then such performance shall be required as of the next following business day.

(m) Time of Essence. Time is of the essence of each and every term, condition, obligation and provision of this Agreement.

(n) Settlement Statements. The Party's shall require the escrow holder to prepare and deliver, for each Party's reasonable approval, a preliminary Settlement statement for each escrow, which must be approved prior to closing each escrow.

(o) Authority to Sign. Each Party represents and warrants that it has the right and authority to enter into this Agreement, and that the person signing this Agreement on its behalf is authorized to do so.

(p) No Merger of Title. It is the intention of the Parties, and the Parties agree, that, except as otherwise specifically set forth herein (and except as specifically set forth in the Conservation Easement as to the property encumbered thereby), all easements and rights of way and similar rights held by the City at close of escrow that encumber Fisher Flats, Brandenburg East, Brandenburg West, Sobrato North, Weyhe West or Weyhe East shall remain and shall not be affected by transfer of fee title to the City or merged into any greater estate or interest held by the City at any time.

IN WITNESS WHEREOF, the Parties hereto have duly executed this Agreement as of the Effective Date.

CITY OF SAN JOSE,
a municipal corporation

By: _____
Toni J. Taber, CMC,
City Clerk

APPROVED AS TO FORM:

PENINSULA OPEN SPACE TRUST,
a California nonprofit public benefit
corporation

By: _____
Name: _____
Its: _____

SANTA CLARA VALLEY OPEN SPACE
AUTHORITY, a California independent
special district.

By: _____
Name: _____
Its: _____

APPROVED AS TO FORM:

LIST OF EXHIBITS

Exhibit A	Legal Description of Brandenburg Property
Exhibit B	Legal Description of Sobrato North
Exhibit C	Legal Description of Sobrato South
Exhibit D	Legal Description of Weyhe Property
Exhibit E	Legal Description of Fisher Flats
Exhibit F	Legal Description of Brandenburg West
Exhibit G	Legal Description of Weyhe West
Exhibit H	Legal Description of Brandenburg East
Exhibit I	Legal Description of Weyhe East
Exhibit J	List of Permitted Exceptions
	Exhibit J.1 Brandenburg East Permitted Exceptions
	Exhibit J.2 Brandenburg West Permitted Exceptions
	Exhibit J.3 Sobrato North Permitted Exceptions
	Exhibit J.4 Fisher Flats Permitted Exceptions
Exhibit K	Form of Brandenburg West and Sobrato North Deed
Exhibit L	Form of Conservation Easement
Exhibit M	Intentionally Omitted
Exhibit N	Form of Notice of Expiration of PD Permits
Exhibit O	Weyhe Exceptions
Exhibit P	Form of Weyhe Property Right of Entry Agreement
Exhibit Q	Form of Conservation Easement Amendment
Exhibit R	Form of Notice of Cessation
Exhibit S	Form of Notice of Dissolution
Exhibit T	List of Assigned Agreements
Exhibit U	Form of Termination Agreement
Exhibit V	Form of Land Transfer Agreement Termination

Exhibit A

Legal Description of Brandenburg Property

The land located in the County of Santa Clara, State of California, described as follows:

PARCEL ONE:

Parcel 1, as shown upon that certain Map entitled, "Parcel Map being a resubdivision of a portion of Parcel B as shown on the Record of Survey Recorded in Book 276 of Maps, at Pages 22 and 23, Santa Clara County Records", which Map was filed for Record in the Office of the Recorder of the County of Santa Clara, State of California, on September 22, 1983 in Book 518 of Maps, at Pages 20, 21 and 22.

For Convenience of Reference Only: APN: 708-30-008

PARCEL TWO:

Parcels 3 and the designated remainder as shown on that certain Parcel Map entitled, "being a Portion of Parcel 2 and 3 as shown on that certain Parcel Map filed for Record in Book 518 of Maps at pages 20 through 22, Santa Clara County Records which map Recorded in the Office of the Recorder for the County of Santa Clara, State of California on October 28, 2004 in Book 777 of Maps at pages 20, 21 and 22.

For Convenience of Reference Only: APNs: 708-30-016, 017 and 018

PARCEL THREE:

PARCEL "A", so designated and delineated on the Record of Survey filed for record December 9, 1970 in Book 276 of Maps, pages 22 and 23, Santa Clara County Records.

Excepting therefrom those portions thereof described in the Deed to the City of San Jose, Recorded July 17, 1986, in Book J769, Page 579, Official Records.

For Convenience of Reference Only: APNs: 708-28-002 and 708-27-007

PARCEL FOUR:

Being a portion of the Rancho La Laguna Seca as patented in Santa Clara County, California, and being more particularly described as follows:

Beginning at a point in the center line of Bailey Avenue, as deeded to the County of Santa Clara by Deed recorded in Book 183 of Deeds Page 389, records of Santa Clara County, California distant thereon South 48° 30' West 2093.56 feet from the intersection thereof with the Southwesterly line of the Southern Pacific Railroad Company right of way and running thence North 41° IT 30" West 1754.53 feet to a buried iron pipe from which the most Northern corner of land described in the Deed recorded in Book 67 of Deeds, at Page 82, bears North 49° 00' 40" East 2157.72 feet; thence South 49° 00' 40" West 794.00 feet to a buried iron pipe; thence South

"Exhibit A"

41° 35' East 753.06 feet; thence South 41° 30' East 1008.48 feet to a buried iron pipe in the center line of Bailey Avenue; thence along said centerline North 48° 30' East 783.38 feet Point of Beginning.

Excepting therefrom that portion thereof described as follows:

All of Parcels A, B, and C, as shown on record of survey, Santa Teresa Boulevard, filed for record October 2, 1969 in Book 259 of Maps, Page 49, Santa Clara County Records.

Also excepting therefrom that portion thereof described in the Deed to the City of San Jose Recorded July 17, 1986, in Book J769, Page 579 of Official Records.

Subject to those rights reserved by Chevron U.S.A. Inc., according to the Corporation Grant Deed Recorded October 28, 1986, in Book J898, page 802, Official Records.

Also excepting therefrom that portion thereof described in the Deed to the City of San Jose Recorded October 31, 1986 in Book J904, page 401, Official Records.

For Convenience of Reference Only: APN: 708-27-014

PARCEL FIVE:

All that certain 41.817 acre +/- Parcel of land as shown on that certain Record of Survey filed for record in Book 466 of Maps at Page 45 Santa Clara County Records and being more particularly described as follows:

Beginning at the most Northerly corner of Parcel Five as said Parcel is described in the Grant Deed from Walter Cottle Lester to Ethel E. Lester for an Undivided 1/2 interest, as said Deed was recorded August 5, 1971 in Book 9450 of Official Records at Page 682, Santa Clara County Records; thence leaving said point of beginning along the Northwesterly line of said Parcel Five, South 48° 30' West, 913.69 feet to the most Northerly corner of that certain tract of land deeded to William S. Tevis by Emma E. Owen, by Deed dated April 27, 1905, recorded in Book 295 of Deeds at Page 484, said Northerly corner being on the general Northeasterly line of that certain 169.719 acre parcel shown as Parcel A on that certain Record of Survey recorded in Book 276 of Maps, at Pages 22 and 23, Santa Clara County Records; thence leaving said Northerly corner and along said general Northeasterly line of Parcel A, being also the Northeasterly line of said lands deeded to Tevis, South 41° 53' 21" East (shown as South 42° 04' 16" East on said Record of Survey) 1957.42 feet to a point on the centerline of Emado Avenue (50 feet wide); thence leaving said general Northeasterly line and along the centerline of Emado Avenue North 48° 48' 41" East, 945.18 feet to a 3/4' iron bolt found in the centerline of Emado Avenue at the most Easterly corner of said Parcel Five; thence leaving said centerline of Emado Avenue and along the Northeasterly line of said Parcel Five, North 42° 48' 25" West, 1963.02 feet Point of Beginning.

For Convenience of Reference Only: APN: 708-26-001

“Exhibit A”

PARCEL SIX:

All that certain 44.982 acres +/- parcel of land as shown on that certain Record of Survey filed for record in Book 466 of Maps at Page 45, Santa Clara County Records, and being more particularly described as follows:

Beginning at the intersection of the centerline of Emado Avenue (50 feet wide) with the Southwesterly line of that certain Parcel of land conveyed by Herbert Packing Co., Inc., a Corporation, to Southern Pacific Railroad Company, a Corporation by Deed recorded February 11, 1927 in Book 299 of Official Records, at Page 334, Santa Clara County Records; thence leaving said point of beginning along said centerline of Emado Avenue South 48° 48’ 41” West, 997.17 feet to the most Easterly corner of that certain Parcel of land described as Parcel Five in the Grant Deed from Walter Cottle Lester to Ethel E.

Lester for an Undivided 1/2 interest, recorded August 5, 1971 in Book 9450 of Official Records, Page 682, Santa Clara County Records; thence leaving said centerline of Emado Avenue along the Northeasterly line of said Parcel Five, North 42° 48’ 25” West, 1963.02 feet to the most Northerly corner of said Parcel Five; thence along the Northwesterly lines of Parcels 2 and 1 respectively as described in said Deed from Walter Cottle

Lester to Ethel E. Lester, North 48° 30’ East, 997.05 feet to the Northwesterly corner of said Parcel conveyed to Southern Pacific Railroad Company, thence along the Southwesterly line of said Southern Pacific Railroad Parcel, South 42° 48’ 23” East, 1968.44 feet Point of Beginning.

For Convenience of Reference Only: APN: 708-26-002

PARCEL SEVEN:

Beginning at a stake marked 7.T. standing at the most Easterly corner of that certain 60 acre tract of land conveyed by Emma Owen to William S. Tevis by Deed dated April 27, 1905 and recorded in Book 295 of Deeds, Page 484, Santa Clara County Records, California; and running thence along the Southeasterly line of lands formerly of Emma E. Owen, North 48° 46’ East 29.85 1/2 chains to a stake marked W.O.W J.C. standing on the Southwesterly line of the right of way of the Southern Pacific Railroad Company; thence along the Southwesterly line of said right of way North 41° 14’ West 3 chains, thence North 42° 49’ West 7.16 chains to an iron bar standing in the center line of a road called Emado Avenue, from which iron bar a stake marked W.P.7. bears South 42° 49’ East Twenty-Five (25) feet; thence along the center line of said Emado Avenue and its prolongation. South 48°48’ West 29.73 chains to a stake marked 6-7 standing on the Northeasterly line of that certain 60 acre tract conveyed to William S. Tevis as aforesaid; thence along said Northeasterly line of said 60 acre tract, South 41° 41’ East 10.17 1/2 chains to the place of beginning, and being a part of the Rancho La Laguna Seca.

Excepting therefrom that portion thereof conveyed by W.S. Groesbeck and Clara S. Groesbeck, his wife, to Southern Pacific Railroad Company, a Corporation, by Deed dated October 1, 1928 and recorded October 1, 1928 in Book 419 Official Records, Page 447, as follows, to wit:

A strip of land twenty feet wide being a portion of the Rancho Laguna Seca, in the County of Santa Clara, State of California, more particularly described as follows:

“Exhibit A”

Beginning at the intersection of the Southwesterly right of way line of the Southern Pacific Railroad Company, thirty feet at right angles Southwesterly from the center line of the original constructed main tract of the said Southern Pacific Railroad Company with the center line of Emado Avenue (50.00 feet wide); thence South 43° 13' East along the said Southwesterly right of way line, a distance of four hundred and twenty-three and 56/100 feet to a point; thence Southeasterly along said Southwesterly right of way line, on an arc of a curve, concave to the right having a radius of 5699.65 feet (the tangent to said curve at the last mentioned point is the last described course) an arc distance of two hundred forth-seven feet to a point in the dividing line between the land of W.S. Groesbeck and the lands of Chas. O. Bocks; thence South 49° 16' West along said dividing line a distance of 20 feet to a point; thence Northwesterly parallel to and fifty feet radially Southwesterly from said center line of the original constructed main tract on the arc of a curve concave to the left having a radius of 5679.65 feet, (the tangent of the last mentioned curve at the last described point bears North 40° 44' West) an arc distance of Two Hundred Forty-Six and 13/100 (246.13 feet) to a point; thence North 43° 13' West (tangent to last described curve) a distance of Four Hundred Twenty-Four and 26/100 feet to a point in the said center line of Emado Avenue; thence North 48° 48' East along the said center line of Emado Avenue a distance of Twenty and 01/100 feet Point of Beginning.

For Convenience of Reference Only: APNs: 708-27-001 and 002

PARCEL EIGHT:

Portion of Lots 3 and 4, as shown upon that certain Map entitled, "Map of the Oliver Blanchard Subdivision in the Rancho Del Refugio De Laguna Seca, being a part of the land of the Fiacro Fisher Est Co.", which was filed for record in the Office of the Recorder of the County of Santa Clara, State of California, on December 17, 1917 in Volume "P" of Maps, at Pages 30 and 31, and more particularly described as follows:

Beginning at a 2" x 2" stake marked "2-3" standing at the most Easterly corner of Lot 3, as shown upon the Map above referred to; running thence along the line between Lots 2 and X as shown on said Map, North 42° 49 min. West 23.69 chains to a point in the center of the main Canal of Laguna Seca Reclamation District No. 1663, and at the most Northerly corner of Lot of said Oliver Blanchard Subdivision; thence along the center of said Canal being the Northwesterly line of said Lot 4, South 33° 28 min. West 7.33 chains; thence South 42° 49 min. East 21.89 chains to a stake marked "0-1" standing on the Southeasterly line of Lot 3, said "Oliver Blanchard Subdivision"; thence along the Southeasterly line of said Lot 3, North 48° 25 min. East. 7.125 chains to the Place of Beginning.

For Convenience of Reference Only: APN: 708-25-002

Exhibit B

Legal Description of Sobrato North

THE LAND SITUATED IN THE CITY OF SAN JOSE, IN THE COUNTY OF SANTA CLARA, STATE OF CALIFORNIA, AND DESCRIBED AS FOLLOWS:

Parcel One:

Parcels 1 and 2 as shown on that certain Parcel Map entitled "Being a portion of Parcels 2 and 3 as shown on that certain Parcel Map filed for record in Book 518 of Maps, Pages 20 through 22, Santa Clara County Records" which map was filed for record in the office of the Recorder of the County of Santa Clara on October 28, 2004 in Book 777 of Maps, Pages 20, 21 and 22.

Parcel Two:

Rights and easements as granted in that certain Declaration of Covenants, Conditions, Construction Obligations and Restrictions and Reservation of Reciprocal Easements for Coyote Valley Research Park Executed by Coyote Valley Research Park, LLC, a Delaware limited liability company, recorded November 16, 2004 as Instrument No. 18101214, Official Records.

APN: 708-30-014, 708-30-015

Exhibit C

Legal Description of Sobrato South

THE LAND SITUATED IN THE CITY OF SAN JOSE, IN THE COUNTY OF SANTA CLARA, STATE OF CALIFORNIA, AND DESCRIBED AS FOLLOWS:

Parcel One:

Lot A as shown on Lot Line Adjustment Permit as evidenced by Document recorded November 9, 2017 as Document No. 23798388, of Official Records, being more particularly described as follows:

All of Lot One of Lot Line Adjustment No. AT08-053, in the City of San Jose, County of Santa Clara, State of California, as described in the Lot Line Adjustment Permit recorded November 13, 2008 as Document No. 20043355 of Official Records of Santa Clara County, Together with that portion of Parcel Two of the land described in the Grant Deed to Campus Park Associates recorded April 12, 2001 as Document No. 15634613 of Official Records of said Santa Clara County, described as follows:

Commencing at the Southwesterly terminus of the southeasterly line of Lot One of said Lot Line Adjustment No. AT08-053; Thence along said Southeasterly line North 48°32'29" East, 3413.96 feet; Thence along the Northeasterly line of said Lot One the following five (5) courses,

1. North 33°14'43" West, 378.71 feet;
2. North 10°44'43" West, 503.00 feet;
3. North 26°44'43" West, 260.00 feet;
4. North 41°44'43" West, 350.00 feet;
5. North 61°44'43" West, 294.14 feet to the Point of Beginning;

Thence continuing along the Northeasterly line of said Lot One the following six (6) courses,

1. North 61°44'43" West, 219.87 feet;
2. North 45°14'43" West, 342.00 feet;
3. North 13°14'43" West, 220.00 feet;
4. North 7°45'17" East, 142.03 feet;
5. North 36°45'17" East, 349.97 feet;
6. North 20°45'47" East, 41.60 feet to the Northerly line of said Parcel Two;

"Exhibit C"

Thence along the Northerly line of Parcel Two of said Grant Deed to Campus Park Associates the following two (2) courses,

1. North 48°31'18" East 240.37 feet;
2. North 53°49'09" East, 236.57 feet;

Thence leaving said Northerly line the following three (3) courses,

1. South 36°10'51" East, 414.75 feet to the beginning of a tangent curve, concave Westerly with a radius of 567.00 feet;
2. Southerly, Southeasterly and Easterly along said curve through a central angle of 112°03'20" an arc distance of 1108.90 feet;
3. South 28°15'17" West, 111.90 feet to the Northeasterly line of Lot One of said Lot Line Adjustment No. AT08-053, said point being the Point of Beginning.

Said Lot A being made pursuant to Lot Line Adjustment Permit (File No. AT17-030), recorded November 9, 2017, as Instrument No. 23798388, of Official Records.

Parcel Two:

Lot B as shown on Lot Line Adjustment Permit as evidenced by Document recorded November 9, 2017 as Document No. 23798388, of Official Records, being more particularly described as follows:

All of Parcel Two, in the City of San Jose, County of Santa Clara, State of California, as described in the Grant Deed to Campus Park Associates recorded April 12, 2001 as Document No. 15634613 of Official Records of Santa Clara County, Except therefrom that portion of said Parcel Two, described as follows:

Commencing at the Southwesterly terminus of the southeasterly line of Lot One of Lot Line Adjustment No. AT08- 053, in the City of San Jose, County of Santa Clara, State of California, as described in the Lot Line Adjustment Permit recorded November 13, 2008 as Document No. 20043355 of Official Records of Santa Clara County, Thence along said Southeasterly line North 48°32'29" East, 3413.96 feet; Thence along the Northeasterly line of said Lot One the following five (5) courses,

1. North 33°14'43" West, 378.71 feet;
2. North 10°44'43" West, 503.00 feet;
3. North 26°44'43" West, 260.00 feet;

“Exhibit C”

4. North 41°44'43" West, 350.00 feet;
5. North 61°44'43" West, 294.14 feet to the Point of Beginning;

Thence continuing along the Northeasterly line of said Lot One the following six (6) courses,

1. North 61°44'43" West, 219.87 feet;
2. North 45°14'43" West, 342.00 feet;
3. North 13°14'43" West, 220.00 feet;
4. North 7°45'17" East, 142.03 feet;
5. North 36°45'17" East, 349.97 feet;
6. North 20°45'47" East, 41.60 feet to the northerly line of said Parcel Two;

Thence along the Northerly line of Parcel Two of said Grant Deed to Campus Park Associates the following two (2) courses,

1. North 48°31'18" East 240.37 feet;
2. North 53°49'09" East, 236.57 feet;

Thence leaving said Northerly line the following three (3) courses,

1. South 36°10'51" East, 414.75 feet to the beginning of a tangent curve, concave Westerly with a radius of 567.00 feet;
2. Southerly, Southeasterly and Easterly along said curve through a central angle of 112°03'20" an arc distance of 1108.90 feet;
3. South 28°15'17" West, 111.90 feet to the Northeasterly line of Lot One of said Lot Line Adjustment No. AT08-053, said point being the Point of Beginning.

Said Lot B being made pursuant to Lot Line Adjustment Permit (File No. AT17-030), recorded November 9, 2017, as Instrument No. 23798388, of Official Records.

APN: 712-03-111, 712-03-112

“Exhibit C”

Exhibit D

Legal Description of Weyhe Property

ALL THAT REAL PROPERTY SITUATED IN THE CITY OF SAN JOSE, IN THE COUNTY OF SANTA CLARA, STATE OF CALIFORNIA, AND DESCRIBED AS FOLLOWS:

Beginning at a stake marked "B3" standing at the most Southerly corner of Lot 3, of the "Oliver Blanchard Subdivision in the Rancho Del Refugio De Laguna Seca, being part of the land of Fiacro Fisher Est.", as said Subdivision is shown in Book "P" of Maps, at Page 30, in the Office of the County Recorder of Santa Clara County, California, and running thence along the line between Lots 3 and 4, said Oliver Blanchard Subdivisions and its prolongation N. 42° 36' W., 19.30 Chs to a point in the center of the Main Canal of Laguna Seca Reclamation District No. 1663, and on the Northwesterly line of Lot 4, said Oliver Blanchard Subdivision; thence along the center line of said Canal being the Northwesterly line of said Lot 4, N. 26° 45' E., 3.412 Chs. and N. 33° 28' E., 4.74 Chs thence leaving said Canal, and running S. 42° 49' E., 21.80 Chs., to a stake marked "0'1" standing on the Southeasterly line of Lots 3, said Oliver Blanchard Subdivision; thence along the Southeasterly line of said Lot 3, S. 48° 25' W., 7.877 Chs. to the place of beginning, and being a part of Lots 3 and 4 of the Oliver Blanchard Subdivision in the Rancho Refugio De La Laguna Seca, as said Subdivision as shown in Book "P" of Maps, at Page 30, in the Office of the County Recorder of Santa Clara County, California.

APN: 708-25-001

"Exhibit D"

1

Exhibit E

Legal Description of Fisher Flats

The land referred to is situated in the unincorporated area of the County of Santa Clara, State of California, and is described as follows:

TRACT 1:

Lot 2, as shown on the Map of the Oliver Blanchard Subdivision of the Rancho Del Refugio De La Laguna Seca made by Chas. Herrmann, Surveyor and C.E., in July 1917, which Map was recorded in the Office of the County Recorder of the County of Santa Clara, State of California in Book P of Maps, Page 30, Records of said County.

APN: 708-25-004

TRACT 2:

PARCEL ONE:

Lot 1, as shown the Map of the Oliver Blanchard Subdivision in the Rancho Del Refugia De La Laguna Seca made by Chase Hermann, Surveyor and C.E., in July 1917, which said Map was recorded in the Office of the County Recorder of the County of Santa Clara, State of California, in Book P of Maps, Page 30, Records of said County.

EXCEPTING THEREFROM the underground water rights, without the right of surface entry as granted to Citizens Water Company, by Instrument recorded July 26, 1895, in Book 181 of Deeds at Page 599, Santa Clara County Records.

ALSO EXCEPTING THEREFROM that portion thereof conveyed by William L. Shepherd et al, to the Southern Pacific Railroad Company, a corporation, by Deed dated December 6, 1926 and recorded December 7, 1926 in Book 278 of Official Records, Page 583, Record of Santa Clara County, as follows:

A strip of land 10 feet wide, being a portion of Lot 1 as said Lot is designated upon Map entitled, "Map of the Oliver Blanchard Subdivision of the Rancho Del Refugio De La Laguna Seca, being part of the Lands of the Fiacro Fisher Est. Co." filed for record December 17, 1927 in Book P of Maps, Page 30, Records of Santa Clara County, State of California, more particularly described as follows:

Beginning at the most Easterly corner of said Lot 1, said point being in the Southwesterly right of way line of the S.P.R.R. Co., distant 40 feet at right angles Southwesterly from the center line of the original constructed Main Tract of said S.P.R.R. Co.; thence North 43° 13' West along the said Southwesterly right of way line distance of 1397.22 feet to the Northeast corner of said Lot 1; thence South 50° 58' West along the Northerly line of said Lot 1 a distance of 10.01 feet to a point; thence South 43° 13' East parallel to and 50 feet at right angles Southwesterly from the said center line a distance of 1397.68 feet to the point in the Southerly line of said Lot 1; thence North 48° 30' East along said Southerly line of Lot 1, a distance of 10.01 feet to the point of beginning.

PARCEL TWO:

"Exhibit E"

A right of way for ingress and egress over the Northerly 15 feet of the property granted to Southern Pacific Railroad Company as reserved by William L. Shepherd et al in Deed recorded December 7, 1926 in Book 278 of Official Records, Page 583, Santa Clara County Records.

PARCEL THREE:

A permanent ingress and egress easement as shown in document entitled Easement Deed, recorded September 11, 2001 in Instrument No. 15862549 and recorded November 9, 2001 in Instrument No. 15956019 of Official Records, Santa Clara County Records.

APN: 708-25-005

“Exhibit E”

2

Exhibit F

Legal Description of Brandenburg West

[Steve Choy/K&W to complete legal description and plat]

“Exhibit F”

Exhibit G

Legal Description of Weyhe West

[Steve Choy/K&W to complete legal description and plat]

“Exhibit G”

1

Exhibit H

Legal Description of Brandenburg East

[Steve Choy/K&W to complete legal description and plat]

“Exhibit H”

1

Exhibit I

Legal Description of Weyhe East

[Steve Choy/K&W to complete legal description and plat]

“Exhibit I”

1

Exhibit J

List of Permitted Exceptions

Exhibit J.1: Brandenburg East Permitted Exceptions

Exhibit J.2: Brandenburg West Permitted Exceptions

Exhibit J.3: Sobrato North Permitted Exceptions

Exhibit J.4: Fisher Flats Permitted Exceptions

“Exhibit J”

1

Exhibit J.1

Brandenburg East Permitted Exceptions

1. [intentionally omitted]
2. The fact that said land lies within the City of San Jose Maintenance District 9 and may be subject to assessment thereunder Payable with the County Taxes or through the City's Director of Finance as disclosed by:
3. Notice of Assessment recorded December 19, 2002 as Instrument No. 16697131, of Official Records.
4. The lien of special tax assessed pursuant to Chapter 2.5 commencing with Section 53311 of the California Government Code for Community Facilities District No. 5A, as disclosed by Notice of Special tax Lien Recorded July 5, 2001, Document No. 15757636, Official Records.

Document(s) declaring modifications thereof Recorded July 31, 2001 as Instrument No. 15800018, of Official Records.
5. The lien of special tax assessed pursuant to Chapter 2.5 commencing with Section 53311 of the California Government Code for Community Facilities District No. 5B, as disclosed by Notice of Special Tax Lien Recorded July 5, 2001, Document No. 15757637, Official Records.
6. [intentionally omitted]
7. The lien of supplemental or escaped assessments of property taxes, if any, made pursuant to the provisions of Chapter 3.5 (commencing with Section 75) or Part 2, Chapter 3, Articles 3 and 4, respectively, of the Revenue and Taxation Code of the State of California as a result of the transfer of title to the vestee named in Schedule A or as a result of changes in ownership or new construction occurring prior to Date of Policy.
8. Taxes or assessments that are not shown as existing liens by the records of any taxing authority that levies taxes or assessments on real property or by the Public Records; (b) proceedings by a public agency that may result in taxes or assessments, or notices of such proceedings, whether or not shown by the records of such agency or by the Public Records.
9. [intentionally omitted]
10. Easements, liens or encumbrances, or claims thereof, not shown by the Public Records.
11. Any encroachment, encumbrance, violation, variation or adverse circumstance affecting the Title that would be disclosed by an accurate and complete land survey of the land and not shown by the Public Records.

“Exhibit J”

12. (a) Unpatented mining claims, (b) reservations or exceptions in patents or in Acts authorizing the issuance thereof, (c) water rights, claims or title to water, whether or not the matters excepted under (a), (b) or (c) are shown by the Public Records.
13. Rights of the public to any portion of the Land lying within the area commonly known as Emado Avenue, Bailey Avenue, & Santa Teresa Boulevard.
14. Easement(s) granted to Pacific Gas and Electric Company, a California corporation recorded October 20, 1955, Book 3309, Page 438, of Official Records.
15. The fact that the ownership of said land does not include rights of access to or from the street, highway, or freeway abutting said land, except access to and from grantors remaining lands shall be limited to the nearest traffic lane of Santa Teresa Boulevard, such rights having been relinquished by the document recorded May 28, 1970, in Book 8935 at Page 492, Official Records.
16. [intentionally omitted]
17. [intentionally omitted]
18. [intentionally omitted]
19. [intentionally omitted]
20. Easement(s) granted to The City of San Jose, a Municipal Corporation recorded July 17, 1986 at Book J769, Page 615, of Official Records.
21. [intentionally omitted]
22. [intentionally omitted]
23. Easement(s) granted to The City of San Jose, a Municipal Corporation recorded October 31, 1986 at Book J904, Page 406, of Official Records.
24. Development Agreement relative to the development of property in North Coyote Valley executed by Coyote Valley Research Park, LLC, a Delaware limited liability company and the City of San Jose, A Municipal Corporation dated October 24, 2000 recorded January 18, 2001 as Instrument No. 15529779, of Official Records.
25. The terms and provisions contained in the document entitled, "Partial Assignment of Development Agreement and Master Cooperation Agreement" Recorded November 16, 2004 as Instrument No. 18101218, of Official Records.
26. The terms and provisions contained in the document entitled, "Assignment Relating to Partial Assignment of Development Agreement and Master Cooperation Agreement" Recorded July 26, 2011 as Instrument No. 21255360, of Official Records.

"Exhibit J"

27. Easement(s) granted to City of San Jose, A Municipal Corporation recorded December 5, 2002 as Instrument No. 16661027, of Official Records.
28. Easement(s) granted to City of San Jose, A Municipal Corporation recorded December 5, 2002 as Instrument No. 16661030, of Official Records.
30. [intentionally omitted]
31. [intentionally omitted]
32. [intentionally omitted]
33. Easement(s) granted to Level3 Communications, LLC recorded August 16, 2013 Recording No. 22355191, of Official Records.
34. The terms and provisions contained in the document entitled, "Partial Assignment of Development Agreement and Master Cooperation Agreement" recorded November 16, 2004, Recording No. 18101218, of Official Records.
35. Matters contained in Statement of Decision and Quiet Title Judgment recorded April 18, 2018, Instrument No. 23912562, of Official Records.
36. Rights of Lessees under that certain Grazing and Dry Land Farming Lease Agreement with AGCO Hay LLC (AGCO), dated April 18, 2016, or any superseding lease entered into with AGCO prior to Closing.
37. The terms and provisions of that certain Buyer Remediation Covenant to be recorded pursuant to the Brandenburg PSA.
38. The terms and provision contained in the Conservation Easement granted to the Santa Clara Valley Open Space Authority to be recorded pursuant to this Agreement.

"Exhibit J"

Exhibit J.2

Brandenburg West Permitted Exceptions

1. Property taxes, which are a lien not yet due and payable, including any assessments collected with taxes to be levied for the fiscal year 2019-2020.
2. The fact that said land lies within the City of San Jose Maintenance District 9 and may be subject to assessment thereunder Payable with the County Taxes or through the City's Director of Finance as disclosed by:
3. Notice of Assessment recorded December 19, 2002 as Instrument No. 16697131, of Official Records.
4. The lien of special tax assessed pursuant to Chapter 2.5 commencing with Section 53311 of the California Government Code for Community Facilities District No. 5A, as disclosed by Notice of Special tax Lien Recorded July 5, 2001, Document No. 15757636, Official Records.

Document(s) declaring modifications thereof Recorded July 31, 2001 as Instrument No. 15800018, of Official Records.
5. The lien of special tax assessed pursuant to Chapter 2.5 commencing with Section 53311 of the California Government Code for Community Facilities District No. 5B, as disclosed by Notice of Special Tax Lien Recorded July 5, 2001, Document No. 15757637, Official Records.
6. [intentionally omitted]
7. The lien of supplemental or escaped assessments of property taxes, if any, made pursuant to the provisions of Chapter 3.5 (commencing with Section 75) or Part 2, Chapter 3, Articles 3 and 4, respectively, of the Revenue and Taxation Code of the State of California as a result of the transfer of title to the vestee named in Schedule A or as a result of changes in ownership or new construction occurring prior to Date of Policy.
8. Taxes or assessments that are not shown as existing liens by the records of any taxing authority that levies taxes or assessments on real property or by the Public Records; (b) proceedings by a public agency that may result in taxes or assessments, or notices of such proceedings, whether or not shown by the records of such agency or by the Public Records.
9. [intentionally omitted]
10. Easements, liens or encumbrances, or claims thereof, not shown by the Public Records.
11. Any encroachment, encumbrance, violation, variation or adverse circumstance affecting the Title that would be disclosed by an accurate and complete land survey of the land and not shown by the Public Records.

“Exhibit J”

12. (a) Unpatented mining claims, (b) reservations or exceptions in patents or in Acts authorizing the issuance thereof, (c) water rights, claims or title to water, whether or not the matters excepted under (a), (b) or (c) are shown by the Public Records.
13. Rights of the public to any portion of the Land lying within the area commonly known as Emado Avenue, Bailey Avenue, & Santa Teresa Boulevard.
14. [intentionally omitted]
15. [intentionally omitted]
16. [intentionally omitted]
17. As to that portion of the Land described in “*Exhibit A*” to the Agreement as “Parcel Two”, the fact that the ownership of said land does not include rights of access to or from the street, highway, or freeway abutting said land, except:
 - (a) A private access opening for right turn ingress and egress only from and to Bailey Avenue, the centerline of which opening shall be located at a point on the Northwesterly boundary of Parcel "B", distant 75 feet Southwesterly along said Northwesterly boundary from the most Northerly terminus of the course N 48° 31' 18" E, 392.79 feet, shown on said Record of Survey, which opening shall be 40.00 feet in width and shall be of such additional width as necessary to accommodate the returns and tapers necessary to transition to and from said Bailey Avenue for right turns only, as may or shall be required by any duly authorized authority having jurisdiction thereof.
 - (b) A temporary private access opening for right turn ingress and egress only from and to Bailey Avenue, the centerline of which opening shall be located at a point on the Northwesterly boundary of Parcel "B", distant not greater than 550 ft. nor less than 510 ft. Southwesterly along said Northwesterly boundary from the most Northerly terminus of the course N 48° 31' 18" E, 392.79 feet, shown on said Record of Survey which opening shall be 40.00 feet in width and shall be of such additional width as necessary to accommodate the returns and tapers necessary to transition to and from said Bailey Avenue for right turns only, as may or shall be required by any duly authorized authority having jurisdiction thereof. In the event of a public road connection from Grantor's remaining property to bailey Avenue, access over and across this opening shall cease and terminate forthwith; however, Grantor's remaining property shall abut upon and have access to said public road which will be connected to Bailey Avenue.
 - (c) A private access opening for right turn ingress and egress only from and to bailey Avenue, the centerline of which opening shall be located at a point on the Southeasterly boundary of Parcel "J" (as shown on said Record of Survey) distant not more than 135 ft. nor less than 95 ft. Northeasterly from the most Southerly corner of said Parcel "J", which opening shall be 40.00 feet in width and shall be of such additional width as necessary to accommodate the returns and tapers

“Exhibit J”

necessary to transition to and from said Bailey Avenue for right turns only, as may or shall be required by any duly authorized authority having jurisdiction thereof.

Construction of necessary improvements and dedication of and required for acceleration and deceleration lanes, in connection with issuance of an encroachment permit, and incidental to and part of each private access opening shall be installed by Grantor, or its assigns, upon development of remaining property adjacent to Bailey Avenue, at no cost to County of Santa Clara, such rights having been relinquished by the document recorded August 26, 1977 as Instrument No. 5767441, in Book D102 at Page 158, Official Records.

19. Recitals as shown on that certain map recorded September 22, 1983, Book 518 of Maps, Page 20, which, among other things states:

"Parcel No. 1, 2 & 3 are subject to further Dedication & Improvement requirements under site Development Permit, P.D. Permit, Conditional Use Permit, or similar regulations & payment of applicable sanitary sewer connection fees & storm drainage fees & other applicable fees before development."
20. Easement(s) granted to The City of San Jose, a Municipal Corporation recorded July 17, 1986 at Book J769, Page 615, of Official Records.
21. Easement(s) granted to The City of San Jose, A Municipal Corporation recorded July 17, 1986 at Book J769, Page 629, of Official Records.
22. Easement(s) granted to The City of San Jose, a Municipal Corporation recorded July 17, 1986 at Book J769, Page 634, of Official Records.
23. Easement(s) granted to The City of San Jose, a Municipal Corporation recorded October 31, 1986 at Book J904, Page 406, of Official Records.
24. Development Agreement relative to the development of property in North Coyote Valley executed by Coyote Valley Research Park, LLC, a Delaware limited liability company and the City of San Jose, A Municipal Corporation dated October 24, 2000 recorded January 18, 2001 as Instrument No. 15529779, of Official Records.
25. The terms and provisions contained in the document entitled, "Partial Assignment of Development Agreement and Master Cooperation Agreement" Recorded November 16, 2004 as Instrument No. 18101218, of Official Records.
26. The terms and provisions contained in the document entitled, "Assignment Relating to Partial Assignment of Development Agreement and Master Cooperation Agreement" Recorded July 26, 2011 as Instrument No. 21255360, of Official Records.
27. Easement(s) granted to City of San Jose, A Municipal Corporation recorded December 5, 2002 as Instrument No. 16661027, of Official Records.

"Exhibit J"

28. Easement(s) granted to City of San Jose, A Municipal Corporation recorded December 5, 2002 as Instrument No. 16661030, of Official Records.
30. Easement(s) for Sanitary Sewer, Public Service and incidental purposes, and for Santa Clara Valley Water District Easement, and rights incidental thereto as delineated or as offered for dedication, on the Parcel Map Recorded October 28, 2004 in Book 777, Page 20, of Parcel Maps.
31. Recitals as shown on that certain map recorded October 28, 2004, Book 777 of Maps, Page 20, which, among other things states:
 - "1. Parcel 3 is to be granted in Fee for Fire Station Purposes to the City of San Jose by separate instrument as required by the Master Cooperation Agreement by and between the City of San Jose and Coyote Valley Research Park, LLC, dated April 19, 2001.
 2. All areas labeled "Designated Remainder" To be Dedicated to the Santa Clara Valley Water District."
32. [intentionally omitted]
33. Easement(s) granted to Level3 Communications, LLC recorded August 16, 2013 Recording No. 22355191, of Official Records.
34. The terms and provisions contained in the document entitled, "Partial Assignment of Development Agreement and Master Cooperation Agreement" recorded November 16, 2004, Recording No. 18101218, of Official Records.
35. Matters contained in Statement of Decision and Quiet Title Judgment recorded April 18, 2018, Instrument No. 23912562, of Official Records.
36. Rights of Lessees or other persons in possession under that certain Grazing and Dry Land Farming Lease Agreement with AGCO Hay LLC (AGCO), dated April 18, 2016, or any superseding lease entered into with AGCO prior to Closing.
37. The terms and provisions of that certain Buyer Remediation Covenant to be recorded pursuant to the Brandenburg PSA.
38. Matters noticed in any recorded memorandum of this Agreement, including, without limitation, the Measure T use restrictions and the right of first refusal granted to the City, as provided in this Agreement.

"Exhibit J"

Exhibit J.3

Sobrato North Permitted Exceptions

1. Property taxes, which are a lien not yet due and payable, including any assessments collected with taxes to be levied for the fiscal year 2019-2020.
2. The fact that said land lies within CFD 5A and may be subject to assessment thereunder payable with the county taxes or through the City's Director of Finance.
3. The fact that said land lies within CFD 5B and may be subject to assessment thereunder payable with the county taxes or through the City's Director of Finance.
4. The Property lies within the boundaries of that certain Mello-Roos Community Facilities District (CFD) described as "San Jose-CFD #9 Mello Roos" on the Preliminary Report and is liable for an annual special tax which is included with and payable with the general property taxes of the City of San Jose, County of Santa Clara.
5. The lien of supplemental or escaped assessments of property taxes, if any, made pursuant to the provisions of Chapter 3.5 (commencing with Section 75) or Part 2, Chapter 3, Articles 3 and 4, respectively, of the Revenue and Taxation Code of the State of California as a result of the transfer of title to Seller or as a result of changes in ownership or new construction occurring prior to Date of Policy.
6. [intentionally omitted]
7. Water rights, claims or title to water, whether or not disclosed by the public records.
8. Any adverse claim based upon the assertion that: (a) Some portion of said Land has been created by artificial means, or has accreted to such portion so created; or (b) Some portion of said Land has been brought within the boundaries thereof by an avulsive movement of a certain "Unnamed Creek's" as described on the Preliminary Report ("Unnamed Creek's") or has been formed by accretion to any such portion.
9. Rights and easements for navigation and fishery which may exist over that portion of said Land lying beneath the waters of Unnamed Creek's.
10. Any rights in favor of the public which may exist on said Land if said Land or portions thereof are or were at any time used by the public.
11. Rights of the public to any portion of the Land lying within the area commonly known as Santa Teresa Boulevard and Bailey Avenue.
12. The ownership of said Land does not include rights of access to or from the street, highway, or freeway abutting said Land, such rights having been relinquished by the document recorded on August 8, 1972 on Book 9961, Page 529 of Official Records.

"Exhibit J"

13. Easement(s) granted to the City of San Jose recorded on July 17, 1986 in Book J769, Page 615 of Official Records.
14. Easement(s) granted to the City of San Jose recorded on July 17, 1986 in Book J769, Page 629 of Official Records.
15. That certain Development Agreement between Coyote Valley Research Park, LLC, a Delaware limited liability company and the City of San Jose recorded January 18, 2001 as Instrument No. 15529779 of Official Records
16. Partial Assignment of Development Agreement and Master Cooperation Agreement recorded November 16, 2004 as Instrument No. 18101218 of Official Records.
 - a) The terms and provisions contained in the document entitled Assignment Relating to Partial Assignment of Development Agreement and Master Cooperation Agreement recorded July 26, 2011 as Instrument No. 21255360 of Official Records.
 - b) The terms and provisions contained in the document entitled Assignment Relating to Partial Assignment of Development Agreement and Master Cooperation Agreement, recorded June 12, 2012 as Instrument No. 21704891 of Official Records.
17. Easement(s) delineated as offered for dedication on that certain parcel map filed for record in Book 777 of Maps at Pages 20 through 22 of the Official Records.
18. [intentionally omitted]
19. Any encroachment, encumbrance, violation, variation or adverse circumstance affecting the Title that would be disclosed by an accurate and complete land survey of the Land and not shown by the Official Records.
20. [intentionally omitted]
21. [intentionally omitted]
22. The terms and provisions of that certain Buyer Remediation Covenant to be recorded pursuant to the Sobrato North PSA.

“Exhibit J”

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Exhibit J.4

Fisher Flats Permitted Exceptions

1. [intentionally omitted]
2. [intentionally omitted]
3. [intentionally omitted]
4. Water rights, claims or title to water, whether or not disclosed by the public records.
5. (a) Taxes or assessments that are not shown as existing liens by the records of any taxing authority that levies taxes or assessments on real property or by the Public Records; (b) proceedings by a public agency that may result in taxes or assessments, or notices of such proceedings, whether or not shown by the records of such agency or by the Public Records.
6. [intentionally omitted]
7. Easements, liens or encumbrances, or claims thereof, not shown by the Public Records.
8. Any encroachment, encumbrance, violation, variation or adverse circumstance affecting the Title that would be disclosed by an accurate and complete land survey of the land and not shown by the Public Records.
9. (a) Unpatented mining claims; (b) reservations or exceptions in patents or in Acts authorizing the issuance thereof; (c) water rights, claims or title to water, whether or not the matters excepted under (a), (b) or (c) are shown by the Public Records.
10. [intentionally omitted]
11. [intentionally omitted]
12. Rights of the public to any portion of the Land lying within the area commonly known as Blanchard Road.
13. Easement(s) for the purpose(s) shown below and rights incidental thereto as delineated or as offered for dedication, on the map of said tract/plat;

Purpose: Road
Affects: As shown on map
Recording: Book P, Page 30, of Maps
14. Matters contained in that certain document

Entitled: Grant Deed
Dated: July 23, 1895

“Exhibit J”

Executed by: Fiacro Fisher and Citizens Water Company
Recording Date: July 26, 1895
Recording No: Book 181, Page 599, of Deeds

15. Matters contained in that certain document

Entitled: Grant Deed
Dated: March 11, 1902
Executed by: Fiacro Fisher and E.G. Wheeler
Recording Date: January 16, 1903
Recording No: Book 264, Page 5, of Deeds

16. Matters contained in that certain document

Entitled: Easement Deed
Dated: September 7, 2001
Executed by: Metcalf Energy Center, LLC, a Delaware limited liability company and Carmen Patane, Trustee of the Carmen Patane Revocable Trust dated April 8, 1997
Recording Date: September 11, 2001
Recording No: 15862549, of Official Records

17. Easement(s) for the purpose(s) shown below and rights incidental thereto, as granted in a document:

Granted to: Metcalf Energy Center, LLC, a Delaware limited liability company
Purpose: A permanent construction for paved road and related road improvements
Recording Date: September 11, 2011
Recording No: 15862550, of Official Records

18. Easement(s) for the purpose(s) shown below and rights incidental thereto, as granted in a document:

Granted to: Metcalf Energy Center, LLC, a Delaware limited liability company
Purpose: Water pipelines and facilities and ingress and egress
Recording Date: June 11, 2002
Recording No: 16308398, of Official Records

19. Matters contained in that certain document

Entitled: Easement Deed
Dated: Not Shown
Executed by: Donald a. Wells, Sr., individually and doing business as W/L properties, and as general partner of WL Properties, a general partnership
Recording Date: December 23, 2002
Recording No: 16704658, of Official Records

“Exhibit J”

20. Easement(s) for the purpose(s) shown below and rights incidental thereto, as granted in a document:

Granted to: Metcalf Energy Center, LLC, a Delaware limited liability company

Purpose: Roadway and utility

Recording Date: December 23, 2002

Recording No: 16704658, of Official Records

21. [intentionally omitted]

22. Easement(s) for the purpose(s) shown below and rights incidental thereto, as granted in a document:

Granted to: Qwest Communications Company, LLC, et al

Purpose: Permanent telecommunications

Recording Date: August 16, 2013

Recording No: 22355191, of Official Records

23. [intentionally omitted]

24. Discrepancies, conflicts in boundary lines, shortage in area, encroachments, or any other matters which a correct survey would disclose and which are not shown by the public records.

25. The terms and provision contained in the Conservation Easement granted to the Santa Clara Valley Open Space Authority to be recorded pursuant to this Agreement.

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Exhibit K

**Form of Brandenburg West and Sobrato North
Quitclaim Deed (City to POST)**

RECORDING REQUESTED BY, AND
WHEN RECORDED MAIL TO AND MAIL
TAX STATEMENTS TO:

Peninsula Open Space Trust
222 High Street
Palo Alto, CA 94301
Attn: Director of Transactions

APN: Portion of _____, and all of 708-
30-014 and 015

(Space above for Recorder's use only)

This document is exempt from the payment of a recording fee pursuant to Government Code §6103.

City Documentary Transfer Tax: \$0.00; County Documentary Transfer Tax: \$0.00.

Transfer for no consideration (California R&T Code 11911; San Jose Muni Code 4.58.100).

Property is in the City of San Jose, County of Santa Clara.

QUITCLAIM DEED

The CITY OF SAN JOSE, a municipal corporation ("**Grantor**"), hereby quitclaims to the PENINSULA OPEN SPACE TRUST, a California non-profit public benefit corporation, without representation or warranty, express or implied, all of its right, title and interest (if any) in, under and to that certain land located in the City of San Jose, County of Santa Clara, State of California, more particularly described on Exhibit "A" attached hereto and incorporated herein by this reference and all improvements thereon;

IN WITNESS WHEREOF, the Grantor has executed this Quitclaim Deed as of the date set forth below.

GRANTOR:

CITY OF SAN JOSE,
a municipal corporation

By: _____

"Exhibit K"

CALIFORNIA ALL PURPOSE ACKNOWLEDGEMENT

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

STATE OF CALIFORNIA

COUNTY OF LOS ANGELES

On _____ before me, _____ Notary Public, personally appeared _____, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity, and that by his/her/their signature(s) on the instrument the person(s), or the entity(ies) 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.

Place Notary Seal Above

Signature of Notary Public

EXHIBIT 'A' TO QUITCLAIM DEED

[Insert Legal Descriptions for Brandenburg West and Sobrato North]

“Exhibit K”

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Exhibit L

Form of Conservation Easement

RECORDED AT THE REQUEST
OF, AND WHEN RECORDED
RETURN TO:

Santa Clara Valley Open Space Authority
33 Las Colinas Lane
San José, CA 95119

WITH A COPY TO:

City of San José
200 East Santa Clara Street
San José, CA 95113-1905
Attn: _____

GRANT OF CONSERVATION EASEMENT

Coyote Valley Property

THIS GRANT OF CONSERVATION EASEMENT (“**Conservation Easement**”) dated as of _____ 2019 (the “**Easement Date**”), is by and between the CITY OF SAN JOSE, a California municipal corporation (“**Owner**”) and the SANTA CLARA VALLEY OPEN SPACE AUTHORITY, a California independent special district (“**Holder**”) (each of Owner and Holder also referred to singularly as a “**Party**” and collectively as the “**Parties**”), with reference to the following facts and circumstances:

RECITALS

- A. Owner is the sole owner in fee simple of the real property described on Exhibit “A” and shown on Exhibit “B.” which is located in San José, California, and which is subject to the terms of this Conservation Easement (the “**Conservation Property**”).
- B. Holder is a public, independent special district authorized to acquire, accept, and hold title to interests in real property, including conservation easements, pursuant to California Public Resources Code section 35152 and California Civil Code sections 815 and 816. Holder preserves open space, natural resources, watersheds, wildlife habitat, and farmland throughout Santa Clara County.
- C. The Conservation Property possesses significant natural resources and conservation values (collectively, the “**Conservation Values**”) of great importance to the Parties and

“Exhibit L”

Third Party Beneficiary, the people of Santa Clara County and the people of the State of California. all of which provide resilience to a changing climate. In particular, the Conservation Values include:

1. Primary Conservation Values

- a. Wildlife Habitat and Connectivity. The Conservation Property consists predominantly of regionally rare undeveloped valley floor habitat that can support important grasslands, valley oak savanna, oak woodlands, riparian forest, and wetlands. Located at the valley narrows, it connects over one million acres of habitat in the Santa Cruz Mountains and the Diablo Range. The loss to development of the landscape connectivity on the Conservation Property would further isolate wildlife populations in the Santa Cruz Mountains and the Diablo Range resulting in the loss of genetic diversity and reducing the ability of wild plant and animal populations to adapt to climate change, which would result in the decline or loss of species populations. As shown by the studies in the Baseline Documentation, preserving and enhancing the Conservation Property is essential for establishing a landscape linkage that connects species and habitat between the Santa Cruz and Diablo Mountain ranges. Preserving and enhancing the Conservation Property is also essential to maintaining biodiversity and the health of wildlife (plant and animal populations) in the region. Wildlife species that are located on or traverse over the Conservation Property include, but are not limited to, mountain lion, bobcat, coyote, deer, raptors, and migratory birds. The Conservation Property provides connectivity and habitat, or potential habitat, for rare, threatened and endangered species including, but not limited to, tricolored blackbirds, burrowing owls, Swainson’s hawk, western pond turtle, California red-legged frog, California tiger salamander, badger, golden eagle, and bay checkerspot butterfly. The Conservation Property is located within the Coyote Creek watershed, and its protection and management as open space will maintain water quality, provide climate resilience, protect groundwater dependent ecosystems, and support favorable habitat conditions in the waterways to benefit wildlife, including, but not limited to, local populations of steelhead trout.

- b. Water Resources. Located in the Lower Coyote Creek Watershed, the Conservation Property encompasses a flood prone area and groundwater basin upstream from the City of San José (“City”) and the San Francisco Bay. This flood prone area is a part of the larger Fisher Creek floodplain and historic Laguna Seca Wetland complex that spread and capture floodwater, thereby reducing flooding in downstream areas along Coyote Creek, and supporting riparian areas and wetlands in Coyote Valley. The Conservation Property overlies a portion of the Santa Clara Plain Groundwater Basin, where soil conditions allow for infiltration and percolation of rainfall and runoff into the groundwater table, which can support shallow groundwater conditions and baseflows into Fisher Creek.

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Protecting the Conservation Property from development maintains its natural flood control function, protects groundwater and surface water quality, provides climate resilience, and supports Groundwater Sustainability (as defined below). Enhancement activities within the Conservation Property could improve water resource quality and support the restoration and expansion of historic groundwater dependent ecosystems in and around the Laguna Seca Wetland Complex, while also buffering surface water and groundwater supplies from contamination.

2. Secondary Conservation Values

- a. Scenic Resources. Located in the pastoral Coyote Valley, the Conservation Property is part of a larger complex of undeveloped open space and agricultural lands that provide an exceptional scenic buffer between the cities of San José and Morgan Hill. The Conservation Property is adjacent to several scenic properties, and is highly visible from scenic routes such as Highway 101, Santa Teresa Boulevard, Monterey Road, and Metcalf Road. The Conservation Property itself is picturesque and provides expansive views across its open landscape to the nearby foothills of the Santa Cruz Mountains and the Diablo Range. Tulare Hill is just to the north of the property and its steep, rock outcrop covered slopes provide a dramatic backdrop. The property also provides unobstructed views to notable landmarks and peaks including Loma Prieta, Mount Umunhum, and El Toro Peak.
- b. Low Intensity/Passive Recreation and Environmental Education Values. The Conservation Property provides the opportunity to create an unparalleled natural urban greenbelt that will provide access to open space and trails, improving quality of life and benefiting public health. The Conservation Property is located just to the west of the Coyote Creek Parkway and Coyote Ridge Open Space Preserve. Its protection helps close a gap in the system of local parks and open space preserves and will facilitate local and regional trail connections. The Conservation Property will connect with the de Anza Historic Trail to the Coyote Creek Parkway and other trails, including the Bay Area Ridge Trail. The Conservation Property provides opportunities for Environmental Education to interpret Coyote Valley's myriad conservation values and the importance of protection of this landscape through activities such as docent-led tours, interpretive signs, and educational events.
- c. Agricultural Resources. The Conservation Property has over 178.5 acres of land classified as Prime Farmland and 130.2 acres of land classified as Farmland of Local Importance as designated by the State Department of Conservation in 2016. The Conservation Property is an important agricultural resource. Livestock operations were present on the Conservation Property in the 1800's. The Conservation Property has supported on-going agricultural operations since the early 1900's, and

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once supported orchards that were widespread throughout the Santa Clara Valley at a time when it was known as the Valley of Heart's Delight.

- d. Cultural Resources. Coyote Valley was inhabited by the Ohlone people and is considered an important cultural landscape by the Muwekma and Amah Mutsun Tribal Bands. Prior to Spanish settlement, the San Juan Batista de Anza Expedition traveled through Coyote Valley in 1775-76. Coyote Valley is included within the Juan Bautista de Anza National Historic Trail corridor, and the portion of Santa Teresa Blvd immediately adjacent to the property has been designated as a certified segment of this National Historic Trail.
- D. The Peninsula Open Space Trust ("**POST**") has an option to purchase property directly adjacent to the Conservation Property (the "**Weyhe Property**"), which is shown in Exhibit "B". If POST acquires the Weyhe Property and conveys all or any portion of the Weyhe Property to City, the Parties intend to include any portion of the Weyhe Property conveyed to the City as part of the property protected by this Conservation Easement, as further provided in Section 13 below.
- E. POST, a California nonprofit, public benefit corporation, is a third party beneficiary of this Conservation Easement, as described in Section 20 below, and has certain rights under this Conservation Easement as provided further below.
- F. As of the Easement Date, Owner and Holder have approved in writing the report and other materials referred to in this paragraph (the "**Baseline Documentation**"), to be kept on file at the principal office of Holder with a copy in the records of the City maintained by the City Clerk. The specific Conservation Values of the Conservation Property have been documented in this Baseline Documentation along with an inventory of relevant features, conditions, natural resources, water rights, and structures and Improvements (as defined below) on the Conservation Property. The Baseline Documentation consists of reports, maps, photographs and other documentation that collectively provides an accurate representation of the Conservation Property at the time of the Easement Date and is intended to serve as an objective, though not exclusive, basis for monitoring compliance with the terms of this Conservation Easement. A signed acknowledgment and certification by the Parties of the condition of the Conservation Property as set forth in the Baseline Documentation is attached hereto as Exhibit "C".
- G. As owner of the fee interest in the Conservation Property, Owner intends to convey a conservation easement to Holder over the Conservation Property including the right to preserve and protect in perpetuity the Conservation Values of the Conservation Property, and to afford the public certain access rights to the Conservation Property for passive recreational purposes, subject to the restrictions contained within this Conservation Easement. The Parties and Third Party Beneficiary desire that the Conservation Property be used and managed in a manner compatible with the Conservation Values of the Conservation Property. Any activities, uses, or Improvement in furtherance of the Secondary Conservation Values may occur only if not inconsistent with the protection and enhancement of the Primary Conservation Values.

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- H. The City purchased the Conservation Property with funds from the 2018 Measure T— Disaster Preparedness, Public Safety, and Infrastructure Bond. In furtherance of the purpose and language of Measure T, the Conservation Easement will help provide natural flood control and prevent water quality contamination by preserving open space and protecting the floodplain and groundwater sub-basin.
- I. Protection of the Conservation Property will significantly reduce the vehicle miles travelled from those that would have occurred with the campus industrial land uses previously envisioned for the Conservation Property.
- J. Protection of the Conservation Property provides resilience in a changing climate by connecting habitats to allow for shifts in response to climate change, buffering floods from storms that occur with increasing severity and frequency, sequestering carbon from the atmosphere, and avoiding emissions by preventing large scale development on the Conservation Property.
- K. Owner and Holder intend to preserve, protect, and enhance in perpetuity the Conservation Values of the Conservation Property for the benefit of this generation and generations to come. The Parties intend for this Conservation Easement to confine the use of the Conservation Property to uses and activities that are consistent with the terms of this Conservation Easement, including the Purposes of this Conservation Easement (as defined and described below), and will prohibit and prevent any use of the Conservation Property that will impair or interfere with the Conservation Values of the Conservation Property.

AGREEMENT

NOW THEREFORE, in consideration of the above and for valuable consideration, including the mutual covenants, terms, conditions and restrictions contained within this Conservation Easement, and pursuant to the laws of the State of California (in particular, sections 815 through 816 of the California Civil Code and section 35152 of the California Public Resources Code), Owner hereby grants to Holder, and Holder hereby accepts, this Conservation Easement in perpetuity over the Conservation Property, as follows:

- 1. **Definitions.** In addition to the capitalized terms defined anywhere else in this Conservation Easement, the following terms will have the following meanings:
 - a. “**Agricultural Uses**” are defined as the following (subject to the other terms of this Conservation Easement): breeding, raising, pasturing, and grazing livestock of every nature and description for the production of food and fiber; breeding and raising bees, fish, poultry, and other fowl; planting, raising, harvesting, and producing agricultural, horticultural, and forestry crops and products of every nature and description; agricultural accessory uses and agricultural operations, including but not limited to storage, repair and maintenance of agricultural equipment, and the processing, and storage of crops and products harvested and produced solely on the Conservation Property, and the sale (including direct retail

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sale to the public) of crops and products harvested and produced primarily on the Conservation Property.

- b. **“Development Rights”** are rights provided through and administered by the land use policies and regulations of the City including any “density credits,” “development credits,” or other rights that permit residential, agricultural, commercial, industrial or other development of land.
- c. **“Educational Activities”** are defined as those educational activities that provide interpretation of the Conservation Values on the property to the public without being inconsistent with the protection and enhancement of the Primary Conservation Values, including, but not limited to, docent-led tours, interpretive signs, and educational events.
- d. **“Emergency Water Condition”** exists if temporary use of groundwater from the Conservation Property is needed to: (a) suppress fires that pose an imminent threat to health, safety, or property; or (b) (i) address an extreme public health and safety crisis resulting from extreme drought conditions in San José, California, including but not limited to providing drinking water to San José residents for the duration of the emergency, after Owner has implemented mandatory water rationing and prohibited the use of water for: ornamental irrigation or landscaping (including lawns); vehicle washing; outdoor water features (such as drinking fountains, ponds and other aesthetic structures); and washing down driveways, sidewalks, construction sites, and parking areas; and (ii) the City Council has adopted a resolution proclaiming the existence of a local water emergency.
- e. **“Existing City Easement”** is the Partnership Easement Deed for water infrastructure granted to the City by Santa Teresa Associates recorded in the Official Records of Santa Clara County on July 17, 1986 as Document No. 8863594.
- f. **“Existing City Wells”** are the three (3) City wells on the Conservation Property as of the Easement Date as identified in the Baseline Documentation.
- g. **“Existing Contract”** means a contract that permits the use by a third party of the Conservation Property, or a portion thereof (including, but not limited to, a lease or an easement) entered into prior to the Easement Date, including any required extension.
- h. **“Existing Easement Area”** is the portion of the Conservation Property subject to and described in the Existing City Easement.
- i. **“Existing Improvements”** means those Improvements that exist on the Conservation Property as of the Easement Date, as described in the Baseline Documentation.

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- j. **“Existing Service Area”** is the area in Coyote Valley to which City provides water service as of the Easement Date as identified in the Baseline Documentation.
- k. **“Future Owner Wells”** are any wells constructed on the Conservation Property by Owner after the Easement Date pursuant to Section 6.b.i.2, below.
- l. **“Groundwater Sustainability”** means the management and use of groundwater in a manner that can be maintained without Material Negative Impact on Groundwater Sustainability (defined below).
- m. **“Holder’s Approval”** means that whenever Holder’s approval is required in accordance with this Conservation Easement, Holder (through its General Manager or any other authorized representative identified in a written notice from Holder to Owner) shall use its reasonable efforts to grant or withhold its approval in writing by written notice to Owner within sixty (60) days after receipt of written notice requesting approval of the action. Holder’s decision on a written notice requesting Holder’s Approval shall be at the reasonable discretion of Holder, and Holder’s Approval may be withheld upon a reasonable determination by Holder that the allowing the request to proceed would be inconsistent with the terms of this Conservation Easement; (including the Purposes of this Conservation Easement, described below), and Holder’s Approval may be subject to reasonable conditions to ensure consistency with this Conservation Easement; however, before withholding approval or imposing conditions, Holder will first meet with Owner and discuss potential modifications to the request that would ensure consistency with the terms and Purposes of the Conservation Easement. Holder’s Approval of a particular action shall not be construed as an approval of the same or similar future activities, or as a waiver of the requirement to obtain Holder’s Approval in the future. Holder and Owner acknowledge that, in view of the perpetual nature of this Conservation Easement, they are unable to foresee all potential future actions affecting the Purposes of this Conservation Easement. Holder therefore may, at its sole discretion, approve (or disapprove) an action not expressly contemplated by or addressed in this Conservation Easement, provided that such action is consistent (or inconsistent, in the case of disapproval) with the Purposes and other terms of this Conservation Easement.
- n. **“Improvements”** refers to all buildings, structures, facilities and other physical improvements, whether temporary or permanent, located on, above or under the Conservation Property.
- o. **“Interim Maintenance and Operations Plan”** is a document that has been agreed to by the Parties that identifies the activities, uses and Improvements needed for the management and maintenance of the Conservation Property until a Management Plan is approved as provided in Section 3.b below. The Interim Maintenance and Operations Plan generally allows for maintenance and operation of the Conservation Property, including the Conservation Values, in its current condition.

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- p. **“Low Intensity Passive Recreation”** refers to recreational activities such as hiking, biking, and equestrian activities on designated trails or within designated areas, and other recreational activities that minimally impact the Conservation Property. Low Intensity Passive Recreation does not include activities otherwise prohibited herein or that would be inconsistent with the protection and enhancement of the Primary Conservation Values.
- q. **“Management Plan”** is a document approved by the Parties as further described in Section 3.b below that identifies the specific uses, activities, and Improvements that may occur on the Conservation Property consistent with the Purposes and other terms of this Conservation Easement.
- r. **“Material Negative Impact on Groundwater Sustainability”** or **“Material Negative Impact”** occurs when any of the following occurs, as determined pursuant to Section 6.f below:
- i. A more than insignificant lowering of groundwater levels indicating a more than insignificant depletion of supply;
 - ii. A more than insignificant reduction of groundwater storage;
 - iii. A more than insignificant reduction in elevation of groundwater at wells on adjacent properties;
 - iv. A more than insignificant degradation of water quality due to pumping, including the migration of contaminant plumes that impair water supplies;
 - v. More than insignificant land subsidence;
 - vi. A more than insignificant reduction in base flows of Coyote Creek or Fisher Creek;
 - vii. A more than insignificant dewatering of wetlands and springs; and
 - viii. A more than insignificant loss or prolonged stress to groundwater dependent vegetation on and around the Conservation Property, based on designated monitoring locations identified by the Water Impact Assessment Process.
- s. **“Municipal Water System”** refers to Owner’s existing water supply facilities and infrastructure as identified in the Baseline Documentation, and any future water supply facilities and infrastructure permitted under this Conservation Easement.
- t. **“New Contract”** means a contract or any non-mandatory extension of an Existing Contract that permits the use of the Conservation Property, or a portion thereof, including, but not limited to, a lease or an easement, entered into after the Easement Date.

- u. **“Other Wells”** are any existing or future wells on the Conservation Property, other than the Existing City Wells or Future Owner Wells.
- v. **“Owner”** shall mean the City of San José, or its permitted successors-in-interest, as applicable, whose representative for purposes of this Conservation Easement shall be _____ (unless changed by written notice from Owner).
- w. **“Primary Conservation Values”** refers to the Conservation Values identified in Recital C.1. above.
- x. **“Public Access”** means authorized access to the Conservation Property by any person who is not (i) an agent or employee of Owner, Holder, or Third Party Beneficiary; (ii) an employee of any governmental agency while engaged in the conduct of their official duties for such governmental agency; (iii) a tenant, occupant or easement holder that has an Existing Contract or New Contract; (iv) a licensee or invitee of Owner, Holder or Third Party Beneficiary.
- y. **“Resource Professional”** is an appropriate experienced resource management professional approved by Holder, and where indicated herein, by Third Party Beneficiary, both exercising reasonable discretion.
- z. **“Secondary Conservation Values”** refers to those Conservation Values identified in Recital C.2. above.
- aa. **“SGMA”** refers to The Sustainable Groundwater Management Act of 2014.
- bb. **“Solar Energy System”** means (i) any solar collector or other solar energy device whose primary purpose is to provide for the collection, storage and distribution of solar energy for space heating, space cooling, generation of electricity or water heating for use primarily on the Conservation Property, or (ii) any structural or other design feature of a building whose primary purpose is to provide for any of the foregoing.
- cc. **“Third Party Beneficiary Approval”** means that whenever the Third Party Beneficiary’s approval is required in accordance with this Conservation Easement, Third Party Beneficiary shall use its reasonable efforts to grant or withhold its approval within sixty (60) days after receipt of the request for approval. Third Party Beneficiary’s approval may be withheld only if it reasonably determines that allowing the request to proceed would be inconsistent with the terms of this Conservation Easement (including the Purposes of this Conservation Easement, described below).
- dd. **“Water Expert”** refers to a hydrologist or other expert with expertise in assessing impacts to Groundwater Sustainability from use of groundwater, including impacts to creek baseflows and groundwater dependent ecosystems, such as existing and future wetlands and riparian areas.
- ee. **“Water Rights”** include all of Owner’s right, title, and interest in and to the
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reasonable and beneficial uses of water and water rights part and parcel and/or appurtenant to the Conservation Property or otherwise described in the Baseline Documentation, including, but not limited to, (i) riparian, pre-1914 or permitted or licensed appropriative, prescriptive, or contract surface water rights; and (ii) overlying, appropriative, prescriptive, or contract groundwater rights.

2. **Purposes.** The primary purposes of this Conservation Easement are to preserve, protect, and enhance in perpetuity the Conservation Values of the Conservation Property, including by preventing uses of or activities on the Conservation Property that will impair or interfere with the Conservation Values of the Conservation Property. Any activities, uses, or Improvement in furtherance of the Secondary Conservation Values may occur only if not inconsistent with the protection and enhancement of the Primary Conservation Values. Protection and enhancement of the Primary Conservation Values may impair or interfere with the Secondary Conservation Values. All of the foregoing purposes described in this paragraph are referred to collectively as the “**Purposes**” of this Conservation Easement. Accordingly, this Conservation Easement restricts the use of the Conservation Property to uses and activities that are consistent with the Purposes and other terms of this Conservation Easement.

3. **Maintenance and Management Plans.**

a. **Interim Maintenance and Operations Plan.** The Interim Maintenance and Operations Plan shall be kept on file with the Baseline Documentation at the office of Holder and shall remain in effect until a Management Plan is adopted for the Conservation Property. The Interim Maintenance and Operations Plan may be amended as needed in consultation with Owner and Third Party Beneficiary. All amendments to the Interim Maintenance and Operations Plan must be approved by Owner, Holder, and Third Party Beneficiary. For as long as Owner is the City of San José, approval of any amendments to the Interim Maintenance and Operations Plan by Owner will require approval by the San José City Council or its staff designee.

b. **Management Plan.** The Parties intend to prepare a Management Plan to implement appropriate and desired uses, enhancements, activities, and improvements on the Conservation Property, consistent with the Conservation Easement.

i. As soon as reasonably practical, Holder, Owner, and Third Party Beneficiary shall meet and confer to establish the process and timeline for the preparation of a Management Plan for the Conservation Property. Holder shall be responsible for initiating and leading preparation of the Management Plan in close coordination with Owner and Third Party Beneficiary. The process agreed to by the Holder, Owner and Third Party Beneficiary shall include: (1) regular meetings so that Owner and Third Party Beneficiary can provide their input at key junctures throughout the planning process, and (2) engagement with local and regional stakeholders, neighbors, experts, and the public at large. The Parties shall

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be subject to the Interim Maintenance and Operations Plan until such time as the Management Plan (or portion thereof) is approved by Holder, Owner, and Third Party Beneficiary. For as long as Owner is the City of San José, approval of the Management Plan by Owner will require approval by the San José City Council or its staff designee. Once approved by the Parties and Third Party Beneficiary, the Management Plan shall replace the Interim Maintenance and Operations Plan. The Management Plan shall be kept on file with the Baseline Documentation at the office of Holder and Owner.

- ii. The Management Plan will, among other things: (1) Identify different areas on the Conservation Property for different uses, types, and extent of Improvements, such as agricultural, riparian, restoration, Passive Low Intensity Recreation, Educational Activities, and parking and other built infrastructure (“**Designated Areas**”); (2) identify uses, activities, and Improvements permitted to occur within each Designated Area, such as natural flood control Improvements, natural resource and ecological restoration and/or enhancement activities, natural resource research, wildlife connectivity enhancement, cultural resource management, grazing and other Agricultural Uses, Low Intensity Passive Recreation activities, Public Access, and facilities for use by the public; (3) identify the maximum amount of impermeable surfaces permitted on the Conservation Property; and (4) identify building envelopes within the Designated Areas within which Improvements will be placed.
- iii. Uses, activities and Improvements identified in the Management Plan must be consistent with the Purposes of this Conservation Easement.
- iv. Holder and Owner shall review the existing Management Plan annually and determine if an update is needed. If Holder or Owner determines an update is needed, the requesting party shall prepare and propose an amendment and submit it to the Owner or Holder, as applicable, and Third Party Beneficiary for approval. All amendments to the Management Plan must be approved by Owner, Holder, and Third Party Beneficiary. For as long as Owner is the City of San José, approval of any amendments to the Management Plan by Owner will require approval by the San José City Council or its staff designee. The Parties shall be subject to the previously approved Management Plan until such time as the amendment of the Management Plan is approved by Holder, Owner, and Third Party Beneficiary.

4. **Rights of Holder.** To accomplish the purposes of this Easement, Owner conveys to Holder the right (subject to all laws and permitting requirements applicable to Holder):

- a. **Preservation, Protection and Enhancement.** To preserve, protect, restore, and enhance the Conservation Values, and undertake the uses, activities, and

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Improvements identified in the Interim Maintenance and Operations Plan or Management Plan, including, but not limited to:

- i. Natural resource protection and habitat restoration and enhancement, including Improvements to facilitate the movement of wildlife to and through the Conservation Property
 - ii. Natural flood management Improvements and uses
 - iii. Agricultural Uses and Improvements for Agricultural Uses
 - iv. Improvements for Public Access, Low Intensity Passive Recreation, and Educational Uses
 - v. Repair, maintenance, removal, and abandonment of Existing Improvements on the Property (excluding the Municipal Water System)
 - vi. Irrigation facility Improvements
 - vii. Fencing and gate Improvements
 - viii. Maintenance and improvement of existing roads not within public rights of way over the Conservation Property
 - ix. Fire management activities as needed to protect the Conservation Values
 - x. Native and non-native plant and animal removal as needed to protect Conservation Values
 - xi. New utilities and renewable energy to serve the Property
- b. Access. To access and use any roads on the Conservation Property as needed to implement the Interim Maintenance and Operations Plan or Management Plan, or to monitor compliance with the Conservation Easement.
- c. Public Use. To allow and restrict Public Access to the Conservation Property and use of Improvements for Low Intensity Passive Recreation and Educational Activities in a manner that avoids or minimizes impacts to the Primary Conservation Values.
- d. Existing Uses. To continue, or allow to be continued, the existing uses and Existing Improvements described in the Baseline Documentation, unless the Interim Maintenance and Operations Plan or Management Plan provides for the termination of such use or demolition of such Existing Improvement.
- e. Monitoring. To enter upon the Conservation Property in order to monitor compliance with the terms of this Conservation Easement and to enforce such terms.

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- f. Compliance. If Holder reasonably suspects a potential or actual violation of the terms of this Conservation Easement, to enter upon the Conservation Property at any time in order to assess and monitor such potential violation.
 - g. Enforcement. To prevent any activity on or use of the Conservation Property that is inconsistent with the terms of this Conservation Easement (including the Purposes described above), including by pursuing any of Holder’s available rights and remedies in accordance with Section 10.c hereof, and by requiring the restoration of such areas or features of the Conservation Property that have been damaged by any violative activity, use, or Improvement.
 - h. Signage. To erect and maintain signage or other appropriate markers that (i) acknowledge funders and parties responsible for protection of the Conservation Property; (ii) provide directional information for the public; (iii) provide information about the Conservation Values, the Conservation Property, or the transaction that resulted in this Conservation Easement; or (iv) are otherwise specified in the Interim Maintenance and Operations Plan or Management Plan.
 - i. Water. To use all existing Water Rights not otherwise used by City or a subsequent service provider for the Municipal Water System.
5. **Owner’s Reserved Rights.** Owner reserves unto itself and to its successors and assigns the right to engage in the following rights relating to the Conservation Property:
- a. Access. To access the Conservation Property to: (i) implement any of the reserved rights in this Section; (ii) fulfill any of Owner’s obligations in this Conservation Easement; (iii) lead tours or conduct other public relations activities with at least seven (7) days’ prior written notice to Holder and provided such activities do not interfere with Holder’s use or management of the Conservation Property; (iv) use and maintain the Municipal Water System as provided in Section 6, below; (v) or as otherwise provided in the Interim Maintenance and Operations Plan or Management Plan. Owner shall provide prior written notice to Holder, as further provided in this Conservation Easement or the Management Plan, of any construction activities or other activities that will involve grading, excavation, or removal of topsoil, earth, or rock.
 - b. Existing Improvements. With regard to the Existing Improvements on the Conservation Property, Owner may:
 - i. Use and maintain the existing pumphouses and wells, and remove, fill in, close or destroy any of them.
 - ii. Use, maintain, or remove (but not expand or replace) Existing Improvements except as provided in the Management Plan.
 - iii. Use, operate, maintain, repair, remove, and replace in the same location and form any portions of the Municipal Water System.

- iv. Use, operate, maintain, repair, remove, and replace in the same location and form any existing sanitary sewer infrastructure or stormwater infrastructure, including all outfalls, laterals and other appurtenances.
- v. Use, operate, maintain, repair, replace, and remove any existing sidewalk, trees, or other Improvements within the public right of way.
- c. Existing Uses. To continue, or allow to be continued, the existing uses described in the Baseline Documentation or Interim Maintenance and Operations Plan, unless a subsequently adopted Management Plan provides for termination of such use.
- d. Trespassers and Illegal Dumping. To take action to prevent and remove trespassers, encampments, and illegal dumping on the Conservation Property as provided in Section 11.e, below.
- e. Required Actions. To undertake those uses, activities, and Improvements required in this Conservation Easement or identified as Owner’s responsibility in the Management Plan.
- f. Water Rights. To hold and reasonably and beneficially use all water and Water Rights attributable to the Conservation Property for the Municipal Water System or for the benefit of the Conservation Property or Conservation Values as provided in Section 6, below.
- g. Habitat Enhancement and Mitigation or Conservation Banking. In collaboration with Holder, to undertake and allow activities to preserve, enhance, and create natural habitat or wetland resources on the Conservation Property; to grant mitigation credit for such activities; and to establish one or more mitigation or conservation banks pursuant to State or federal law, which banks include some or all of the Conservation Property, all as provided in the Management Plan.

6. **Use of Groundwater from the Conservation Property.**

- a. Background.
 - i. The Parties and Third Party Beneficiary seek to ensure that use of water from the Conservation Property is consistent with SGMA, Measure T, and the Conservation Easement. In addition, City seeks to continue to be able to provide groundwater from the Conservation Property to existing and future customers and potentially sell or lease its water rights and infrastructure. The Parties and Third Party Beneficiary seek to prevent having the pumping and use of groundwater from the Conservation Property negatively impact creek baseflows or groundwater dependent ecosystems, such as existing and future wetlands and riparian areas.
 - ii. The Conservation Property overlies the Santa Clara Subbasin, a high priority basin managed by the Santa Clara Valley Water District

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(SCVWD). SGMA requires local agencies to develop and implement plans to sustainably manage high priority groundwater basins, such as the Santa Clara Subbasin. Under SGMA, sustainable groundwater management means the management and use of groundwater in a manner that can be maintained during the planning and implementation horizon without causing undesirable results, such as: (a) the chronic lowering of groundwater levels; (b) depletions of interconnected surface water that have significant and unreasonable adverse impacts on beneficial uses of the surface water, such as groundwater dependent ecosystems; and (c) significant and unreasonable: (1) reduction of groundwater storage, (2) seawater intrusion, (3) degraded water quality, or (4) land subsidence. (Water Code §§ 10721(v) &(x), 10727.4.)

iii. Parties intend to manage and use groundwater from the Conservation Property in a manner that does not cause a Material Negative Impact on Groundwater Sustainability.

b. Wells on Conservation Property.

i. Existing and Future City Wells.

- (1) Owner may continue to use, repair, or replace the Existing City Wells as permitted under the Existing City Easement. Consistent with the Existing City Easement and the provisions in this Section 6, the City may provide groundwater from the Existing City Wells to existing and future customers within the Existing Service Area but may not provide groundwater from the Existing City Wells to customers outside the Existing Service Area except as provided in Sections 6.c and 6.d, below.
- (2) Owner may not drill any wells on the Conservation Property outside the Existing Easement Area without Holder's Approval, which approval shall not be unreasonably withheld, conditioned or delayed, if: (i) the location, capacity, and use of any such Future Owner Wells will not cause a Material Negative Impact on Groundwater Sustainability and (ii) the Future Owner Well will replace an Existing City Well. Any new approved Future Owner Wells may be used to provide groundwater to existing and future customers within the Existing Service Area but may not be used to provide groundwater to customers outside the Existing Service Area except as provided in Sections 6.c and 6.d, below. Any new approved Future Owner Well shall be located along existing infrastructure on Bailey Avenue. Prior to any approvals of Future Owner Wells on the Conservation Property, the Parties shall work together to identify alternative locations off the Conservation Property for such wells. No Future Owner Wells shall be permitted prior to the appropriation by the City Council of the City's share of

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between Owner and any such third party. Owner shall provide Holder a copy of such agreement prior to the effectiveness of any such transfer.

f. Process for Determination of Material Negative Impact.

- i. As soon as reasonably practical, Holder, Owner and Third Party Beneficiary shall jointly select and retain a Water Expert to establish a process for determining whether the use of any Future Owner Wells, Existing City Wells, and Other Wells will cause a Material Negative Impact on Groundwater Sustainability (the “**Water Impact Assessment Process**”). Owner (subject to appropriation of funds by the City Council when Owner is City, which appropriation City staff shall recommend to the Council), Holder, and Third Party Beneficiary shall each pay one-third of the costs of retaining the services of the Water Expert.
- ii. The Water Impact Assessment Process will be developed concurrently with the Management Plan, but shall not include any binding arbitration or similar process in which the result is binding on the Owner (when Owner is the City). The Management Plan may not be adopted until Holder, Owner, and Third Party Beneficiary have agreed to the Water Impact Assessment Process. The Water Impact Assessment Process will be used by the Parties and Third Party Beneficiary to determine if use of water from the Conservation Property will cause a Material Negative Impact on Groundwater Sustainability, taking into account that the Existing City Well being replaced will no longer be pumping water from the Conservation Property.

g. Five Year Groundwater Sustainability Report.

- i. As soon as reasonably practical after the Parties and Third Party Beneficiary agree to the Water Impact Assessment Process, the Parties and Third Party Beneficiary shall jointly retain a Water Expert to prepare a report (the “**Groundwater Sustainability Report**”) that evaluates Groundwater Sustainability and considers the impacts on Groundwater Sustainability (including impacts to creek baseflows and groundwater dependent ecosystems such as wetlands and riparian areas) associated with: (1) pumping from the Existing City Wells, any Future Owner Wells, and Other Wells; (2) the actions of the SCVWD; and (3) pumping occurring in the basin outside the Conservation Property. The Groundwater Sustainability Report shall also evaluate whether Existing City Wells, any Future Owner Wells, and Other Wells individually or cumulatively cause a Material Negative Impact on Groundwater Sustainability, and if so, what actions the Water Expert recommends to minimize such impact.
- ii. Owner (subject to appropriation of funds by the City Council when Owner is the City, which appropriation City staff shall recommend), Holder, and

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Third Party Beneficiary shall each pay one-third of the costs of the Groundwater Sustainability Report and shall have a Groundwater Sustainability Report prepared every five (5) years unless the Parties and Third Party Beneficiary agree that a Groundwater Sustainability Report is not needed to protect the Conservation Values or Owner no longer extracts any water from the Conservation Property, or the Existing City Wells and any Future Owner Wells are no longer operating, in which case, Groundwater Sustainability Reports shall no longer be required.

- iii. If any Groundwater Sustainability Report indicates that any of the factors identified in Section 6.g.i(1),(2) or (3) above has a Material Negative Impact on Groundwater Sustainability, the Parties and Third Party Beneficiary shall work cooperatively to address such impacts as recommended by the Water Expert recognizing that there may be legal or financial limitations on the ability of the Parties to implement such recommendations. By way of example, the Water Expert’s recommendations may include: (1) modifying how wells are operated on the Conservation Property by limiting hours or flow; (2) jointly engaging SCVWD to take actions to protect and enhance groundwater dependent ecosystems; (3) jointly engaging well operators other than the City with respect to wells not on the Conservation Property to adjust pumping to support protection and enhancement of groundwater dependent ecosystems; (4) initiating water conservation programs to reduce water usage; and (5) jointly pursuing legislative or regulatory changes to better protect and enhance groundwater dependent ecosystems. Notwithstanding the foregoing, Owner is under no obligation to (though it may choose to) modify the use of Existing City Wells as long as Owner is in compliance with Sections 6.c and 6.d.

- h. Resolution of Disputes Regarding Use of Groundwater. Consistent with Section 10.a (Disputes and Remedies) below, if a dispute arises regarding implementation of this Section that is not resolved through the Water Impact Assessment Process described in Section 6.f above, then within thirty (30) days after receipt of written notice of the dispute, the Parties and Third Party Beneficiary shall meet to discuss the dispute and attempt to agree on an appropriate resolution. If the Parties and Third Party Beneficiary determine that it is appropriate and desirable, a Water Expert shall attend the meeting and assist in resolution of the dispute. Owner, Holder, and Third Party Beneficiary shall each pay one-third the costs of retaining the services of any Water Expert. The Parties and Third Party Beneficiary also have all rights and obligations provided in Section 10, below.

- i. Notifications. Owner shall provide at least ninety (90) days prior notice to Holder and Third Party Beneficiary before (1) transferring any water rights or infrastructure to another party; (2) constructing any Future Owner Wells; and (3) providing groundwater from the Conservation Property to customers outside the Existing Service Area unless such notice is infeasible due to an Emergency Water Condition, in which case, Owner shall provide as much prior notice as reasonably

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feasible.

7. **Prohibited Uses.** Uses, practices and activities that impair or interfere with the Conservation Values or are inconsistent with the terms of this Conservation Easement (including the Purposes of this Conservation Easement described above) are prohibited. The following uses and practices, though not necessarily an exhaustive list, are inconsistent with this Conservation Easement and are expressly prohibited:
- a. **Subdivision.**
 - i. The division, subdivision, *de facto* subdivision or partition of the Conservation Property for any purpose is prohibited under this Conservation Easement, except as specifically allowed in the remainder of this Section 7.a. Owner shall not sell or convey the Conservation Property other than as a whole property consisting of all of the parcels described in this Conservation Easement, except as permitted in this Section 7.a. Partition of the Conservation Property between owners or tenants in common shall be considered a subdivision and is prohibited under this Conservation Easement.
 - ii. Any lot line adjustment shall be considered a subdivision and is prohibited, except with Holder's Approval and Third Party Beneficiary's Approval. The foregoing shall not prohibit any lease of all or any portion of the Conservation Property, nor ownership of the Conservation Property as undivided interests, or in any corporation, partnership, trust or other entity, nor the creation of a life or future estate. Any land transferred by any approved lot line adjustment shall remain subject to this Conservation Easement in perpetuity.
 - iii. If it would enhance the Conservation Values, the subdivision and sale of only a portion of the Conservation Property may occur with Holder's Approval in consultation with Third Party Beneficiary.
 - b. **Mineral, Oil, Gas Extraction.** The exploration for, or development and extraction of (including by excavating, quarrying, drilling or removing), any minerals, oil, gas, or hydrocarbons by any mining method, or by any other method that would impair or interfere with the Conservation Values of the Conservation Property, is prohibited under this Conservation Easement.
 - c. **Commercial or Industrial Use.** The establishment and conduct of commercial or industrial development, use of, or activity on the Conservation Property is prohibited under this Conservation Easement, except for Agricultural Uses or other uses, both as provided for in the Interim Maintenance and Operations Plan or Management Plan.
 - d. **Improvements.** The placement or construction of any Improvements of any kind on the Conservation Property is prohibited under this Conservation Easement,

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other than Improvements identified in the Interim Maintenance and Operations Plan or Management Plan, Improvements temporarily necessary to implement activities identified in Management Plan, or Improvements otherwise specifically permitted in this Conservation Easement, including Section 6, above.

- e. Soil Erosion or Degradation. Any use, practice, or activity that results in or would be likely to result in material degradation of soil quality or quantity is prohibited under this Conservation Easement except as provided in the Management Plan for the purpose of enhancing the Conservation Values. The movement of soil from the Conservation Property to some other location is prohibited under this Conservation Easement except as provided in the Interim Maintenance and Operations Plan or the Management Plan for the purpose of enhancing the Conservation Values. Sewage, contaminated soils, or fill unauthorized by Holder may not be placed on the Conservation Property.
- f. Disturbance of Wetlands and Riparian Areas. The draining, filling, dredging, clearing, diking, or alteration of any wetlands or any riparian areas (as identified in the Baseline Documentation), or the cultivation or other disturbance of the soil in any riparian areas, is prohibited under this Conservation Easement, except as provided in the Interim Maintenance and Operations Plan or Management Plan for the purpose of enhancing the Conservation Values, or as otherwise specifically permitted in this Conservation Easement.
- g. Water Quality Degradation. Any use, practice, or activity that results in or would be likely to result in material degradation of water quality or pollution of any surface or subsurface waters is prohibited under this Conservation Easement, including stockpiling animal wastes, compost, or loose soil in a manner whereby runoff impairs or interferes with surface or groundwater quality. Sewage, contaminated soils, or fill unauthorized by Holder may not be placed on the Conservation Property. The Parties intend and agree that the foregoing does not prohibit restoration activities taken to benefit groundwater dependent ecosystems or the use of agrichemicals such as fertilizers, pesticides, herbicides, and fungicides that are used in accordance with all applicable laws and federal, state, local, and manufacturer's regulations, directions and policies for the purpose of enhancing the Conservation Values.
- h. Alteration of Streams or Ponds. The alteration or manipulation of the ponds and watercourses located on the Conservation Property (as identified in the Baseline Documentation), or the creation of new water impoundments or watercourses is prohibited under this Conservation Easement, except as provided in the Management Plan for the purpose of enhancing the Conservation Values. However, any existing water impoundments (as identified in the Baseline Documentation) for Agricultural Uses or for flood control purposes may be maintained, repaired, rebuilt, and periodically dredged to maintain their capacity. When permitted alterations to existing water impoundments are made, damage to riparian and wetland vegetation around the perimeter shall be minimized.

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- i. Tree Cutting. The cutting down, or other destruction or removal, of live native trees is prohibited under this Conservation Easement, except (i) to improve wildlife habitat on the Conservation Property; (ii) when required (and only to the extent necessary) to clear for the construction of any Improvements permitted under this Conservation Easement or provided for in the Management Plan; or (iii) when necessary to remove, mitigate or prevent an imminent risk of harm to persons, property or health on or adjacent to the Conservation Property (including for safety or fire protection of permitted Improvements). Notwithstanding the foregoing, Holder's Approval (after consultation with Third Party Beneficiary) and written approval by Owner (or receipt of a permit from City where Owner is City) is required prior to cutting down, destroying or removing living, healthy native oak trees that exceed eighteen (18) inches in diameter at the base, except as provided in the Management Plan for the purpose of enhancing the Conservation Values.

- j. Feedlots. The establishment or maintenance of any commercial feedlot is prohibited under this Conservation Easement. A commercial feedlot is defined as a confined area or facility within which the land is not grazed or cropped at least annually, and which is used primarily to feed market livestock that have not been raised on the Conservation Property.

- k. Dumping; Junk Yards. The dumping or other disposal of waste, trash, refuse, rubbish, junk, or debris on the Conservation Property is prohibited under this Conservation Easement, except for (i) dumping or disposal of organic material generated by Agricultural Uses on the Conservation Property and (ii) storage of trash, refuse, rubbish, debris, junk or waste (including hazardous waste) as reasonably required in connection with Agricultural Uses or other permitted uses on the Conservation Property as provided in the Interim Maintenance and Operations Plan or Management Plan, in each case in accordance with applicable laws and regulations and generally accepted agricultural management practices (and provided that Section 7.g. above [Water Degradation] is not violated). No trash, refuse, rubbish, debris, junk or waste (including hazardous waste) shall be placed, stored, dumped, buried or permitted to remain in any riparian area identified in the Baseline Documentation. The storage or disassembly of inoperable automobiles and trucks for purposes of sale, or rental of space for that purpose, is prohibited under this Conservation Easement.

- l. Signs and Billboards. The placement of any signs or billboards on the Conservation Property is prohibited under this Conservation Easement, except as provided in Section 4.h. above. In addition, signs whose placement, number and design do not diminish the scenic character of the Conservation Property may be displayed to (i) state the name and address of the Conservation Property and the names of any persons living on the Conservation Property; (ii) advertise a permitted on-site activity; or (iii) control unauthorized entry or use.

- m. Sale or Transfer of Water Rights; Groundwater. Except as provided in Section 6, above, (i) the sale, transfer, encumbrance, lease, abandonment, forfeiture,

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quitclaim, or other separation of any Water Rights appurtenant to the Conservation Property to any other property, or use of any Water Rights or water appurtenant to the Conservation Property for anything other than for those uses and activities permitted in this Conservation Easement, the Interim Maintenance and Operations Plan, or the Management Plan, is prohibited; and the extraction or pumping of groundwater from the Conservation Property is prohibited under this Conservation Easement when such groundwater is conveyed to any location not on the Conservation Property. .

- n. Off-Road and Motorized Vehicles. Use of off-road, motorized, or all-terrain vehicles or motorcycles, including any recreational or commercial off-road or motorized vehicle use, is prohibited under this Conservation Easement, except for power-driven mobility devices needed for persons with mobility disabilities as required by law. Use of off-road, motorized, or all-terrain vehicles is permitted as may be reasonably necessary in connection with permitted Agricultural Uses, maintenance of the Conservation Property, or Improvements or uses described in the Interim Maintenance and Operations Plan or Management Plan, provided such use is consistent with any restrictions in such plans.
- o. Commercial Hunting or Shooting. Commercial hunting or commercial shooting ranges are prohibited under this Conservation Easement, except as reasonably necessary for management of invasive species or as provided in the Interim Maintenance and Operations Plan or Management Plan for the purpose of enhancing the Conservation Values.
- p. Historic or Archeological Resources. The excavation, removal, destruction, or sale of any archeological artifacts or remains found on the Conservation Property is prohibited under this Conservation Easement, except as part of an archeological excavation plan approved by a Resource Professional prior to excavation and subject to Holder’s Approval (after consultation with Third Party Beneficiary). Excavation for archeological resources must be consistent with the approved excavation plan as confirmed by a Resource Professional during and after the excavation.
- q. Excavation. Major alteration of land forms by grading or excavation of topsoil, earth, or rock (which consists of any grading or excavation of more than one hundred and fifty (150) cubic yards) is prohibited under this Conservation Easement except as provided in the Interim Maintenance and Operations Plan or Management Plan or as reasonably necessary to prepare site(s) to construct or maintain Improvements explicitly permitted in this Conservation Easement, including in Section 6, or provided for in the Interim Maintenance and Operations Plan or Management Plan. No commercial quarrying is permitted under this Conservation Easement. Filling, dumping, excavating, draining, dredging, or extracting loam, soil, sands, gravel, rocks or other material on or below the surface of the Conservation Property, or granting or authorizing surface entry for any of these purposes, is prohibited under this Conservation Easement, except as

provided in the Interim Maintenance and Operations Plan or Management Plan for purposes of enhancing the Conservation Values.

- r. Recreational Facilities. Uses, activities, or Improvements that do not constitute or are not used for Passive Low Intensity Recreation, including but not limited to, golf courses, driving ranges, swimming pools, tennis courts, barbeque facilities, skate board or skating facilities, off-leash dog use, horseshoes, recreational sports fields, playgrounds, and facilities that include planted or artificial turf, are prohibited under this Conservation Easement.
 - s. Lighting. The use of lighting between sunset and sunrise is prohibited under this Conservation Easement, except as needed to protect persons or the Conservation Property, or as provided in the Interim Maintenance and Operations Plan or Management Plan.
 - t. Contracts. Except as provided in Section 6, New Contracts that encumber any portion of the Conservation Property are prohibited under this Conservation Easement, except with Holder's Approval or as provided in the Interim Maintenance and Operations Plan or Management Plan. Notwithstanding the foregoing, Existing Contracts may be extended and New Contracts may be entered into for those uses allowed by Existing Contracts.
 - u. Parking Areas. Areas for the parking of vehicles are prohibited under this Conservation Easement, except as provided in the Interim Maintenance and Operations Plan or Management Plan.
 - v. Invasive Species. The planting, introduction or dispersal of invasive, non-native plant or animal species is prohibited under this Conservation Easement, except for non-native species planted for permitted Agricultural Uses or for ornamental residential purposes, or as provided in the Interim Maintenance and Operations Plan or Management Plan.
8. **Hazardous Materials; Representations, Releases and Indemnities**. Owner warrants, represents and covenants to Holder and Holder warrants, represents and covenants to Owner as follows (and each of Owner's and Holder's representations and warranties shall survive any termination of this Conservation Easement):
- a. To each Party's actual knowledge as of the Easement Date, except as disclosed in the reports listed in Exhibit "D", (i) no material (collectively "**Hazardous Materials**") regulated under any applicable environmental, hazardous waste, and/or health and safety laws, statutes or regulations, including, without limitation, the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended (42 U.S.C. Section 9601 et seq.), the Superfund Amendments and Reauthorization Act of 1986, the Federal Resource Conservation and Recovery Act of 1976 (42 U.S.C. Section 6901 et seq.), the Clean Water Act (33 U.S.C. Section 466 et seq.), the Safe Drinking Water Act (14 U.S.C. Sections 1401-1450), the Hazardous Materials Transportation Act (49

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U.S.C. Section 1801 et seq.), the Toxic Substance Control Act (15 U.S.C. Sections 2601-2629), the California Hazardous Waste Control Law (California Health and Safety Code Sections 25100-25600), the Porter-Cologne Water Quality Control Act (California Health and Safety Code Section 13000 et seq.), or the Safe Drinking Water and Toxic Enforcement Act (California Health and Safety Code Section 25249.5 et seq.), or any and all amendments, modifications, successor and related statutes, regulations, rules and ordinances (collectively, “**Applicable Hazardous Materials Laws**”), has been used, generated, manufactured, placed, stored, treated, released, disposed, or discharged on the Conservation Property in violation of any of the Applicable Hazardous Materials Laws. Notwithstanding any other provision of this Conservation Easement, the term “**Hazardous Materials**” shall not include any material customarily used and legally permitted for Agricultural or residential purposes, which material is used in customary quantities and in accordance with label instructions and applicable laws and regulations, including Applicable Hazardous Materials Laws.

- b. Holder covenants that Holder will not violate any Applicable Hazardous Materials Laws or use, generate, manufacture, place, store, treat, release, dispose, or discharge any Hazardous Materials on the Conservation Property, or cause or permit any such activity to occur, in violation of any Applicable Hazardous Materials Laws.
- c. Owner covenants that Owner shall not violate any of Applicable Hazardous Materials Laws or use, generate, manufacture, place, store, treat, release, dispose, or discharge any Hazardous Materials on the Conservation Property, or cause or permit any such activity to occur, in violation of any of the Applicable Hazardous Materials Laws.
- d. Holder releases and agrees to defend, indemnify, and hold Owner, and Owner’s directors, governing members, officers, employees, agents, contractors, and representatives and the heirs, representatives, successors and assigns of each of them harmless from and against any and all liabilities, losses, claims, costs, demands, penalties, orders, charges, liens, and expenses (including reasonable attorneys’ fees and costs) whatsoever, except to the extent due to the negligence, willful misconduct, or affirmative acts of Owner, regardless of by whom or when asserted, arising out of, connected with, or relating to (i) any such use, generation, manufacture, placement, storage, treatment, release, disposal, discharge, or contamination in violation of the foregoing warranties and representations of Owner above; (ii) any violation or alleged violation of, or other failure or alleged failure to comply with, any of the Applicable Hazardous Materials Laws by Owner.
- e. Owner releases and agrees to defend, indemnify, and hold Holder and Third Party Beneficiary, and Holder’s and Third Party Beneficiary’s directors, governing members, officers, employees, agents, contractors, and representatives and the heirs, representatives, successors and assigns of each of them harmless from and against any and all liabilities, losses, claims, costs, demands, penalties, orders,

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charges, liens, and expenses (including reasonable attorneys' fees and costs) whatsoever, except to the extent due to the negligence, willful misconduct, or affirmative acts of Holder, regardless of by whom or when asserted, arising out of, connected with, or relating to (i) any such use, generation, manufacture, placement, storage, treatment, release, disposal, discharge, or contamination in violation of the foregoing warranties and representations of Holder above; (ii) any violation or alleged violation of, or other failure or alleged failure to comply with any of the Applicable Hazardous Materials Laws by Holder.

9. **Development Rights.** The Parties agree as follows with respect to any Development Rights relating to the Conservation Property:
- a. **Development Rights.** The Development Rights on the Conservation Property may be used only for those Improvements, activities, and uses permitted under this Conservation Easement. Development Rights may not be transferred to any other property or person from the Conservation Property.
 - b. **Remaining Rights, and Transfer.** Except for the Development Rights associated with Improvements, activities, and uses permitted under this Conservation Easement, all other rights associated with the Conservation Property (including, but not limited to, mineral rights and rights to install or operate a Solar Energy System not otherwise permitted in this Conservation Easement) are hereby conveyed by Owner to Holder and shall not be applied to or utilized for any Improvements, uses, or activities on the Conservation Property or transferred to any other property or person, but shall be subject to laws and all permitting requirements applicable to Holder notwithstanding that such rights have been conveyed by Owner (which is the local municipality).
10. **Disputes and Remedies.** If a Party (the "**Non-Breaching Party**") determines that there is a violation of the terms of this Conservation Easement to which the other Party is subject, the Non-Breaching Party shall give written notice of such breach (the "**Notice of Breach**") to the Party in violation of such terms of this Conservation Easement (the "**Breaching Party**"). The Notice of Breach shall include a demand for corrective action sufficient to cure the violation and, where the violation involves injury to the Conservation Property resulting from any use, activity, omission or Improvement inconsistent with the Purposes or other terms of this Easement, to restore the portion of the Conservation Property so injured.
- a. **Consultations Regarding Interpretation and Enforcement of this Conservation Easement.** When any disagreement, conflict, need for interpretation, or need for enforcement arises between the Parties to this Conservation Easement, each Party shall first consult with the other Party in good faith about the issue and attempt to resolve the issue without resorting to mediation or legal action.
 - b. **Mediation of Disputes.** Owner and Holder agree that mediation offers an alternative to the expense and time required to resolve disputes by litigation. Mediation is therefore the Parties' preferred dispute resolution procedure when

"Exhibit L"

circumstances do not require Owner or Holder to seek immediate injunctive relief from the courts. In the event of any dispute between Owner and Holder over the meaning, requirements, interpretation, or implementation of this Conservation Easement, Owner or Holder may refer the dispute to mediation by providing written notice to the other Party. The non-requesting Party shall have thirty (30) days after receipt of a mediation request to consent or refuse to mediate the dispute. The failure of the non-requesting Party to respond to a request for mediation within thirty (30) days shall be deemed to be a refusal to mediate. Third Party Beneficiary, at its option, may participate in any mediation.

- i. Procedure. Within thirty (30) days after Owner and Holder agree to mediation of a dispute, the Parties shall mutually select a mediator. Mediation hearings shall remain informal, with each Party being permitted to present such facts and evidence as it may reasonably believe supports that Party's position. Costs and expenses of mediation shall be divided equally between Owner and Holder; provided, however, that each Party shall pay its own attorneys' fees, unless otherwise determined in the mediation.
- ii. Limitations. Notwithstanding any provision to the contrary, the mediation procedure set forth within this Conservation Easement shall in no way be construed to deprive Owner or Holder from any judicial remedy provided at law, or by agreement within this Conservation Easement, and is intended solely as an informal dispute resolution mechanism. Neither Owner nor Holder shall have the right to compel performance of mediated solutions, unless such solutions are reduced to a binding written agreement between Owner and Holder at the conclusion of the mediation process.

The Parties intend that each conflict and dispute submitted to mediation shall be unique, with facts, circumstances, and recommended resolutions to be determined on a case-by-case basis, without reference to prior conflicts, disputes, or resolutions.

- c. Remedies. If the Breaching Party fails to cure the violation within thirty (30) days after delivery to it of a Notice of Breach , or under circumstances where the violation cannot be cured within the thirty (30) day period, the Breaching Party fails to continue diligently to cure such violation until finally cured, the Non-Breaching Party may bring an action at law or in equity in a court of competent jurisdiction to enforce the terms of this Conservation Easement, to enjoin the violation, *ex parte* as necessary, by temporary or permanent injunction, to recover any damages to which it may be entitled for violation of the terms of this Conservation Easement, including damages for the loss of any Conservation Values, and to require the restoration of the Conservation Property to the condition that existed prior to injury. Either Party, at its sole discretion, may apply any damages recovered to the cost of undertaking any corrective action on the Conservation Property. If the Non-Breaching Party, at its sole discretion, determines that circumstances require immediate action to prevent or mitigate

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damage to the Conservation Values of the Conservation Property, the Non-Breaching Party may pursue its remedies under this Section without prior notice to the Breaching Party or without waiting for the period provided for cure to expire. The Non-Breaching Party's rights under this Section apply and shall be in addition to all remedies now or hereafter existing at law or in equity, including California Civil Code section 815 et seq. In the event of either actual or threatened violations of the terms of this Conservation Easement, the Non-Breaching Party's remedies at law for any violation of the terms of this Conservation Easement are inadequate and the Non-Breaching Party shall be entitled to the injunctive relief described in this Section, both prohibitive and mandatory, in addition to such other relief to which the Non-Breaching Party may be entitled, including specific performance of the terms of this Conservation Easement, without the necessity of proving either actual damages or the inadequacy of otherwise available legal remedies.

- d. Discretion. Enforcement of the terms of this Conservation Easement shall be at the discretion of the Non-Breaching Party, and any forbearance by the Non-Breaching Party to exercise its rights under this Conservation Easement in the event of any breach of any term of this Conservation Easement by the Breaching Party shall not be deemed or construed to be a waiver by the Non-Breaching Party of such term or of any subsequent breach of the same or any other term of this Conservation Easement or of any of the Non-Breaching Party's rights under this Conservation Easement. No delay or omission by the Non-Breaching Party in the exercise of any right or remedy upon any breach by the Breaching Party shall impair such right or remedy or be construed as a waiver. The Non-Breaching Party's permission to carry out, or failure to object to, any proposed use or activity shall not constitute consent to any subsequent use or activity of the same or any different nature.
- e. Waiver of Certain Defenses. The Breaching Party hereby waives any defense of laches, estoppel, prescription, unclean hands, or the doctrine of changed circumstances in any action or proceeding, including but not limited to any mediation, brought by the Non-Breaching Party to enforce or to interpret the provisions of this Conservation Easement.
- f. Acts Beyond a Party's Control. Nothing contained in this Conservation Easement shall be construed to entitle either Party to bring any action against the other Party for any injury to or change in the Conservation Property resulting from causes beyond such Party's control, including without limitation, fire, flood, storm, and earth movement, or from unauthorized acts of unrelated third parties (but not acts of tenants, lessees, or sublessees) of whose actions such Party was unaware or whose actions such Party could not have reasonably prevented (collectively "**Emergency Conditions**"), or from any prudent action taken by such Party (or third parties legally authorized to act) under Emergency Conditions to prevent, abate, or mitigate significant injury to the Conservation Property or to any person resulting from such Emergency Conditions that could impact the Conservation Property.

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11. **Costs and Responsibilities.**

- a. **Taxes; Liens.** Owner shall pay or cause to be paid before delinquency any taxes, assessments, fees, and charges of whatever description levied on or assessed against the Conservation Property by competent authority (collectively "**taxes**"), including any such taxes imposed upon, or incurred as a result of, this Conservation Easement, and shall furnish Holder with satisfactory evidence of payment upon request. Owner and Holder shall keep the Conservation Property free of any liens arising out of any work performed for, materials furnished to, or obligations incurred by Owner or Holder, respectively.
- b. **Liability.**
- i. Holder, and its successors and assigns, shall be responsible for, indemnify, and hold harmless Owner, its directors, governing members, officers, employees, agents, contractors, and representatives and the heirs, representatives, successors and assigns of each of them (collectively, the "**Owner Indemnified Parties**") from any and all liabilities, penalties, costs, losses, damages, expenses (including, but not limited to, reasonable attorneys' fees and experts' fees), causes of action, claims, demands, orders, liens or judgments (collectively, "**Claims**") resulting from, growing out of, or in any way connected with or incident to Holder's activities or actions on the Conservation Property, except to the extent attributable to the negligence or willful misconduct of the Owner Indemnified Parties. The duty of Holder to indemnify and hold harmless includes the duty to defend as set forth in Civil Code Section 2778 with counsel acceptable to Owner.
- ii. Owner, and its successors and assigns, shall be responsible for, indemnify, and hold harmless Holder, its directors, governing members, officers, employees, agents, contractors, and representatives and the heirs, representatives, successors and assigns of each of them ("**Holder Indemnified Parties**") from any and all Claims resulting from, growing out of, or in any way connected with or incident to Owner's activities or actions on the Conservation Property, including but not limited to the Municipal Water System, except to the extent attributable to the negligence or willful misconduct of the Holder Indemnified Parties. The duty of Owner to indemnify and hold harmless includes the duty to defend as set forth in Civil Code Section 2778 with counsel acceptable to Holder.
- c. **Existing Improvements.**
- i. Owner shall be responsible for the management and maintenance of the following Existing Improvements on the Conservation Property, all as described in the Baseline Documentation: (1) any residences; (2) sidewalks; (3) trees along public streets; (4) public utilities owned by Owner; (5) pumphouses; (6) paved roads; (7) the Municipal Water

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System; and (8) any areas encumbered by City held easements that existed as of the Easement Date, which easements the Parties do not intend to have merge with Owner's fee interest in the Conservation Property as provided in the Coyote Valley Master Transfer and Conservation Easement Agreements by and among POST, City, and Holder dated November 2019, and shall be deemed Existing Contracts under this Agreement (subject to Section 6, below, as applicable).

- ii. Holder shall be responsible for the management and maintenance of the following Existing Improvements on the Conservation Property, all as described in the Baseline Documentation: (1) flood facilities; and (2) Other Wells, to the extent required by applicable law.

d. New Improvements and Resources.

- i. Owner shall be responsible for the management and maintenance of any new Improvements it makes or adds to the Conservation Property.
- ii. Holder shall be responsible for obtaining any legally required governmental approval and permits for all new Improvements it makes or adds to the Conservation Property (notwithstanding that the Conservation Property is owned by the City), and for the management and maintenance of all such new Improvements, including Public Access Improvements, and management of Agricultural operations and natural resources on the Conservation Property.

- e. Trespassers and Illegal Dumping. Owner, where Owner is City, shall respond to, cause to be removed, enforce applicable law, or otherwise address trespassers, encampments, and illegal dumping on the Conservation Property in a similar manner as it would respond to such activities on public right of way or other City owned property that is managed by the City Department of Parks, Recreation and Neighborhood Services or other City department, taking into account the availability of funding. The Interim Maintenance and Operations Plan includes the contact information for the representatives of Owner and Holder designated to address the matters identified in this Section. At the request of either Party, the Parties shall consult regarding what actions, if any, should be taken.

12. Extinguishment; Holder's Entitlement to Proceeds.

- a. Extinguishment. If circumstances arise in the future which render the Purpose of this Conservation Easement impossible or impracticable to accomplish, this Conservation Easement may be terminated or extinguished only by judicial proceedings in a court of competent jurisdiction. After satisfaction of any prior claims, the amount of compensation to which the Holder shall be entitled from any sale, exchange, or involuntary conversion of all or any portion of the Conservation Property, subsequent to such termination or extinguishment, shall be determined, unless otherwise provided by California law at the time, in

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accordance with the valuation provisions in Section 12.b below. Holder shall use any such proceeds in a manner consistent with the Purposes of this Conservation Easement.

- b. Compensation Value. The Conservation Easement constitutes a real property interest immediately vested in Holder. The value of the respective interests of Owner and Holder shall be assessed separately according to the fair market value of the respective interests at the time of the valuation.
- c. Eminent Domain and Condemnation.
 - i. If Owner or Holder is notified that the Conservation Property may be acquired for public use by eminent domain, the Party receiving such notice shall notify the other Party of the potential acquisition no later than fifteen (15) days after first receiving such notice.
 - ii. Given the Purposes of this Conservation Easement, it is presumed that the Conservation Property has been appropriated for the best and most necessary public use as provided in California Code of Civil Procedure Section 1240.680.
 - iii. Prior to the inspection of the Conservation Property by the appraiser pursuant to Section 7267.1 of the California Government Code or any other provision of law, Owner shall notify Holder that it or its designated representative may accompany the appraiser during his or her inspection. Within seven (7) days of receiving any notice of the hearing on the resolution of necessity pursuant to Section 1245.235 of the California Code of Civil Procedure, Owner shall provide Holder a copy of the notice of the hearing. As provided in Sections 1250.220 and 1250.230 of the California Code of Civil Procedure, in any eminent domain proceeding to acquire all or a portion of the Conservation Property, Holder is required to be named as a defendant and may appear in the proceedings.
 - iv. Owner and Holder shall be entitled to any incidental or direct damages resulting from such taking or condemnation, in proportion to their interest in the rights which are taken or condemned and for which such damages are awarded or paid. Any expense incurred by Owner or Holder in any such action shall be first reimbursed out of the recovered proceeds. The remainder of such proceeds shall be divided between Owner and Holder in proportion to their interests in the Conservation Property, or portion thereof, as set forth in Section 12.b.
- d. Only a Portion of the Conservation Property Affected. Should this Conservation Easement be terminated or extinguished only as to a portion of the Conservation Property, or should only a portion of the Conservation Property be taken in exercise of eminent domain by public, corporate or other authority, in such cases the balance of the Conservation Property shall remain subject to this Conservation

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Easement. All relevant documents shall be updated and re-recorded by the Parties to reflect the modified Conservation Easement area, and encumbrances that were junior or subordinate to this Conservation Easement prior to such termination, extinguishment or condemnation shall remain junior or subordinate to the Conservation Easement as amended and re-recorded.

13. **Amendment.** If circumstances arise under which an amendment to or modification of this Conservation Easement would be appropriate, Owner and Holder may jointly amend this Conservation Easement, provided that no amendment shall be allowed that will affect the qualification of this Conservation Easement or the status of Holder under any applicable laws, including sections 815 et seq. of the California Civil Code, or section 170(h) of the Internal Revenue Code, as amended, and any amendment shall be consistent with the purposes of this Conservation Easement and with Holder's board-approved policy on amending a conservation easement. Any such amendment shall be in writing, shall refer to this Conservation Easement by reference to its recordation data, and shall be recorded in the Official Records of Santa Clara County, California. If POST acquires the Weyhe Property and conveys all or any portion of the Weyhe Property to City, the Parties shall amend the Conservation Easement, including Exhibits "A" and "B", to include the Weyhe Property or such portion of the Weyhe Property conveyed to City as part of the property protected by this Conservation Easement.
14. **Conveyance of Conservation Easement.** Holder may convey this Conservation Easement in whole or in part but only to an entity that is: (a) authorized to acquire and hold conservation easements under section 815.3 of the California Civil Code (or any successor provision then applicable), and (b) has the commitment and the resources to assume the responsibilities imposed on Holder by this Conservation Easement. As a condition of such transfer, Holder shall require the transferee to expressly agree in writing to assume Holder's obligations within this Conservation Easement in order that the purposes of this Conservation Easement will continue to be carried out. Holder shall provide prior written notice to Owner regarding any proposed transferee and shall provide information to substantiate that such proposed transferee meets the requirements of item (a) and (b), above. Unless the proposed transferee is the Third Party Beneficiary, the transferee shall be subject to Owner's approval, which approval may not be unreasonably withheld. If a transferee (other than the State) or Holder shall cease to exist or to be qualified to hold conservation easements under California Civil Code sections 815.3, then the Conservation Easement shall vest in the State of California upon the State's acceptance, or in a qualified entity then designated by the Holder with due regard to the requirements of this paragraph.
15. **Prior Notification of Marketing or Transfer of the Conservation Property.** If Owner intends to designate the Conservation Property as surplus property, or market its interest in or otherwise seek to transfer the Conservation Property, it shall give Holder written notice of such intention at least thirty (30) days prior to the earlier of the date of such designation, marketing for sale, or transfer. The foregoing shall not create any right of first refusal for Holder to acquire the Conservation Property, but Owner agrees to negotiate with Holder regarding the potential purchase of the Conservation Property by Holder or Third Party Beneficiary for at least a one hundred twenty (120) day period.

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Owner's failure (if any) to comply with this Section shall not impair the validity of this Conservation Easement or limit its enforceability in any way.

16. **Subsequent Conveyance of the Conservation Property.**

- a. **Transfer to Third Party.** Owner shall incorporate by reference the terms of this Conservation Easement in any deed or other legal instrument by which Owner divests itself of any interest in all or a portion of the Conservation Property, including, without limitation, a leasehold interest. Owner shall give written notice to Holder of the transfer of any interest in the Conservation Property at least thirty (30) days prior to the date of such transfer, and Owner shall provide Holder with a copy of the purchase and sale agreement and deed or other legal instrument at least twenty (20) days prior to its effective date so that Holder may confirm that the Conservation Property will remain properly encumbered by this Conservation Easement upon any conveyance. Owner shall provide a complete copy of this Conservation Easement to its transferee prior to any such transfer. Owner's failure (if any) to comply with this Section shall not impair the validity of this Conservation Easement or limit its enforceability in any way.
- b. **Transfer to Holder.** If Owner transfers the Conservation Property, or portion thereof, to Holder, it is the intent of the Parties that fee title to the Conservation Property shall not merge (whether by operation of law or otherwise) with any of the rights granted by this Conservation Easement, and this Conservation Easement shall remain in full force and effect as to all portions of the Easement Property. Consistent with the foregoing, should Holder acquire fee title to all or a portion of the Conservation Property, Holder shall assign (ideally prior to any such transfer to Holder of fee title) this Conservation Easement to POST, or if POST declines such assignment or is no longer in existence, to another entity that is a qualified entity at the time of transfer under section 170(h) of the Internal Revenue Code, as amended (or any successor provision then applicable), and the then-applicable regulations, and authorized to acquire and hold conservation easements under section 815.3 of the California Civil Code (or any successor provision then applicable).

17. **Estoppel Certificates.** As reasonably requested by Owner, Holder shall within thirty (30) days after receipt of such request execute and deliver to Owner any document, including an estoppel certificate, which certifies Owner's compliance with any obligation of Owner contained in this Conservation Easement and otherwise evidences the status of the Conservation Property as may be reasonably requested by Owner.

18. **Notices.** Unless otherwise specified in this Conservation Easement, Interim Maintenance and Operations Plan, or Management Plan, any notice, demand, request, consent, approval, or communication that either Party desires or is required to give to the other shall be in writing, shall be sent by certified mail, postage prepaid, or sent by overnight delivery using a reputable overnight messenger service, addressed as follows:

“Exhibit L”

To Owner: City of San José
200 East Santa Clara Street
San José, CA 95113-1905
Attn: _____

To Holder: Santa Clara Valley Open Space Authority

33 Las Colinas Lane
San José, CA 95119
Attn: General Manager

Third Party Beneficiary: Peninsula Open Space Trust
222 High Street
Palo Alto, CA 94301
Attn: President

or to such other address as either Party or Third Party Beneficiary from time to time shall designate by written notice to the other.

19. **Recordation.** This instrument shall be recorded by Holder in the Official Records of Santa Clara County, California. Holder may rerecord this Conservation Easement whenever rerecording is required to preserve Holder's rights in this Conservation Easement.
20. **Third Party Beneficiary.** POST is an intended third party beneficiary of this Conservation Easement, with the right, subject to and on the terms set forth in this Section, to exercise independent enforcement authority to enforce the terms of this Conservation Easement. If Third Party Beneficiary in its sole discretion determines that an activity, use or Improvement is inconsistent with the Purpose of this Conservation Easement or that any Party has not fully and/or effectively complied with this Conservation Easement or enforced any of the obligations or otherwise exercised its rights pursuant to this Conservation Easement, Third Party Beneficiary, as an intended third party beneficiary of this Conservation Easement, notwithstanding any prior actions taken by any Party, shall have the right, but not the duty, upon reasonable prior written notice to Owner and Holder and, where reasonably feasible, after conferring with Owner and Holder, to enjoin or prevent the violation of this Conservation Easement or otherwise exercise any and all of the rights or remedies under the provisions of this Conservation Easement. In addition, Third Party Beneficiary shall have the right to enter onto the Conservation Property in order to monitor and inspect compliance with this Conservation Easement. The Parties may not cancel, terminate, rescind, or amend this Conservation Easement without Third Party Beneficiary's Approval. If Holder becomes Owner of the

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Conservation Property, POST shall become Holder and a new Third Party Beneficiary acceptable to the Parties shall be identified.

21. **General Provisions.**

- a. **Controlling Law.** The interpretation and performance of this Conservation Easement shall be governed by the laws of the State of California.
- b. **Liberal Construction.** Any general rule of construction to the contrary notwithstanding, this Conservation Easement shall be liberally construed in favor of Holder to affect the Purposes of this Conservation Easement and the policy and purpose of Section 815 et seq. of the California Civil Code notwithstanding economic or other hardship or changes in circumstances or conditions. If any provision in this instrument is found to be ambiguous, an interpretation consistent with the Purposes of this Conservation Easement shall be favored and an interpretation that would render the provision valid shall be favored over any interpretation that would render it invalid. This instrument shall be construed in accordance with its fair meaning and it shall not be construed against either Party on the basis that that Party prepared this instrument.
- c. **Severability.** If any provision of this Conservation Easement, or the application to any person or circumstance, is found to be invalid, the remainder of the provisions of this Conservation Easement, or the application of such provision to persons or circumstances other than those as to which it is found to be invalid, as the case may be, shall not be affected so long as the purposes of this Conservation Easement can still be carried out.
- d. **No Third Party Rights.** This instrument is made and entered into for the sole benefit and protection of Owner, Holder, and Third Party Beneficiary and their respective successors and assigns. No person or entity other than the Parties and Third Party Beneficiary, and their respective successors and assigns shall have any right of action under this Conservation Easement or any right to enforce its terms and provisions.
- e. **No Forfeiture.** Nothing contained within this Conservation Easement is intended to result in a forfeiture or reversion of Owner's fee title in any respect. Owner specifically reserves the right to convey fee title to the Conservation Property subject to this Conservation Easement.
- f. **Successors.** The covenants, terms, conditions, and restrictions of this Conservation Easement shall be binding upon, and inure to the benefit of, the Parties, their respective successors and assigns, and their successors-in-interest, and shall continue as a servitude running in perpetuity with the Conservation Property. The terms "**Owner**" and "**Holder**," wherever used in this Conservation Easement and any pronouns used in their place, shall mean and include, the named "Owner" and "Holder" and the respective personal representatives, heirs,

devises, and assigns of such named Owner or Holder, and the respective successors of such Owner and Holder.

- g. Termination of Rights and Obligations. Except as expressly provided otherwise in this instrument, a Party's rights and obligations under this Conservation Easement shall terminate upon the transfer of the Party's interest in this Conservation Easement or the fee title to the Conservation Property, as the case may be, except that rights, obligations, and liability relating to acts or omissions occurring prior to transfer shall survive transfer.
- h. Captions. The captions in this instrument have been inserted solely for convenience of reference and are not a part of this instrument and shall have no effect upon construction or interpretation.
- i. Counterparts. The Parties may execute this instrument in two or more counterparts; each counterpart shall be deemed an original instrument. In the event of any disparity between the counterparts produced, the recorded counterpart shall be controlling.
- j. Exhibits and Recitals. All Exhibits referred to in this Conservation Easement are attached and incorporated by this reference. All recitals in this Conservation Easement are accurate and shall constitute an integral part of this Conservation Easement, and this Conservation Easement shall be construed in light of those recitals.
- k. Warranty of Authority. Each person executing this Conservation Easement on behalf of a Party represents that such person has the requisite authority to bind the Party on whose behalf he or she is signing this Conservation Easement and that all requisite approvals of such Party have been obtained.
- l. Time of Essence. Time is of the essence of every provision hereof in which time is a factor.
- m. Entire Agreement. This Conservation Easement constitutes the entire agreement of the Parties and Third Party Beneficiary with respect to the subject matter hereof and fully supersedes all prior written or oral agreements and understandings between any of the Parties or Third Party Beneficiary.

INTENDING TO BE LEGALLY BOUND, the undersigned Owner and Holder, by their respective duly authorized representatives, have signed and delivered this Conservation Easement as of the Easement Date.

[signatures on next page]

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OWNER:

CITY OF SAN JOSE

By: _____

Print Name: _____

Title: _____

Approved as to form:

By: _____

HOLDER:

SANTA CLARA VALLEY OPEN SPACE AUTHORITY

By: _____

Print Name: _____

Title: _____

Approved as to form

By: _____

THIRD PARTY BENEFICIARY:

PENINSULA OPEN SPACE TRUST

By: _____

Print Name: _____

Title: _____

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CALIFORNIA ALL PURPOSE ACKNOWLEDGMENT

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

STATE OF CALIFORNIA

COUNTY OF SANTA CLARA

On _____ before me, _____ Notary Public, personally appeared _____, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity, and that by his/her/their signature(s) on the instrument the person(s), or the entity(ies) 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.

Place Notary Seal Above

Signature of Notary Public

CALIFORNIA ALL PURPOSE ACKNOWLEDGMENT

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

STATE OF CALIFORNIA

COUNTY OF SANTA CLARA

On _____ before me, _____ Notary Public, personally appeared _____, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity, and that by his/her/their signature(s) on the instrument the person(s), or the entity(ies) 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.

Place Notary Seal Above

Signature of Notary Public

CALIFORNIA ALL PURPOSE ACKNOWLEDGMENT

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

STATE OF CALIFORNIA

COUNTY OF SANTA CLARA

On _____ before me, _____ Notary Public, personally appeared _____, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity, and that by his/her/their signature(s) on the instrument the person(s), or the entity(ies) 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.

Place Notary Seal Above

Signature of Notary Public

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SCHEDULE OF EXHIBITS

Exhibit A	Legal Description of Conservation Property
Exhibit B	Map of Conservation Property
Exhibit C	Acknowledgment of Baseline Documentation and Receipt of Baseline Documentation
Exhibit D	List of Hazardous Materials Reports Prepared for Conservation Property

Exhibit A

Legal Description of Conservation Property

(to be added)

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Exhibit B

Map of Conservation Property

(to be added)

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Exhibit C

Acknowledgment of Baseline Documentation and Receipt of Baseline Documentation

The undersigned, _____, on behalf of Owner, and Andrea Mackenzie, representing Holder, certify as Parties to the Conservation Easement, as follows:

- a) Each is familiar with the condition of the Conservation Property, and
- b) Each does hereby acknowledge and certify that the Baseline Documentation Report, and all of its inclusions, dated October 2019, prepared by Jodi McGraw, Ph.D., is an inventory of the natural resources of the Conservation Property and an accurate representation of the condition of the Conservation Property as of the date of conveyance of the Conservation Easement.

Duplicate originals of the Baseline Documentation Report were signed and delivered by each of Owner and Holder, and each will receive a duplicate original of the Baseline Documentation Report at the close of escrow.

CITY OF SAN JOSE

By: _____
Print Name: _____
Title: _____

Approved as to form:

By: _____

SANTA CLARA VALLEY OPEN SPACE AUTHORITY

By: _____
Print Name: _____
Title: _____

Approved as to form

By: _____

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Exhibit D

List of Hazardous Materials Reports Prepared for Conservation Property

EKI Environment & Water. 2017. Phase I Environmental Site Assessment and Results of Phase II Subsurface Investigation. Blanchard Road Property. San Jose, Santa Clara County, California (EKI B70027.00) Prepared for Peninsula Open Space Trust. May 2017.

EKI Environment & Water. 2019. Phase I Environmental Site Assessment. Brandenburg Parcels. Santa Clara County, California (EKI B90033.00). Prepared for Peninsula Open Space Trust. September 2019.

EKI Environment & Water. 2019. Results of Screening Phase II Subsurface Investigation. Brandenburg Parcels. Santa Clara County, California (EKI B90033.00). Prepared for Peninsula Open Space Trust. September 2019.

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Exhibit M

Intentionally Omitted

“Exhibit N”

Exhibit N

Form of Notice of Expiration of PD Permits

*RECORDING REQUESTED BY AND
WHEN RECORDED, MAIL TO:*

**CITY OF SAN JOSE
DEPARTMENT OF PLANNING, BUILDING AND CODE ENFORCEMENT
200 EAST SANTA CLARA STREET, THIRD FLOOR
SAN JOSE, CA 95113**

**NOTICE OF EXPIRATION OF PLANNED DEVELOPMENT PERMITS AND
PLANNED DEVELOPMENT PERMIT AMENDMENTS**

WHEREAS, the City of San Jose, a municipal corporation of the State of California, issued certain Planned Development (PD) Permits and Planned Development Permit Amendments (PDA) listed on, or identified in the documents listed on, and affecting real property located in the City of San Jose, County of Santa Clara, State of California described and/or shown on the attached Exhibit “A”; and

WHEREAS, the PD and PDA identified in the attached Exhibit “A” have not been partially or fully implemented and have expired in accordance to Title 20 of the San Jose Municipal Code and therefore, are no longer in force or effect, and no longer restrict or encumber said real property.

NOW, THEREFORE, the recording of this Notice of Expiration of Planned Development Permits and Planned Development Permit Amendments is to acknowledge the expiration of the Planned Development Permits and Planned Development Permit Amendments identified in the in the attached Exhibit “A”, as those permits and amendments specifically relate to the real property described and/or shown in the attached Exhibit “A”.

Dated October 20, 2019

CITY OF SAN JOSE, A MUNICIPAL CORPORATION OF THE STATE OF CALIFORNIA

ROSALYNN HUGHEY
DIRECTOR OF PLANNING, BUILDING
AND CODE ENFORCEMENT

“Exhibit N”

DATE _____

Attachments at time of recordation:

“Exhibit A”, Proof of Recordation and Legal Descriptions

“Exhibit N”

2

Exhibit O

Weyhe Exceptions

1. [intentionally omitted]
2. [intentionally omitted]
3. [intentionally omitted]
4. Any liens or other assessments, bonds, or special district liens including without limitation, Community Facility Districts, that arise by reason of any local, City, Municipal or County Project or Special District.
5. Easement(s) for the purpose(s) shown below and rights incidental thereto as granted in a document. Granted to: E. G. Wheeler
Purpose: Water rights, easements and privileges
Recorded: January 16, 1903, Book 264, Page 5, of Deeds
6. Easement(s) for the purpose(s) shown below and rights incidental thereto as granted in a document.
Granted to: May Burrell Haehi
Purpose: Right of way
Recorded: February 26, 1918, Book 484, Page 136, of Deeds
7. Terms, provisions, covenants, restrictions and conditions contained in a document executed pursuant to the California Land Conservation Act of 1965 (Williamson Act) and Recorded February 26, 1973 as Book 0249, Page 360 Official Records.
8. [intentionally deleted]
9. [intentionally deleted]
10. [intentionally deleted]
11. Any lack of record access.
12. Any invalidity or defect in the title of the vestees in the event that the trust referred to herein is invalid or fails to grant sufficient powers to the trustee(s) or in the event there is a lack of compliance with the terms and provisions of the trust instrument.
13. [intentionally deleted]
14. Any rights of the parties in possession of a portion of, or all of, said Land, which rights are not disclosed by the public records.

“Exhibit O”

Exhibit P

RIGHT OF ENTRY AND ACCESS AGREEMENT
(Weyhe Property)

THIS RIGHT OF ENTRY AND ACCESS AGREEMENT (the “**Agreement**”) is dated as of _____, 2019, and is entered into by the CITY OF SAN JOSE, a California municipal corporation (“**City**”), and PENINSULA OPEN SPACE TRUST, a California nonprofit public benefit corporation (“**POST**”).

RECITALS

POST and City are parties to that certain Purchase and Sale Agreement and Escrow Instructions for the sale of land and certain other interests owned by Brandenburg Properties LLC and certain related entities (“**Brandenburg PSA**”). Upon closing under the Brandenburg PSA, POST will be assigned certain option rights to acquire the land described on Exhibit “A” and the improvements, if any, thereon (collectively, the “**Property**”) from the current owners of the Property (“**Weyhe**”).

Under that certain Coyote Valley Master Transfer and Conservation Agreement, entered into on _____ by City, POST, and the Santa Clara Valley Open Space Authority (“**OSA**”), POST has agreed to convey a portion of the Property to City if certain conditions are met.

City has requested that City and its consultants/contractors be given access to the Property in order to conduct inspections for a potential future acquisition of the Property (which may include soils tests, and Phase I and Phase II environmental tests and inspections) (collectively, the “**Inspections**”). POST is willing to do so, to the extent of its rights to grant such access, on the terms set forth below.

NOW, THEREFORE, for and in consideration of the foregoing premises, the mutual covenants and agreements contained herein, and other good and valuable consideration, the sufficiency of which is hereby acknowledged, POST and City agree as follows:

Access. City and its contractors/consultants shall have the right to enter upon the Property from the date hereof until _____ for the purpose of conducting the Inspections, but, in the event POST has not yet acquired the Property, the City’s rights to enter shall be subject to POST having entered into an agreement with Weyhe granting POST rights of entry and allowing assignment of those rights to the City, and the City’s rights shall be subject to any limitations thereon in such agreement.

“Exhibit P”

Indemnity. City shall defend, indemnify, and hold POST harmless from and against any and all claims, liabilities, losses, damages, costs and expenses suffered, incurred or sustained by POST as a result of, by reason of, or in connection with the Inspections.

Notices. Any notice, demand, or request under this Agreement shall be in writing and shall be delivered by certified mail, postage prepaid, return receipt requested, or shall be sent by nationally recognized commercial courier for next business day delivery, to the addresses set forth below the respective executions of the parties hereof, or to such other addresses as are specified by written notice given in accordance herewith. All notices, demands, or requests given by mailing shall be deemed given on the date of delivery, or attempted delivery, shown on the return receipt; and those given by commercial courier shall be deemed given one (1) business day after the date of deposit with the commercial courier for overnight delivery.

Assignment. This Agreement may not be assigned.

Governing Law. This Agreement shall be construed, enforced and interpreted in accordance with the laws of the State of California.

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

No Recording. This Agreement does not grant any interest in the Property. In no event shall this Agreement or any memorandum hereof be recorded.

IN WITNESS WHEREOF, POST and City have caused this Agreement to be executed on the day and year first written above.

POST:

PENINSULA OPEN SPACE TRUST

By: _____

Print Name: _____

Title: _____

Address for notices:

Peninsula Open Space Trust
222 High Street
Palo Alto, CA 94301
Attn: Kevin Ice

“Exhibit P”

CITY:

CITY OF SAN JOSE

Address for notices:

City of San Jose
200 East Santa Clara Street
San Jose, CA 95112-1905
Attn: Nanci Klein

APPROVED AS TO FORM:

“Exhibit P”

3

12091-0005\2346780v2.doc

EXHIBIT "A"
DESCRIPTION OF LAND
(Attached.)

“Exhibit P”
4

12091-0005\2346780v2.doc

Exhibit Q

Form of Conservation Easement Amendment

RECORDED AT THE REQUEST
OF, AND WHEN RECORDED
RETURN TO:

Santa Clara Valley Open Space Authority
33 Las Colinas Lane
San Jose, CA 95119

WITH A COPY TO:

City of San Jose
200 East Santa Clara Street
San Jose, CA 95113-1905
Attn: _____

AMENDMENT TO GRANT OF CONSERVATION EASEMENT

Coyote Valley Property

THIS AMENDMENT TO GRANT OF CONSERVATION EASEMENT (“**Amendment**”) dated as of _____ 20__ (the “**Amendment Date**”), is by and between the CITY OF SAN JOSE, a California municipal corporation (“**Owner**”) and the SANTA CLARA VALLEY OPEN SPACE AUTHORITY, a California independent special district (“**Holder**”) (each of Owner and Holder also referred to singularly as a “**Party**” and collectively as the “**Parties**”), with reference to the following facts and circumstances:

RECITALS

- A. On _____, 2019, Owner and Holder entered into that certain “Grant of Conservation Easement, Coyote Valley Property,” recorded in the Official Records of Santa Clara County as document number _____ (“**Conservation Easement**”). The Conservation Easement encumbers the property described in Exhibit “A” thereto (“**Original Easement Property**”).
- B. The Peninsula Open Space Trust, a California nonprofit, public benefit corporation, is a third party beneficiary of the Conservation Easement (“**Third Party Beneficiary**”).
- C. On _____, 20__, Third Party Beneficiary acquired the property directly adjacent to the Conservation Property formerly known as the Weyhe property. Section 12 of the Conservation Easement requires that, if Third Party Beneficiary transfers any portion of the Weyhe property to City, the Parties shall amend the Conservation Easement, including Exhibits “A” and “B”

“Exhibit Q”

thereto, to include the transferred portion as part of the property protected by the Conservation Easement.

D. On _____, 20____, Third Party Beneficiary conveyed to Owner a portion of the Weyhe property, more particularly described in Exhibit “1” hereto (“**Easement Addition**”).

E. The Parties and Third Party Beneficiary now desire to amend the Conservation Easement to include the Easement Addition as part of the property protected by the Conservation Easement.

F. As of the Amendment Date, Owner and Holder have approved in writing the report and other materials referred to in this paragraph (the “**Easement Addition Baseline Documentation**”), to be kept on file at the principal office of Holder with a copy in the records of the City maintained by the City Clerk. The specific Conservation Values of the Easement Addition have been documented in this Easement Addition Baseline Documentation along with an inventory of relevant features, conditions, natural resources, water rights, and structures and Improvements (as defined in the Conservation Easement) on the Easement Addition. The Easement Addition Baseline Documentation consists of reports, maps, photographs and other documentation that collectively provides an accurate representation of the Easement Addition at the time of the Amendment Date and is intended to serve as an objective, though not exclusive, basis for monitoring compliance with the terms of the Conservation Easement as applied to the Easement Addition. A signed acknowledgment and certification by the Parties of the condition of the Easement Addition, as set forth in the Easement Addition Baseline Documentation, is attached hereto as Exhibit “2”.

G. Owner and Holder have agreed to an amended Interim Maintenance and Operations Plan to incorporate the Easement Addition, which is on file at the office of Holder.

AMENDMENT

NOW THEREFORE, in consideration of the above and for valuable consideration, including the mutual covenants, terms, conditions and restrictions contained within the Conservation Easement and this Amendment, and pursuant to the laws of the State of California (in particular, sections 815 through 816 of the California Civil Code and section 35152 of the California Public Resources Code), the Owner hereby grants to Holder, and Holder hereby accepts, the Conservation Easement, as amended by this Amendment, in perpetuity over the Easement Addition. The Parties and Third Party Beneficiary agree as follows:

1. **Amendment of Conservation Easement.** The Conservation Easement is hereby amended as follows:

(a) **Conservation Property.** As of the Amendment Date, the Conservation Property shall include the Easement Addition, and Exhibit “A” and Exhibit “B” are replaced

“Exhibit Q”

with Amended Exhibit “A” and Amended Exhibit “B,” respectively, attached hereto as Exhibit “3”.

(b) Baseline Documentation. As of the Amendment Date, the Baseline Documentation includes the Easement Addition Baseline Documentation.

(c) Existing Contracts. As applied to the Easement Addition only, an Existing Contract means a contract that permits the use by a third party of the Easement Addition, or a portion thereof (including, but not limited to, a lease or an easement) entered into prior to the Amendment Date, including any required extension.

(d) New Contracts. As applied to the Easement Addition only, a New Contract means a contract or any non-mandatory extension of an Existing Contract that permits the use of the Easement Addition, or a portion thereof, including, but not limited to, a lease or an easement, entered into after the Amendment Date.

(e) Existing Improvements. As applied to the Easement Addition only, Existing Improvements means those Improvements that exist on the Conservation Property as of the Amendment Date, as described in the Easement Addition Baseline Documentation. As to the Easement Addition, Owner shall be responsible for the management and maintenance of all of the Existing Improvements specified in Section 10(c)(i) of the Conservation Easement, except that, as to Section 10(c)(i)(4), Owner shall be responsible the management and maintenance of any portion of the Easement Addition encumbered by City-held easements that existed as of the Amendment Date.

(f) Management Plan. As soon as reasonably practical, Holder Owner and Third Party Beneficiary shall meet and confer to revise the timeline for the preparation of a Management Plan to accommodate inclusion of the Easement Addition. Until such time as the amended Management Plan is approved in accordance with the Conservation Easement, the use and management of the Easement Addition shall be subject to the amended Interim Maintenance and Operations Plan.

(g) Hazardous Materials; Representations, Releases and Indemnities. The respective rights, obligations, warranties, representations, releases, and indemnities of the Parties and Third Party Beneficiary as set forth in Section 7 and in Section 10(b)(ii) of the Conservation Easement shall apply to the Easement Addition, except that, as to the Easement Addition, they are made by reference to the disclosures in the Phase I [**if applicable:** and Phase II] report[s] listed in Exhibit “4” hereto, and shall be effective only as of the Amendment Date.

2. No Other Effect on Conservation Easement. Except to the extent expressly modified by this Amendment, each and every term, covenant, and condition set forth in the Conservation Easement remains in full force and effect. Capitalized terms in this Amendment shall have the meanings ascribed to them in the Conservation Easement, except to the extent expressly modified herein.

“Exhibit Q”

3. **Third Party Beneficiary.** Third Party Beneficiary is an intended third party beneficiary of this Amendment, and shall have the same rights under the amended Conservation Easement as provided in Section 19 of the Conservation Easement.

4. **Recordation.** This instrument shall be recorded by Holder in the Official Records of Santa Clara County, California. Holder may rerecord this Amendment whenever rerecording is required to preserve Holder's rights in this Amendment

5. **Warranty of Authority.** Each person executing this Amendment represents that such person has the requisite authority to bind the party on whose behalf he or she is signing this Conservation Easement and that all requisite approvals of such party have been obtained.

INTENDING TO BE LEGALLY BOUND, the undersigned Owner, Holder and Third Party Beneficiary, by their respective duly authorized representatives, have signed and delivered this Amendment as of the Amendment Date.

OWNER:

CITY OF SAN JOSE

By: _____

Print Name: _____

Title: _____

Approved as to form:

By: _____

HOLDER:

SANTA CLARA VALLEY OPEN SPACE AUTHORITY

By:
Print Name: _____
Title: _____

Approved as to form

By: _____

THIRD PARTY BENEFICIARY:

PENINSULA OPEN SPACE TRUST

By:
Print Name: _____
Title: _____

SCHEDULE OF EXHIBITS

- Exhibit "1" Legal Description and Plat of Easement Addition
- Exhibit "2" Acknowledgement of Easement Addition Baseline Documentation
- Exhibit "3" Amended Exhibit "A" and Amended Exhibit "B"
- Exhibit "4" List of Phase I [**if applicable:** and Phase II] Report[s] Prepared for Easement Addition

[Exhibits to be inserted]

"Exhibit Q"

Exhibit R

Form of Notice of Cessation

**RECORDING REQUESTED BY AND
AFTER RECORDATION RETURN TO:**

Thomas Borden
Department of Public Works
City of San José
200 East Santa Clara Street, 3rd Floor
San José, CA 95113

ADDENDUM TO NOTICE OF SPECIAL TAX LIEN

NOTICE OF CESSATION OF SPECIAL TAX

**CITY OF SAN JOSE
Community Facilities District No. 9
(Bailey/Highway 101)**

Pursuant to Section 3114.5 of the Streets and Highways Code of California and the San José City Charter and Chapter 14.27 of the San José Municipal Code which incorporates and modifies the Mello-Roos Community Facilities Act of 1982, Chapter 2.5 of Part 1 of Division 2 of Title 5, commencing with Section 53311 of the California Government Code, as amended, (collectively, the "Act"), a lien to secure payment of a special tax to be levied for the purpose of financing public facilities for City of San José Community Facilities District No. 9 (Bailey/Highway 101) (the "CFD") was imposed by the City Council of the City of San Jose (the "City"), County of Santa Clara, pursuant to a Notice of Special Tax Lien, recorded in the Santa Clara County Recorder's Office on December 19, 2002, as Document No. 16697131 (the "Notice of Special Tax Lien"). Reference is made to the boundary map of the CFD recorded on November 20, 2002, in Book 38 at Pages 20, as Document No. 16629128, in the Santa Clara County Recorder's Office.

On [], the City Council of the City of San José adopted its Resolution No. _____ directing in accordance with California Government Code Section 53330.5, that promptly following the Special Tax Termination Date (as defined in Resolution No. _____) which is [INSERT ACTUAL DATE] the City Clerk shall execute and the Director of Public Works shall record an addendum to the Notice of Special Tax Lien in the Santa Clara County Recorder's Office stating that the obligation to pay the Annual Special Tax and the City Advance Special Tax both as defined in the Rate and Method of Apportionment attached to the Notice of Special Tax Lien have ceased and that the lien imposed by the Notice of Special Tax Lien is extinguished from and after the Special Tax Termination Date.

"Exhibit R"

In accordance with Resolution No. _____ and Section 53330.5 of the Act, the undersigned City Clerk of the City of San Jose hereby gives notice that the obligation to pay the Annual Special Tax and the City Advance Special Tax has ceased with respect to the real property described in the following table and that the lien imposed by the Notice of Special Tax Lien is hereby extinguished from and after [INSERT DATE FROM PRIOR PARAGRAPH].

<u>Assessor's Parcel Nos.</u>	<u>Names of Property Owners</u>
708-25-002	
708-26-001	
708-26-002	
708-27-001	
708-27-002	
708-27-007	
708-27-014	
708-28-002	
708-30-014	
708-30-015	
708-30-016	
708-30-017	
708-30-018	

Dated _____, 2019

By: _____
City of San José

“Exhibit R”

Exhibit S

Form of Notice of Dissolution

**RECORDING REQUESTED BY AND
AFTER RECORDATION RETURN TO:**

Thomas Borden
Department of Public Works
City of San José
200 East Santa Clara Street, 3rd Floor
San José, CA 95113

SECOND ADDENDUM TO NOTICE OF SPECIAL TAX LIEN

**NOTICE OF CESSATION OF SPECIAL TAX
AND NOTICE OF DISSOLUTION**

**CITY OF SAN JOSE
Community Facilities District No. 9
(Bailey/Highway 101)**

Pursuant to Section 3114.5 of the Streets and Highways Code of California and the San José City Charter and Chapter 14.27 of the San José Municipal Code which incorporates and modifies the Mello-Roos Community Facilities Act of 1982, Chapter 2.5 of Part 1 of Division 2 of Title 5, commencing with Section 53311 of the California Government Code, as amended, (collectively, the "Act"), a lien to secure payment of a special tax to be levied for the purpose of financing public facilities for City of San José Community Facilities District No. 9 (Bailey/Highway 101) (the "CFD 9") was imposed by the City Council of the City of San Jose (the "City"), County of Santa Clara, pursuant to a Notice of Special Tax Lien, recorded in the Santa Clara County Recorder's Office on December 19, 2002, as Document No. 16697131 (the "Notice of Special Tax Lien"). Reference is made to the boundary map of the CFD recorded on November 20, 2002, in Book 38 at Pages 20, as Document No. 16629128, in the Santa Clara County Recorder's Office.

On [], the City Council of the City of San José adopted its Resolution No. _____ directing in accordance with California Government Code Section 53330.5, that promptly following the Special Tax Termination Date (as defined in Resolution No. _____) which is [INSERT ACTUAL DATE] the City Clerk shall execute and the Director of Public Works shall record an addendum to the Notice of Special Tax Lien in the Santa Clara County Recorder's Office stating that the obligation to pay the Annual Special Tax and the City Advance Special Tax both as defined in the Rate and Method of Apportionment attached to the Notice of Special Tax Lien have ceased and

"Exhibit S"

that the lien imposed by the Notice of Special Tax Lien is extinguished from and after the Special Tax Termination Date.

On [-----], in accordance with Resolution No. [_____] and Section 53330.5 of the Act, the undersigned City Clerk of the City of San Jose gave notice in the Addendum to Notice of Special Tax Lien, Notice of Cessation of Special Tax recorded in the Santa Clara County Recorder's Office on [_____] , as Document No. _____ (the "Addendum to Notice of Special Tax Lien"). that the obligation to pay the Annual Special Tax and the City Advance Special Tax has ceased with respect to the real property described in the following table and that the lien imposed by the Notice of Special Tax Lien is hereby extinguished from and after [INSERT DATE FROM PRIOR PARAGRAPH].

On [_____] , the City Council of the City of San José adopted its Ordinance No. [_____] , directing in accordance with California Government Code Section 53338.5, that on or after the effective date of Ordinance No. [_____] , but not earlier than the Special Tax Termination Date, the City Clerk shall execute and the Director of Public Works shall record an addendum to the Notice of Special Tax Lien in the Santa Clara County Recorder's Office stating that CFD 9 is dissolved and the lien imposed by the Notice of Special Tax Lien, if previously not extinguished, is extinguished.

In accordance with Ordinance No. [_____] , the undersigned City Clerk of the City of San José gives notice that with respect to the real property described in the following table CFD 9 is dissolved and that the lien imposed by the Notice of Special Tax Lien was extinguished from and after [INSERT DATE IN SECOND PARAGRAPH ON FIRST PAGE].

<u>Assessor's Parcel Nos.</u>	<u>Names of Property Owners</u>
708-25-002	
708-26-001	
708-26-002	
708-27-001	
708-27-002	
708-27-007	
708-27-014	
708-28-002	
708-30-014	
708-30-015	

“Exhibit S”

708-30-016

708-30-017

708-30-018

Dated _____, 2019

By: _____
City of San José

“Exhibit S”

Exhibit T

List of Assigned Agreements

1. First Amended and Restated Bailey Extension Cooperation Agreement, dated as of July 17, 2003, by and among the City of San Jose (the “City”), Coyote Valley Research Park, LLC (“CVRP”) and the Santa Clara County Transportation Authority.
2. Master Cooperation Agreement dated as of April 19, 2001 by and between the City and CVRP.
3. Development Agreement by and between the City of San Jose and CVRP Relative to the Development of Property in North Coyote Valley dated October 24, 2000, recorded as Instrument No. 15529779 of Official Records..
4. Land Transfer and Maintenance Agreement, dated as of February 20, 2001 by and among the City, CVRP and the Santa Clara Valley Water District.
5. Agreement for Bailey Avenue Overcrossing Easements, dated as of July 9, 2001 by and among CVRP, the City and the County of Santa Clara, as amended December 18, 2002 and December 10, 2004.
6. Construction Agreement No. 3-14785 – Flood Control/Mass Grading.
7. Construction Agreement No. 3-14770 – Coyote Valley Parkway, Calle de Cisco & Storm Drain Outfall Improvements.
8. Construction Agreement No. 3-14771 – Santa Teresa Boulevard Improvements.
9. Construction Agreement No. 3-14771A – Santa Teresa Boulevard Water System Improvements.
10. Construction Agreement No. 3-14772 – Bailey Avenue Improvements.
11. Construction Agreement No. 3-14773 – Bailey Avenue and Fire Station Access Road Improvements.
12. Construction Agreement No. 3-14774 – Fisher Creek Boulevard Improvements.
13. Construction Agreement No. 3-14775 – Calle de Cisco Grade Separation.
14. Construction Agreement No. 3-14776 – Coyote Valley Parkway/Valentine Court Improvements.
15. Construction Agreement No. 3-14777 – Water Tank and Access Road Improvements.
16. Construction Agreement No. 3-14778 – Water Pump Station Facilities.

“Exhibit T”

17. Construction Agreement No. 3-14779 – Bailey Road Safety Improvements & Traffic Mitigations.
18. Construction Agreement No. 3-14780 – Santa Teresa Boulevard Traffic Mitigations.
19. Construction Agreement No. 3-14781 – San Jose Traffic Mitigations.
20. Construction Agreement No. 3-14782 – Santa Teresa Soundwall.
21. Construction Agreement No. 03-109196 IP (3-13970) Fills on Bailey Avenue and Monterey Road.

“Exhibit T”

2

Exhibit U

Form of Termination Agreement

AGREEMENT TO TERMINATE ASSIGNED AGREEMENTS

This ASSIGNED AGREEMENT TERMINATION AGREEMENT (“**Termination Agreement**”) is dated as of _____, 2019 (“**Effective Date**”), and is entered into by and between the CITY OF SAN JOSE, a California municipal corporation (“**City**”), the CITY OF SAN JOSE, as successor in interest to Coyote Valley Research Park, LLC (“**CVRP Successor**”), the PENINSULA OPEN SPACE TRUST, a California nonprofit public benefit corporation (“**POST**”), and the SANTA CLARA VALLEY OPEN SPACE AUTHORITY, a California independent special district (“**OSA**”) (each of City, CVRP Successor, POST, and OSA a “**Party**,” and collectively “**Parties**”).

RECITALS

H. In 2001, Coyote Valley Research Park, Inc. (“**CVRP**”) obtained entitlements to build a 6,600,000 square foot campus industrial development on property it owned (“**Former CVRP Property**”), consisting of the “**Brandenburg Property**” and “**Sobrato North**,” as those terms are defined and described in the Coyote Valley Master Transfer and Conservation Agreement by and among POST, City and OSA, executed _____ (“**Master Agreement**”).

I. To facilitate the development, CVRP entered into agreements with the City and certain third parties pertaining to the construction of certain infrastructure or facilities on or for the benefit for the Former CVRP Property. These agreements (collectively, the “**Assigned Agreements**”) consist of the following:

1. Development Agreement By and Between the City of San Jose and Coyote Valley Research Park LLC Relative to the Development of Property in North Coyote Valley, dated October 24, 2000 and recorded as Instrument No. 15529779 of Official Records (“**Development Agreement**”).
2. First Amended and Restated Bailey Extension Cooperation Agreement, dated as of July 17, 2003, by and among the City of San Jose, CVRP, and the Santa Clara County Transportation Authority (the “**VTA**”) (“**Bailey Extension Cooperation Agreement**”). The VTA executed the original Agreement, but the First Amendment states that “by their execution of this First Amended and Restated Agreement, VTA, City and [CVRP] agree that VTA is not a party and shall have no rights or obligations under this First Amended and Restated Agreement.”
3. Master Cooperation Agreement dated as of April 19, 2001, by and between the City and CVRP (“**Master Cooperation Agreement**”).
4. Certain 3-Dash Construction Agreements by and between the City and CVRP, including: Construction Agreement No. 3-14785 – Flood Control/Mass Grading; Construction Agreement No. 3-14770 – Coyote Valley Parkway, Calle de Cisco & Storm Drain

“Exhibit U”

Outfall Improvements; Construction Agreement No. 3-14771 – Santa Teresa Boulevard Improvements; Construction Agreement No. 3-14771A – Santa Teresa Boulevard Water System Improvements; Construction Agreement No. 3-14772 – Bailey Avenue Improvements; Construction Agreement No. 3-14773 – Bailey Avenue and Fire Station Access Road Improvements; Construction Agreement No. 3-14774 – Fisher Creek Boulevard Improvements; Construction Agreement No. 3-14775 – Calle de Cisco Grade Separation; Construction Agreement No. 3-14776 – Coyote Valley Parkway/Valentine Court Improvements; Construction Agreement No. 3-14777 – Water Tank and Access Road Improvements; Construction Agreement No. 3-14778 – Water Pump Station Facilities; Construction Agreement No. 3-14779 – Bailey Road Safety Improvements & Traffic Mitigations; Construction Agreement No. 3-14780 – Santa Teresa Boulevard Traffic Mitigations; Construction Agreement No. 3-14781 – San Jose Traffic Mitigations; Construction Agreement No. 3-14782 – Santa Teresa Soundwall; Construction Agreement No. 03-109196 IP (3-13970) Fills on Bailey Avenue and Monterey Road (“**3-Dash Construction Agreements**”).

J. Through a series of assignments, CVRP’s rights and obligations under the Assigned Agreements were assigned to the successors to CVRP’s fee interest in the Former CVRP Property.

K. The CVRP project was ultimately abandoned, and the Former CVRP Property was conveyed to City by the former owners. The Parties entered into the Master Agreement for the purpose of permanently conserving the Former CVRP Property as open space for purposes of providing natural flood control, groundwater protection, climate resilience, and habitat connectivity, while preserving the City’s existing water supply facilities. POST and OSA have a beneficial interest in portions of the Former CVRP Property under the Master Agreement.

L. Pursuant to the purchase and sale agreements for the Brandenburg Property and Sobrato North, the former owners assigned all of their interest in the Assigned Agreements to the City. Consequently, the City is now successor in interest to CVRP with respect to the Assigned Agreements.

M. By this Termination Agreement, the City and CVRP Successor seek to confirm the expiration of the Development Agreement and terminate the remaining Assigned Agreements prior to the City’s transfer of any interests in the Brandenburg Property and Sobrato North to POST and OSA pursuant to the terms of the Master Agreement.

AGREEMENT

NOW, THEREFORE, incorporating the foregoing Recitals and in consideration of the mutual covenants and conditions contained in this Agreement, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties agree as follows:

1. Expiration of Development Agreement. The City and CVRP Successor agree that the Development Agreement previously expired on its own terms and is no longer of any force and effect.

“Exhibit U”

2. Termination of Remaining Assigned Agreements. The City and CVRP Successor hereby terminate the Bailey Extension Cooperation Agreement, the Master Cooperation Agreement, and the 3-Dash Construction Agreements.
3. No Surviving Provisions. To the extent the Assigned Agreements contain any provisions purporting to survive termination, the City and CVRP Successor hereby amend the Assigned Agreements to terminate any surviving provisions.
4. No Further Assignment or Assumption; Waiver. The Parties acknowledge that the Assigned Agreements are of no further force and effect, that POST and OSA, upon acquiring any right, title or interest in the Former CVRP Property, assume no rights or obligations under the Assigned Agreements, and that the City and CVRP Successor waive any claims under the Assigned Agreements against POST or OSA.
5. General Provisions.
 - a. Effective Date. This Agreement shall become effective upon its execution by all Parties, and shall not be binding until signed by all parties.
 - b. Modifications. This Agreement cannot be changed orally, and no executory agreement shall be effective to waive, change, modify, or discharge it in whole or in part unless such executory agreement is in writing and is signed by the Parties against whom enforcement of any waiver, change, modification, or discharge is sought.
 - c. Entire Agreement. This Agreement, including the exhibits hereto, contains the entire agreement between the Parties pertaining to the subject matter hereof and fully supersedes all prior written or oral agreements and understandings between the Parties pertaining to such subject matter, excepting the Master Agreement.
 - d. Counterparts. This Agreement may be executed in counterparts, all such executed counterparts shall constitute the same agreement, and the signature of any Party to any counterpart shall be deemed a signature to, and may be appended to, any other counterpart.
 - e. Severability. If any provision of this Agreement is determined by a court of competent jurisdiction to be invalid or unenforceable, the remainder of this Agreement shall nonetheless remain in full force and effect; provided that the invalidity or unenforceability of such provision does not materially adversely affect the benefits accruing to any Party.
 - f. Applicable Law. This Agreement shall be governed by and construed in accordance with the laws of the State in California. The exclusive venue for any legal action arising out of this Agreement shall be in Santa Clara County, California.

“Exhibit U”

- g. Captions. The Section headings appearing in this Agreement are for convenience of reference only and are not intended, to any extent or for any purpose, to limit or define the text of any Section or any subsection of this Agreement.
- h. Construction. The Parties acknowledge that the Parties and their counsel have reviewed and revised this Agreement and that the normal rule of construction to take effect that any ambiguities are to be resolved against the drafting Party shall not be employed in the interpretation of this Agreement or any exhibits or amendments hereto.
- i. Incorporation of Recitals. The Recitals set forth above are incorporated herein by reference.

IN WITNESS WHEREOF, the Parties hereto have duly executed this Agreement as of the Effective Date.

City:

CITY OF SAN JOSE,
a municipal corporation

By: _____

APPROVED AS TO FORM:

CVRP Successor:

CITY OF SAN JOSE,
a municipal corporation

“Exhibit U”

By: _____

APPROVED AS TO FORM:

POST:

PENINSULA OPEN SPACE TRUST,
a California nonprofit public benefit corporation

By: _____

Name: _____

Its: _____

“Exhibit U”

OSA:

SANTA CLARA VALLEY OPEN SPACE
AUTHORITY, a California independent special
district.

By: _____

Name: _____

Its: _____

APPROVED AS TO FORM:

“Exhibit U”

Exhibit V

Form of Land Transfer Agreement Termination

TERMINATION OF LAND TRANSFER AND MAINTENANCE AGREEMENT

THIS TERMINATION OF LAND TRANSFER AND MAINTENANCE AGREEMENT (“Termination”) is dated as of _____, 2019 [DATE OF CLOSING] and is executed by the SANTA CLARA VALLEY WATER DISTRICT, a public entity (“District”), the CITY OF SAN JOSE, a charter city and municipal corporation (“City”), and the City in its capacity as successor to the interests of the Coyote Valley Research Park, LLC (“CVRP”) in that certain Land Transfer and Maintenance Agreement dated as of February 20, 2001, by and among the District, the City and CVRP (the “Agreement”).

RECITALS

A. The Agreement relates to property once owned by Coyote Valley Research Park, LLC (“Property”).

B. The Property was acquired in part by SI S, LLC (“Sobrato Entity”), and in remaining part by: Brandenburg Property of Florida, LLC; William Brandenburg, as trustee of the William Brandenburg Revocable Trust dated January 31, 2006; Diane M. Brandenburg, Trustee of Lee Brandenburg Non-exempt QTIP Trust UAD September 19, 1993; Diane M. Brandenburg Trustee of the Jackson Lee Brandenburg Separate Property Trust UAD dated August 14, 2001; and Diane M. Brandenburg, Trustee of the Taylor Ann Brandenburg Separate Property Trust UAD dated August 14, 2001 (the “Brandenburg Entities”).

C. The Sobrato Entity and the Brandenburg Entities have conveyed the Property to the City, and have assigned the Agreement to the City, with the written consent of the District conditioned on the conveyance of the Property to the City. District gave its consent to permit the assignment of any interests that may exist under the Agreement on the condition that its consent shall not be construed as an admission by the District that such interests do exist or that the Agreement is currently in force and effect and further, upon the City Council having authorized the City to enter into this Termination upon close of escrow on the conveyance of the Property to the City.

D. City and District believe that the Agreement is no longer in effect and that any of the obligations thereunder have terminated. For the sole purpose of formally effectuating the termination of the Agreement, City and District acknowledge and agree that the City, as assignee of the Sobrato Entity and the Brandenburg Entities, is the sole successor to any remaining interest of CVRP in the Agreement, and that the City may enter into this Termination in that capacity.

E. The City, both as party to the Agreement and in its capacity as successor to the interest of CVRP under the Agreement, and the District now desire to formally terminate the Agreement to the extent it remains in force and effect.

“Exhibit V”

TERMINATION

The Agreement is hereby terminated. To the extent the Agreement provides for the survival of any of its provisions after termination, the Agreement is hereby amended to delete such provisions, and neither the District, the City, nor the City as successor to the interest of CVRP in the Agreement, shall have any further rights or obligations under the Agreement.

APPROVED AS TO FORM:

CITY (as City and as successor to CVRP):

CITY OF SAN JOSÉ, a municipal corporation:

By: _____
Name: _____
Title: _____

By: _____
Name: _____
Title: _____

APPROVED AS TO FORM:

DISTRICT:

SANTA CLARA VALLEY WATER DISTRICT

By: _____
Name: _____
Title: _____

By: _____
Name: _____
Title: _____

1175428.8

“Exhibit V”