

RECORDING REQUESTED BY:
Clerk of the Board of Supervisors

WHEN RECORDED, RETURN TO:
Clerk of the Board of Supervisors
70 W. Hedding Street
10th Floor, E. Wing
San Jose, CA 95110

(SPACE ABOVE THIS LINE FOR RECORDER'S USE)

**AMENDED AGREEMENT TO CONTRIBUTE TO COUNTY LOW
AND MODERATE INCOME HOUSING PROGRAM**

The County of Santa Clara ("County") and George E. Hall, a married man, as his sole and separate property as to an undivided 75% interest, and Joanne B. Hall, a married woman, as her sole and separate property as to an undivided 25% interest (collectively, "Owners") voluntarily enter into this Amended Agreement to Contribute to County Low and Moderate Income Housing Program ("Amended Agreement") as follows:

WHEREAS, on June 15, 1982 the County approved a tentative subdivision map (Tract #8226) for property described in Exhibit A attached hereto and incorporated herein (the "Property") owned by the Owners; and

WHEREAS, a condition of approval of the tentative subdivision map was that Owners participate in the County Low and Moderate Income Housing Program; and

WHEREAS, in 1997 Owners requested that they be allowed to comply with the subdivision condition of approval related to the contribution to the County Low and Moderate Income Housing Program by contributing the greater of either (i) \$180,000 (which represented 9% of the value of the property being subdivided as of 1997), or (ii) the net proceeds from the sale of lots 8 and 10. This payment was to be made upon the earlier of (i) the sale of the entire property being subdivided or the separate sale of lots 8 and 10, or (ii) two years from recording of the final subdivision map. The Board of Supervisors approved the Owners' request and the parties executed an *Agreement to Contribute to County Low and Moderate Income Housing Program*, which was recorded with the Santa Clara County Recorder on March 26, 1998 (Document No. 14112293) ("1998 Agreement"); and

WHEREAS, the final subdivision map for the Property was recorded with the Santa Clara County Recorder on March 26, 1998 (Book 700 of Maps, pp. 6-13); and

WHEREAS, completing the required subdivision improvements and obtaining all required permits and approvals for the project has been more difficult and time-consuming than the Owners anticipated, and the Owners have not made their contribution to the County Low and Moderate Income Housing Program as provided in the 1998 Agreement; and

WHEREAS, County and Owners amended the 1998 Agreement in 2007, which was recorded with the Santa Clara County Recorder on _____, 2007 (Document No. _____) (“2007 Agreement”) to facilitate a proposed bulk transfer of the Property while adhering to the intent of the subdivision condition of approval related to the required contribution to the County Low and Moderate Income Housing Program as well as the intent of the 1998 Agreement; and

WHEREAS, County and Owners desire to amend the 2007 Agreement to extend the deadline for payment of the contribution to the County Low and Moderate Income Housing Program.

NOW, THEREFORE, THE PARTIES AGREE as follows:

1. Contribution to Low and Moderate Income Housing Program. Owners agree to contribute to the County Low and Moderate Income Housing Program an amount equal to 9% of the fair market value of the Property, excluding the value of the residential structure and related improvements on Parcel 2. The fair market value of the Property shall be based on the sales price of the Property; provided, however, that if the County believes that the sales price does not reflect the fair market value of the Property, the County may require the Property to be appraised by a qualified appraiser acceptable to both the County and the Owners and the fair market value of the Property shall be based on that appraisal.

2. Time for Performance. The Owners shall pay the contribution to the County Low and Moderate Income Housing Program in the amount provided in Paragraph 1 on the earlier of the following dates: (i) the bulk sale of all of the Property except for Parcels 2 and 3 (which is referred to as the “Bulk Property” in this Agreement); or (ii) December 31, 2012. If the event in paragraph 2(ii) is the first to occur and there has been no sale of the Property (bulk or otherwise), then the fair market value of the Property shall be based on an appraisal performed by a qualified appraiser acceptable to both the County and the Owners.

3. Creation of Lien in Favor of County. This Amended Agreement shall create a lien in favor of the County against all of the property shown on the final subdivision map (Tract #8226) and described in Exhibit A except for Parcels 2 and 3, and the County shall have a right to any and all sales proceeds from this property, whether those proceeds are the result of a sale of the Bulk Property or one or more of the parcel(s). Additionally, Owners’ obligations in this Amended Agreement shall be secured by a deed of trust against the Bulk Property in favor of the County.

4. Successors and Assigns. This Amended Agreement is intended to run with the land (the Bulk Property) and shall be binding upon the successors, assigns, heirs, executors and personal representatives of the parties.

5. County to Subordinate. If requested by Owners, County agrees to subordinate its right under this Amended Agreement to any deed of trust given as security for construction financing necessary to install the subdivision improvements required as conditions of approval. County shall not be required to subordinate for any other purpose.

6. Attorneys' fees. In the event either party brings an action to enforce this Amended Agreement or any portion hereof, the prevailing party shall be entitled to reimbursement of reasonable attorneys' fees and costs from the other party.

7. Effect on 2007 Agreement. Upon the recording of this Amended Agreement with the Santa Clara County Recorder, this Amended Agreement shall supersede the 2007 Agreement.

8. Effect of Reversion to Original Lot Configuration. If the Property is restored to its pre-subdivision (Tract #8226) parcel configuration through either the lot merger process (Government Code § 66451.10 *et seq.*) or the reversion to acreage process (Government Code § 66499.11 *et seq.*), then Owners' obligation to contribute to the County Low and Moderate Income Housing Program under this Amended Agreement shall be null and void as of the date all required documentation to legally restore the Property to its pre-subdivision lot configuration is filed for recording with the Santa Clara County Recorder.

IN WITNESS WHEREOF, the parties execute this Amended Agreement:

OWNERS:

Dated: _____

George E. Hall, a married man, as his sole and separate property as to an undivided 75% interest

Dated: _____

Joanne B. Hall, a married woman, as her sole and separate property as to an undivided 25% interest

[Note: Owners' signatures must be notarized.]

COUNTY:

Dated: _____

Liz Kniss, President
Board of Supervisors

Signed and certified that a copy of this document has been delivered by electronic or other means to the President, Board of Supervisors.

ATTEST:

Maria Marinis, Clerk of the Board of Supervisors

APPROVED AS TO FORM AND LEGALITY:

Lizanne Reynolds, Deputy County Counsel

Exhibit A

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

Lots 1 through 17, inclusive, as shown on that certain Tract Map entitled "Uvas Estates Tract No. 8226", Being all of the Southeast 1/4 of the Southwest 1/4 of section 11, and being a portion of the Southeast 1/4 of Sect. 11 and being a portion of Section 12, and being a portion of Lots 1, 2, 3 and 4, Township 10 South, Range 1 East, Mount Diablo Base and Meridian, which Map was filed for record in the Office of the Recorder of the County of Santa Clara, State of California on 3/26/98 in Book 700 of Maps, at Pages 6, 7, 8, 9, 10, 11, 12, and 13.