

ORDINANCE 3221-23

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF SUNNYVALE APPROVING AND ADOPTING A DEVELOPMENT AGREEMENT BETWEEN 1154 SONORA COURT LLC, 1170 SONORA COURT LLC, AND THE CITY OF SUNNYVALE FOR THE DEVELOPMENT OF PROPERTIES COMMONLY KNOWN AS 1154 SONORA COURT AND 1170 SONORA COURT

WHEREAS, to strengthen the public planning process, encourage private participation in comprehensive planning and reduce the economic risk of development, the Legislature of the State of California adopted Government Code Sections 65864 et seq. (the Development Agreement Statute) which authorizes cities to enter into agreements for the development of real property in order to establish certain development rights in such property; and

WHEREAS, pursuant to Government Code Section 65865 the City has adopted rules and regulations establishing procedures and requirements for consideration of development agreements as set forth in Resolution No. 371-81; and

WHEREAS, 1154 SONORA COURT LLC and 1170 SONORA COURT LLC (Applicants) propose to develop the properties located at 1154 Sonora Court (Assessor's Parcel No. 205-50-016, (~1.9 acres)) and 1170 Sonora Court (Assessor's Parcel No. 205-50-014, (~1.1 acres)), respectively, in the city of Sunnyvale, California, County of Santa Clara, the development of which will require future approvals from the City, potentially including, but not limited to, tentative maps, final subdivision maps, easement vacations, encroachment permits, demolition permits, grading permits, building permits, use permits, special development permits, and certificates of occupancy; and

WHEREAS, a development agreement is appropriate for the property to ensure that the Project will be completed in accordance with the City requirements; and

WHEREAS, the Lawrence Station Area Plan (LSAP), as amended on September 14, 2021, contemplates that the City will use development agreements in order to approve additional height and density of development in the LSAP area in return for community benefits offered by developers; and

WHEREAS, a copy of the proposed Development Agreement is attached hereto and incorporated herein as Exhibit "A" to this ordinance; and

WHEREAS, as part of its consideration of amendments to the LSAP, the City examined the environmental effects of the LSAP in the Lawrence Station Area Plan Draft Environmental Impact Report ("EIR") (SCH# 2013082030) and in the Subsequent Environmental Impact Report for the Lawrence Station Area Plan Update/Intuitive Surgical Corporate Campus Project ("SEIR") (SCH# 2019012022) prepared pursuant to the California Environmental Quality Act ("CEQA"), which provided a program-level review of the LSAP and the LSAP amendments; and

WHEREAS, the EIR and SEIR identified measures to mitigate, to the extent feasible, the significant adverse project and cumulative impacts associated with the buildout anticipated by the LSAP. In addition, the EIR and SEIR identified significant and unavoidable impacts to the environment; and

WHEREAS, on December 6, 2016, the City Council reviewed and certified as adequate and complete the EIR by Resolution No. 794-16, and adopted written findings and approved a Mitigation Monitoring and Reporting Program. On September 14, 2021, the City Council reviewed and certified as adequate and complete the SEIR by Resolution No. 1083-21, and adopted written findings and approved a Mitigation Monitoring and Reporting Program (“MMRP”). The City Council adopted a Statement of Overriding Considerations in connection with its approval of the 2016 LSAP and the 2021 LSAP Update pursuant to Section 15093 of Title 14 of the CEQA Guidelines for significant and unavoidable impacts related to air quality, traffic, and wastewater services; and

WHEREAS, pursuant to the Development Agreement Statute and City regulations, the Planning Commission held a duly noticed public hearing on November 13, 2023, on the proposed Project and has found that the proposed Development Agreement is consistent with the objectives of the general plan, compatible with the uses authorized for the Project Area, in conformity with public convenience and beneficial to the public welfare, and will not adversely impact the orderly development of property; and

WHEREAS, the City Council, after published notice, held a public hearing on November 28, 2023, concerning the proposed Project, and has considered the reports and documents presented by City staff, the Planning Commission's recommendation, and the written and oral comments presented at the public hearing.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF SUNNYVALE DOES ORDAIN AS FOLLOWS:

SECTION 1. FINDINGS. The City Council hereby finds and declares that the above recitals are true and correct. The City Council finds that the provisions of the Development Agreement are consistent with the City's General Plan and the LSAP as they will exist on the effective date of this ordinance, and hereby incorporates the findings regarding General Plan and LSAP conformity contained in the Planning Commission findings dated. The City Council finds that the provisions of the Development Agreement are compatible with the uses authorized in the regulations prescribed for the land use district in which the real property is located; are in conformity with public convenience and good land use practice; are not detrimental to the public health, safety and general welfare; are of a beneficial effect on the orderly development of property and the preservation of property values; and are consistent with the requirement of Resolution 371-81. The City Council finds that the Developer is providing a public benefit to the City by, among other things, providing below-market rate housing units; constructing a Caltrain connection and improvements including a publicly-accessible path from 1170 Sonora Court to the Caltrain property, Lawrence Caltrain Station improvements to facilitate access to the northbound platform, station-serving retail at the southwest corner of the 1170 Sonora Court

building, and a placemaking element; making a substantial monetary contribution to the City's Community Benefits fund; and designating the City as point of sale for sales tax purposes during construction. The City Council further finds that development of the Project will require several years to complete, and a development agreement is appropriate for the property to ensure that the Project will be completed.

SECTION 2. DEVELOPMENT AGREEMENT ADOPTED. The Development Agreement, as set forth in Exhibit "A", is hereby adopted, subject to such minor, conforming and clarifying changes consistent with the terms thereof as may be approved by the City Manager, in consultation with the City Attorney prior to execution thereof, including completion of references and status of planning approvals, and completion and conformity of all exhibits thereto, and conformity to the General Plan and LSAP, as amended and approved by the City Council. The City Manager and the City Clerk of the City of Sunnyvale are hereby authorized and directed to execute and attest, respectively, the Development Agreement on behalf of the City of Sunnyvale.

SECTION 3. CEQA. The environmental effects of the Project subject to the proposed Development Agreement were analyzed in the Lawrence Station Area Plan Draft Environmental Impact Report ("EIR") (SCH# 2013082030) and in the Subsequent Environmental Impact Report for the Lawrence Station Area Plan Update/Intuitive Surgical Corporate Campus Project ("SEIR") (SCH# 2019012022). The City Council has reviewed the EIR and SEIR and found that it reflects the independent judgment of the City Council and its staff, and finds that the Project will not cause any significant effects to the environment that were not adequately examined in the EIR and SEIR. The City Council finds that in accordance with Public Resources Code Section 21094(b) and Section 15168(c)(2) of the CEQA Guidelines, none of the conditions or circumstances that would require preparation of subsequent or supplemental environmental review pursuant to Public Resources Code Section 21166 and CEQA Guidelines Section 15162 exists in connection with the Project. The City Council certified the EIR and SEIR as having been prepared in compliance with the requirements of the California Environmental Quality Act ("CEQA"), made necessary findings, adopted a statement of overriding considerations related to air quality, traffic, and wastewater services, and adopted Mitigation Monitoring and Reporting Programs. The City Council incorporates by this reference the findings and mitigations measures contained in the EIR and SEIR as to the environmental effects of the Development Agreement, together with the additional findings contained in this Resolution. The Director of Community Development shall file a Notice of Determination with the County Clerk under Title 14, California Code of Regulations Section 15075.

SECTION 4. RECORDATION. The City Clerk is hereby directed to record the Development Agreement with the county recorder in compliance with the provisions of Government Code Section 65868.5.

SECTION 5. CONSTITUTIONALITY; SEVERABILITY. If any section, subsection, sentence, clause or phrase of this ordinance is for any reason held to be invalid by a court of competent jurisdiction, such decision or decisions shall not affect the validity of the remaining portions of this ordinance. The City Council hereby declares that it would have adopted this

ordinance, and each section, subsection, sentence, clause and phrase thereof, irrespective of the fact that any one or more section, subsection, sentence, clause or phrase be declared invalid.

SECTION 6. EFFECTIVE DATE. This ordinance shall be in full force and effect thirty (30) days from and after the date of its adoption.

SECTION 7. POSTING AND PUBLICATION. The City Clerk is directed to cause copies of this ordinance to be posted in three (3) prominent places in the City of Sunnyvale and to cause publication of a notice once in The Sunnyvale Sun, the official newspaper for publication of legal notices of the City of Sunnyvale, setting forth the date of adoption, the title of this ordinance, and a list of places where copies of this ordinance are posted, within fifteen (15) days after adoption of this ordinance.

Introduced at a regular meeting of the City Council held on November 28, 2023, and adopted as an ordinance of the City of Sunnyvale at a regular meeting of the City Council held on December 5, 2023, by the following vote:

AYES:
NOES:
ABSTAIN:
ABSENT:
RECUSAL:

ATTEST:

APPROVED:

DAVID CARNAHAN
City Clerk
Date of Attestation: _____

LARRY KLEIN
Mayor

(SEAL)

APPROVED AS TO FORM:

JOHN A. NAGEL
City Attorney

RECORDING REQUESTED BY

CITY OF
SUNNYVALE
City Attorney's Office
P.O. Box 3707
Sunnyvale, CA 94088

**WHEN RECORDED
MAIL TO**

CITY OF
SUNNYVALE
City Attorney's Office
P.O. Box 3707
Sunnyvale, CA 94088

Record at No Fee per Government Code section 6103

[Space above this line for Recorder's use only]

DEVELOPMENT AGREEMENT

by and between

**1154 SONORA COURT, LLC,
1170 SONORA COURT, LLC and CITY OF SUNNYVALE**

Project Name: 1154 Sonora Court and 1170 Sonora Court

THIS DEVELOPMENT AGREEMENT, dated for convenience [REDACTED], 2023, at Sunnyvale, California (the "Agreement") is entered into by and between 1154 SONORA COURT, LLC, a Delaware limited liability company and 1170 SONORA COURT, LLC, a Delaware limited liability company (each, individually, a "Developer" and collectively, "Developers") and the CITY OF SUNNYVALE, a charter city, created and existing under the laws of the State of California ("the City"), pursuant to the authority of Sections 65864-65869.5 of the Government Code of the State of California, and City of Sunnyvale Resolution No. 371-81. The Agreement creates legal obligations pertaining to the 1154 Sonora Court and 1170 Sonora Court development projects, each individually a Project and collectively the Projects, as more particularly described below. Herein, the Developers and City are each individually a "Party" and collectively, the "Parties."

RECITALS

A. State Authorization. To strengthen the public planning process, encourage private participation in comprehensive planning and reduce the economic risk of development, the Legislature of the State of California adopted Section 65864 *et seq.* of the Government Code (the "Development Agreement Statute"), which authorizes the City to enter into a binding property development agreement with any person having a legal or equitable interest in real property for the development associated with such property in order to establish certain development rights in the property which is the subject of the development project application.

B. City Procedure and Requirements. The City has implemented the provisions of Government Code Section 65864 *et seq.* and adopted certain development agreement procedures and requirements through the enactment of Resolution No. 371-81, adopted on December 15, 1981 (hereinafter referred to as the "Development Agreement Resolution").

C. Properties. The subject of this Agreement is the development of those certain properties located at 1154 Sonora Court (Assessor's Parcel No. 205-50-016, (~1.9 acres)) and 1170 Sonora Court (Assessor's Parcel No. 205-50-014, (~1.1 acres)) in the city of Sunnyvale, California, County of Santa Clara (hereinafter referred to individually as a "Property" and collectively as the "Properties") as described in Exhibit A-1 and depicted in Exhibit A-2 and described in Exhibit A-3 and depicted in Exhibit A-4, respectively, attached hereto and incorporated herein by reference. The Developers are under purchase and sale contract to purchase the Properties in fee and have obtained the written consent of the current land owner, A&F Properties, LLC ("Land Owner"), to enter and record this Agreement. Subject to the terms of Section 8.5 and Section 11.2 hereof, all persons holding legal or equitable interests in the Property shall be bound by this Agreement.

D. Lawrence Station Area Plan. The subject Properties are located within the area subject to the Lawrence Station Area Plan (or "LSAP"). The LSAP was originally adopted in 2016 and then amended and adopted by the City Council on September 14, 2021.

E. Projects. Developers propose to construct two mixed-use office and residential building on each of the two Properties, as described in more detail in the Development Approvals defined in Recital G.

F. Environmental Review. The City examined the environmental effects of the LSAP in the Lawrence Station Area Plan Draft Environmental Impact Report ("EIR") (SCH# 2013082030) and in the Subsequent Environmental Impact Report for the Lawrence Station Area Plan Update/Intuitive Surgical Corporate Campus Project ("SEIR") (SCH# 2019012022) prepared pursuant to the California Environmental Quality Act ("CEQA"). On December 6, 2016, the City Council reviewed and certified as adequate and complete the EIR by Resolution No. 794-16, and adopted written findings and approved a Mitigation Monitoring and Reporting Program. On September 14, 2021, the City Council reviewed and certified as adequate and complete the SEIR by Resolution No. 1083-21, and adopted written findings and approved a Mitigation Monitoring and Reporting Program ("MMRP"). The City Council adopted a Statement of Overriding Considerations in connection with its approval of the 2016 LSAP and the 2021 LSAP Update pursuant to Section 15093 of Title 14 of the CEQA Guidelines. The City prepared Environmental Checklists for each Project to analyze the environmental effects of this Agreement and the other Development Approvals (as defined in Recital G, below) for consistency with the EIR and SEIR pursuant to Sections 15162 and 15168 of the CEQA Guidelines that each concluded no additional CEQA review was required for the Projects (each a "CEQA Checklist" and collectively, the "CEQA Checklists"). The EIR, SEIR, MMRP and CEQA Checklists are, collectively, the "CEQA Clearance")

G. Development Approvals. In addition to the CEQA Clearance, the following approvals, entitlements, and findings have been adopted by the City with respect to the Projects, and constitute the "Development Approvals":

a. This Agreement

b. The Special Development Permits and Vesting Tentative Parcel Maps considered concurrently with this Agreement and related State Density Bonus Letters of Intent:

i. Number 2022-7270 (1154 Sonora Court) for a mixed office and residential building with three levels of office at 142,270 square feet, four levels of residential with 173 apartment living units of which 28 units will be affordable to lower income households, and two levels of underground parking with 352 parking spaces; and, to allow creation of five commercial condominiums in the office/R&D space.

ii. Number 2022-7271 (1170 Sonora Court) for mixed use office and residential building with three levels of office at 79,211 square feet, a retail space on the ground floor of approximately 380 square feet, four levels of residential with 107 apartment living units of which 18 units will be affordable to lower income households, and two levels of underground parking with 207 parking spaces; and, to allow creation of six commercial condominiums in the office/R&D space.

H. Purposes. The Developers and City desire to enter into this Agreement for the purpose of developing the Projects as set forth in the Development Approvals. The City has an expressed interest in ensuring the adequacy of public facilities and infrastructure improvements to support well-planned growth, and entering into development agreements is a method whereby a level of assurance can be achieved to meet that interest. The City has determined that the development of the Projects is a development for which a development agreement is appropriate. This Agreement will provide certain benefits to the City, as described in Article 2, will eliminate uncertainty in the City's land use planning, will provide orderly development of the Properties in accordance with the policies and goals set forth in the City's General Plan and LSAP, and will otherwise achieve the goals and purposes of Resolution No. 371-81, adopted by the City on December 15, 1981. The Developers have incurred and will incur substantial costs in order to develop the Projects in compliance with this Agreement and the other Development Approvals. In exchange for these benefits to the City and the public, the Developers desire to receive assurance that the City will grant permits and approvals required for the development of the Projects on the Properties in accordance with existing city laws, subject to the terms and conditions contained in this Agreement. In order to effectuate these purposes, the Parties desire to enter into this Agreement.

I. Relationship of City and Developers. It is understood that this Agreement is a contract that has been negotiated and voluntarily entered into by City and Developers and that the Developers are each an independent entity and not an agent or partner of City. City and Developers hereby renounce the existence of any form of joint venture or partnership between them, and agree that nothing contained in this Agreement or in any document executed in connection with this Agreement shall be construed as making City and Developers joint ventures or partners.

J. Planning Commission Recommendations of Approval. Approval of the CEQA Clearance, this Agreement, and the other Development Approvals, were considered by the Planning Commission, on November 13, 2023. After conducting a duly noticed public hearing, the Commission recommended approval to the City Council.

K. Development Agreement Adoption. After conducting a duly noticed public hearing and making the requisite findings, the City Council approved the CEQA Clearance and other Development Approvals and introduced this Agreement by the first reading of Ordinance No. [REDACTED]-23 on November 28, 2023. On December 5, 2023, the City Council adopted this Agreement by the second reading of Ordinance No. [REDACTED]-23 (the “Adoption Date”), and authorized its execution.

L. Consistency with General Plan, LSAP and Zoning. Development of the Properties in accordance with this Agreement will provide for orderly growth and development in accordance with the policies set forth in the City’s General Plan, the LSAP, and the Development Approvals. Having duly examined and considered this Agreement and having held properly noticed public hearings hereon, the City Council finds and declares that this Agreement is consistent with the City’s General Plan, LSAP, Zoning Code (Title 19 of the Sunnyvale Municipal Code) and Subdivision Code (Title 18 of the Sunnyvale Municipal Code). This Agreement satisfies the requirements of Government Code Section 65867.5

M. Development Agreement Resolution. City and Developers have taken all actions mandated by and fulfilled all requirements set forth in the Development Agreement Resolution.

NOW THEREFORE, pursuant to the authority contained in Government Code Sections 65864-65869.5 and City of Sunnyvale Resolution No. 371-81, and in consideration of the mutual covenants and promises contained herein, the adequacy and sufficiency of which is hereby acknowledged, the Parties agree as follows.

ARTICLE 1

RECITALS, DEFINITIONS AND DATES

1.1 Incorporation of Recitals. The Preamble, the Recitals and all the defined terms set forth in both, are hereby incorporated into this Agreement as if set forth herein in full.

1.2 Definitions. In addition to the defined terms in the Preamble and the Recitals, each reference in this Agreement to any of the following terms shall have the meaning set forth below for each such term. Certain other terms shall have the meaning set forth for such term in this Agreement.

1.2.1 Applicable Laws. The laws and Constitution of the State of California, excluding its conflict of laws provisions, the laws and Constitution of the United States and any codes, statutes or executive mandates in any court decision, state or federal, thereunder.

1.2.2 Assignee. Any person, business entity, association, organization or other similar entity succeeding to some or all of Developers’ rights and obligations under this Agreement by sale, transfer, or otherwise, including, but not limited to, purchasers, mortgagees, or long-term ground lessees of individual lots, parcels, or of any of the buildings located within the Properties.

1.2.3 City Laws. The ordinances, resolutions, codes, rules, regulations and official policies of the City, governing the permitted uses of land, density, design, improvements and construction standards and specifications applicable to the development of the Properties. Specifically, but without limiting the generality of the foregoing, City Laws shall include the City's

General Plan, the LSAP, the City's Zoning Code (Title 19 of the Sunnyvale Municipal Code) and the City's Subdivision Code (Title 18 of the Sunnyvale Municipal Code).

1.2.4 Conditions. All conditions, Exactions, Impact Fees, payments, services or other conditions of approval called for in connection with the development or construction of the Projects on the Properties under the City Laws and Development Approvals, whether such conditions of approval constitute public improvements, or mitigation measures in connection with environmental review of any aspect of the Projects.

1.2.5 Director. The Director of the Community Development Department.

1.2.6 Enacting Ordinance. Ordinance No. [REDACTED]-23, introduced by the City Council on November 28, 2023, and adopted by the City Council on December 5, 2023 approving this Agreement.

1.2.7 Exactions. Exactions that may be imposed by the City as a condition of developing the Projects, including requirements for acquisition, dedication or reservation of land; and obligations to construct on-site or off-site public and private infrastructure improvements such as roadways, utilities or other improvements necessary to support the Projects, whether such exactions constitute subdivision improvements, mitigation measures in connection with environmental review of the Project, or impositions made under Applicable Rules. For purposes of this Agreement, Exactions do not include Impact Fees.

1.2.8 Impact Fees. The monetary amount charged by City in connection with a development project for the purpose of defraying all or a portion of the cost of mitigating the impacts of the development project or development of the public facilities related to the development project, including, any "fee" as that term is defined by Government Code Section 66000(b). For purposes of this Agreement, a fee that meets both the definitions of an Impact Fee and an Exaction, will be considered to be an Impact Fee.

1.2.9 Party. A signatory to this Agreement as defined in the introductory paragraph or a successor or assign of a signatory to this Agreement.

1.2.10 Projects. Those development projects defined in Recital E.

1.2.11 Properties. Those certain real properties defined in Recital C.

1.2.12 Resolution No. 371-81. Resolution No. 371-81 entitled "Resolution of the City of Sunnyvale Establishing Procedures and Setting a Fee for Processing Development Agreements" adopted by the City Council of the City of Sunnyvale on December 15, 1981.

1.2.13 Subsequent Approvals. Any and all Development Approvals applied for by Developers and approved by City following the Effective Date of this Agreement, including, but not limited to, conditional use permits, variances, subdivision approvals, street abandonments, design review approvals, demolition permits, improvement agreements, infrastructure agreements, grading permits, building permits, right-of-way permits, lot line adjustments, site plans, sewer and water connection permits, parcel maps, lot splits, landscaping plans, master sign programs, transportation demand management programs, encroachment permits, demolition, grading and

building permits and certificates of occupancy and amendments to the Special Development Permit to allow construction of the Projects. At such time as any Subsequent Approval applicable to the Property is approved by the City, then such Subsequent Approval shall automatically become subject to all the terms and conditions of this Agreement applicable to Development Approvals and shall be treated as a “Development Approval” under this Agreement.

1.3 Effective Date; Recordation. The Enacting Ordinance became effective on **January 4, 2024**. The obligations of the Parties under this Agreement shall be effective as of the effective date of the Enacting Ordinance (the “Effective Date”), pursuant to Government Code Section 36937. Not later than ten (10) days after the Effective Date, the Parties shall cause this Agreement to be recorded in the Official Records of the County of Santa Clara, State of California, as provided for in Government Code Section 65868.5 and Resolution No. 371-81. However, failure to record this Agreement within ten (10) days shall not affect its validity or enforceability by and between the Parties.

1.4 Term. Except as provided herein, the term of this Agreement shall commence on the Effective Date and terminate ten (10) years thereafter (“Term”); provided however, that if the Parties have not completed their obligations under this Agreement by the expiration of such term, the term of this Agreement may be extended upon written modification executed by both Parties. The extended term may not exceed two (2) years and must be for good cause as determined by the City Manager, supported by substantial evidence. Following the expiration of the Term, this Agreement shall be deemed terminated and of no further force and effect; provided, however, said termination of the Agreement shall not affect any right or duty emanating from other Development Approvals on the Properties approved concurrently with or subsequent to the approval of this Agreement.

1.5 Capitalized Terms. If any capitalized terms contained in this Agreement are not defined above, then any such terms shall have the meaning otherwise ascribed to them in this Agreement.

ARTICLE 2 **BENEFITS TO THE CITY**

2.1 Community Benefits. Developers agrees to provide the following benefits to the City, each as more particularly described and defined in the Development Approvals. To the extent of any inconsistency between the Development Approvals and this Agreement, this Agreement will control.

(a) BMR Units. A total of 46 inclusionary affordable housing (or below market rate (“BMR”) housing units, of which 10 will be affordable to Very-Low Income households and 36 will be affordable to Low Income households, which exceeds the total BMR requirement for Properties by 5 BMR units affordable to Low Income households.

(b) LSAP Incentives. Lawrence Station Area incentives, valued at \$32,000.

(c) Lawrence Caltrain Connection and Improvements (Special Development Permit Number 2022-7271 only) including:

- a. a publicly accessible path from 1170 Sonora Court to the Caltrain property;
- b. Caltrain Lawrence Station improvements to facilitate access to the northbound platform;
- c. Station-serving retail located at the southeast corner of the 1170 Sonora Court building, adjacent to the publicly accessible path; and
- d. a placemaking element, valued at \$100,000, and as included in the LSAP Sense of Place Plan adopted by the City Council September 2021 by Resolution 1083-21.

(d) Community Benefit Fund Contribution. In addition to all other applicable Impact Fees and other payments under this Agreement, Developer agrees to pay to the City the total amount of ONE MILLION, TWO HUNDRED AND SEVENTEEN THOUSAND, FOUR HUNDRED AND NINETY-FIVE DOLLARS (\$1,217,495) to the City's Community Benefit Fund to be paid at the issuance of a building permit (excluding demolition permit) for each Project in the following pro rata share: 1170 Sonora Court, thirty six percent (36%) and 1154 Sonora Court, sixty four percent (64%).

(e) Point of Sale for Project Construction. The Developer agrees to, prior to issuance of building permit, to the extent allowed by law, to require all persons and entities providing materials to be used in connection with the construction and development of, or incorporated into, the Projects, including by way of illustration but not limitation bulk lumber, concrete, structural steel, roof trusses and other pre-fabricated building components, to (a) obtain a use tax direct payment permit; (b) elect to obtain a subcontractor permit for the job site of a contract valued at \$5 Million Dollars or more; or (c) otherwise designate the Property as the place of use of material used in the construction of the Projects and the place of sale of all fixtures installed in and/or furnished in order to have the local portion of the sales and use tax distributed directly to City instead of through the county-wide pool. Each Developer shall instruct its general contractor(s) to, and shall cause such general contractor(s) to instruct its/their subcontractors to, cooperate with City or City's consultant to ensure the local sales/use tax derived from construction of the Project is allocated to City to the fullest extent possible and to the extent allowed by law. This Section 2.1(e) shall not apply to tenants who perform their own tenant improvement work. To assist City or City's consultant in its efforts to ensure that such local sales/use tax is so allocated to City, Developer shall on an annual basis, or as frequently as quarterly upon City's or City's consultant request, provide City or City's consultant with such information as shall be reasonably requested by City or City's consultant regarding subcontractors working on the Project with contracts in excess of the amount set forth above, including a description of all applicable work and materials and the dollar value of such subcontracts, and, if applicable, evidence of their designation, such as approvals or applications for the direct payment permit, of City as the place of use of such work and materials. City or City's consultant may use such information to contact each subcontractor who may qualify for local allocation of use taxes to City. The City's sole and exclusive remedy for any failure of any general contractor(s) or subcontractor(s) to allocate sales and

use tax revenues as provided herein or to comply with this Section 2.1(e) will be specific performance.

ARTICLE 3 **GENERAL DEVELOPMENT**

3.1 Project; Vested Rights.

3.1.1 Vested Right to Develop. Developers shall have a vested right to develop the Projects on the Properties consistent with the Development Approvals, as the same may be amended from time to time upon application by the Developers (subject to City approval), and subject to the City Laws in effect as of the Effective Date (“Applicable Rules”) and pursuant to all the terms of this Agreement (“Vested Rights”). Except as otherwise specified herein, the Vested Rights shall control the overall design, development, construction, use and occupancy of the Project, and all improvements and appurtenances in connection therewith, including without limitation, the permitted uses on the Properties, density and intensity of uses, the maximum height and sizes of buildings, and the allowable floor area ratios. Except as expressly provided herein, development of the Properties shall be governed by the Vested Rights.

3.1.2 No Obligation to Develop. This Agreement does not impose affirmative obligations on the Developers to commence development of the Projects, or any phase thereof.

3.1.3 City Processing of Applications. City agrees that it will accept, in good faith, for processing, review and action all applications for use and development of the Property in accordance with the Development Approvals, and shall act upon such applications in a diligent and timely manner as set forth in this Agreement, including without limitation Article 5 hereof.

3.1.4 Environmental Review. As set forth in Recital F above, the environmental effects of the Projects and this Agreement (including, but not limited to, the development rights and obligations vested hereby) have been thoroughly and fully examined in the CEQA Clearance and future CEQA review will be subject to Section 5.1.2 of this Agreement.

3.2 Timing of Development. The Parties acknowledge and agree that presently the Developers cannot predict the timing of the Projects. Therefore, the Developers have no obligation to develop or construct all or any component of the Projects. The timing, sequencing, and phasing of the Projects are solely the right and responsibility of Developers in the exercise of their business judgment so long as it is consistent with the Vested Rights. Because the California Supreme Court held in *Pardee Construction Co. v. City of Camarillo* (1984) 37 Cal.3d 465 that failure of the Parties therein to provide for the timing of development resulted in a later-adopted initiative restricting the timing of development to prevail over the Parties' agreement, it is the Parties' intent to cure that deficiency by acknowledging and providing that the Developers shall have the right to develop the Property in such order, at such rate, and at such times as Developers deem appropriate within the exercise of its subjective business judgment and the provisions of this Agreement.

3.3 Compliance with Requirements of Other Government Entities.

3.3.1 During the term of this Agreement, Developers, at no cost to City, shall comply with lawful requirements of, and obtain all permits and approvals required by other local,

regional, State and Federal agencies having jurisdiction over Developers' activities in furtherance of this Agreement. Developers shall pay all required fees when due to Federal, State, regional, or other local governmental agencies and acknowledge that City does not control the amount of any such fees.

3.3.2 As provided in California Government Code Section 65869.5, this Agreement shall not preclude the application to the Properties of changes in laws, regulations, plans, or policies, to the extent that such changes are specifically mandated and required by changes in State or Federal laws or regulations ("State or Federal Law"). In the event changes in State or Federal Law prevent or preclude compliance with one or more provisions of this Agreement, this Agreement shall be modified or suspended as may be necessary to comply with such State or Federal Law. The Parties shall meet and confer in good faith in order to determine whether such provisions of this Agreement shall be modified or suspended as may be necessary to comply with changes in State or Federal Law and City and Developers shall agree to such action as may be reasonably required. It is the intent of the Parties that any such modification or suspension be limited to that which is necessary and to preserve to the extent possible the original intent of the Parties in entering into this Agreement. This Agreement shall remain in full force and effect to the extent it is not inconsistent with such State or Federal Law. Nothing in this Agreement shall preclude the City or Developers from contesting by any available means (including administrative or judicial proceedings) the applicability to the Properties of any such State or Federal Law.

3.4 Reservations of Authority. Notwithstanding any other provision of this Agreement, at the time Subsequent Approvals are applied for, the following regulations and provisions shall apply only to those Subsequent Approvals:

3.4.1 Processing Fees. Processing fees and, subject to the terms of Section 3.4 of this Agreement, charges of every kind and nature imposed by the City, including application, inspection, and monitoring fees, which are in force and effect within the jurisdiction of the City for the class of Subsequent Approvals being applied for on an area-wide basis, which shall be paid at the rate then in effect.

3.4.2 Impact Fees and Exactions. All taxes, assessments, Impact Fees and Exactions imposed by the City, which are in force and effect within the jurisdiction of the City for other similarly situated projects in the City on a City wide or area wide basis, discretionary or ministerial approvals, or taxpayers, as applicable, on which they are imposed, existing as of the Effective Date will apply to the Projects. Developer shall, for the first five (5) years of the Term, pay when due all existing Impact Fees as shown on Exhibit B at the rates in effect as of the Effective Date, except as increased pursuant to the escalation provisions in effect as of the Effective Date, and shall not be required to pay any Impact Fee enacted or established after the Effective Date or any increase in such existing Impact Fees. Thereafter, and during the remainder of the Term (as it may be extended), Developer shall pay all original and any new Impact Fees at the rates in effect at the time due. The Impact Fees itemized on Exhibit B represent the Parties' good faith effort to identify the Impact Fees applicable to the Projects. City and Developer agree to amend and restate Exhibit B, as necessary, in the event one or more Impact Fees have been inadvertently omitted or if any cost or credit amounts have been inadvertently miscalculated. Notwithstanding the foregoing, with respect to the Park Dedication in In-Lieu Fee, the Developer

will pay the lower of the rate in effect as of the Effective Date or in effect at the time of payment and will have the right to pre-pay the Park Dedication In-Lieu Fee. Nothing herein shall prevent the City from imposing on the Projects new Citywide general and Citywide special taxes adopted in accordance with California Const. Art. XIII C and D *et seq.*, otherwise known as Proposition 218. The City acknowledges the Projects are not subject to the LSAP Transportation Impact Fee because the number of units built at the time of approval of the Projects was less than the trigger threshold.

3.4.3 If the City forms an assessment district including the Property and the assessment district is City-wide or area-wide, as defined in Section 3.4.6, the Property may be legally assessed through such district based on the benefit to the Property, which assessment shall be consistent with the assessment of other property in the district similarly situated. Any subsequently created assessment district is subject to collection solely based on the special assessment statute and shall not affect the development rights for the Project.

3.4.4 Procedural regulations relating to hearing bodies, petitions, applications, notices, findings, records, hearings, reports, recommendations, appeals and any other matter of procedure, which are in force and effect within the jurisdiction of the City for the class of Subsequent Approvals being applied for.

3.4.5 Regulations governing construction standards and specifications including, without limitation, the City's building code, plumbing code, mechanical code, electrical code, fire code and grading code, and all provisions of the Sunnyvale Municipal Code, and all other uniform construction codes, which are in force and effect within the jurisdiction of the City for the class of Subsequent Approvals being applied at the time the building permit in question is applied for.

3.4.6 For purposes of this Agreement, "area-wide" shall cover not only the Properties, but also at least all parcels zoned and/or developed in a manner similar to the Property and located in the combined area of the LSAP. The Parties acknowledge that the provisions contained in this Section are intended to implement the intent of the Parties that the Developers have the right to develop the Project pursuant to specified and known criteria and Applicable Rules, and that the City receives the benefits which will be conferred as a result of such development without abridging the right of the City to act in accordance with its powers, duties and obligations.

3.5 Subsequently Enacted Rules and Regulations. The City may, during the term of this Agreement, apply such newer City Laws that are in force and effect within the jurisdiction of the City for the class of Subsequent Approvals being applied for and which are not inconsistent or in conflict with the intent or purposes or any terms, standards or conditions of this Agreement. To the extent any changed City Law is in conflict with the terms of this Agreement, the terms of this Agreement shall prevail.

3.6 Moratorium, Quotas, Restrictions or Other Limitations. Without limiting the generality of any of the foregoing, no moratorium or other limitation (whether relating to the rate, timing, phasing, sequencing or permission of development or construction of all or any part of the Properties, whether imposed by ordinance, resolution, policy, order or otherwise, and whether enacted by the City Council, an agency of City, or otherwise) affecting parcel or subdivision maps (tentative, vesting tentative or final), building permits or any other Approvals (including

entitlements to use or service, such as water, sewer and/or storm drains) shall apply to the Properties. Developers agree and understand that the City does not have authority or jurisdiction over another public agency's authority to grant a moratorium or impose any other limitation that may affect the Properties.

3.7 Initiatives and Referenda. If any City Laws are enacted or imposed by a citizen-sponsored initiative or referendum, or by the City Council directly or indirectly in connection with any proposed initiative or referendum, which City Laws would conflict with this Agreement, such City Laws shall not apply to the Property. The Parties, however, acknowledge that the City's approval of this Agreement is a legislative action subject to referendum.

3.8 Mutual Obligations of the Parties. City has agreed to provide Developers with the long-term assurances, Vested Rights and other City obligations described in this Agreement in consideration for the Developers' obligations contained in this Agreement. Developers have agreed to provide City with the Developers' obligations contained in this Agreement. To ensure that the understanding of the Parties and mutual consideration remain effective, should either Party bring any administrative, legal, or equitable action or other proceeding to set aside or otherwise make ineffective any of the City or Developers' obligations described in this Agreement, this Agreement may be terminated by the Party against whom the proceeding is brought at that Party's sole discretion.

3.9 Developers' Right to Rebuild. Developers may rebuild the Project or element of the Project should it become necessary due to damage from any event, natural disaster or changes in seismic requirements during the Term of this Agreement, notwithstanding the provisions of the City of Sunnyvale Municipal Code Section 19.50.030. Developers may renovate the Project at any time within the Term of this Agreement as long as such renovation does not cause a change of use to a use not allowed by this Agreement or the Vested Rights. Any such rebuilding or renovation shall be subject to the Vested Rights, shall comply with the Subsequent Approvals and the building regulations existing at the time of such rebuilding or reconstruction, as well as the requirements of CEQA.

ARTICLE 4 **SPECIFIC CRITERIA OF THE PROJECT**

4.1 Permitted Development. Notwithstanding anything to the contrary herein or in the Development Approvals, the Developers are hereby allowed a total development of no more than the following, all consistent with this Agreement and the Development Approvals:

1) 1154 Sonora Court: 142,270 gross square feet of office (excluding any area exclusively used for parking) and 173 housing units.

2) 1170 Sonora Court: 79,211 gross square feet of office (excluding any area exclusively used for parking), 107 housing units, and approximately 380 square feet of retail on the ground level.

4.2 Developers' Obligations. As a material consideration for the long-term assurances, Vested Rights, and other City obligations provided by this Agreement, and as a material

inducement to City to enter into this Agreement, Developers have offered and agreed to provide the public benefits to the City set forth in Article 2.

ARTICLE 5

SUBSEQUENT APPROVALS

5.1 Subsequent Approvals.

5.1.1 Applications for Subsequent Approvals shall be accepted, reviewed for completeness, and processed to completion diligently and expeditiously in good faith by the City and considered in a manner consistent with the rights granted by this Agreement and the Applicable Laws.

5.1.2 With the Vested Rights, the City has made a final policy decision that the Projects are consistent with the Applicable Rules, including but not limited to, the LSAP and in the best interests of the public health, safety, and general welfare. Accordingly, the City shall not use its authority in considering any application for a Subsequent Approval that is consistent with the Vested Right and Applicable Rules to change the policy decisions reflected by this Agreement. Nothing herein shall limit the ability of the City to require the necessary reports, analysis, or studies to assist in determining whether the requested Subsequent Approval is consistent with the Applicable Laws and this Agreement, but the scope and nature of such request should be limited to the information reasonably necessary to make such consistency determination at reasonable cost. City's review of the Subsequent Approvals shall be consistent with City Laws and this Agreement, including without limitation Article 3 of this Agreement. To the extent consistent with CEQA, as determined by the City in its reasonable discretion, City shall utilize the CEQA Clearance for review of Subsequent Approvals. In the event that any additional CEQA documentation is legally required for any discretionary Subsequent Approval for the Project, then the scope of such documentation shall be focused, to the extent possible consistent with CEQA, on the specific subject matter of the Subsequent Approval, and the City shall conduct such CEQA review as expeditiously as possible. As provided in Article 12 of this Agreement, Developers shall defend, indemnify and hold the City harmless from or in connection with any litigation seeking to compel the City to perform additional environmental review of any Subsequent Approvals.

5.1.3 Any conditions, terms, restrictions, procedures or requirements imposed by the City on Subsequent Approvals shall not be inconsistent with the Vested Rights or Applicable Rules, and shall not prevent development of the Properties for the uses and the density of development, and at the rate, timing and sequencing, contemplated by this Agreement, except as and to the extent required by State or Federal Law. In connection with approval of any Subsequent Approvals that implement and are consistent with the Vested Rights (including without limitation any minor modifications thereto), the City shall not impose conditions of approval that require Exactions beyond those already included in the Development Approvals, except to the extent required by CEQA review conducted in accordance with Section 5.1.2 of this Agreement. Developers may protest any conditions, dedications or fees imposed on Subsequent Approvals while continuing to develop the Project, such protest by Developer shall not delay or stop the issuance of building permits or certificates of occupancy.

5.2 Life of Development Approvals. The terms of the Development Approvals shall automatically be extended for the duration of this Agreement (including any extension to this Agreement as permitted by Section 1.4) if the term otherwise applicable to such Approval is shorter than the duration of this Agreement (including any extension).

ARTICLE 6

AMENDMENT OF AGREEMENT AND DEVELOPMENT APPROVALS

6.1 Amendment or Cancellation. Any Party may propose an amendment to or cancellation of this Agreement in whole or in part, in the manner provided for in Government Code Section 65868 and Resolution No. 371-81. No amendment to or cancellation of this Agreement or any provision hereof shall be effective for any purpose unless adopted pursuant to the procedures included in Resolution No. 371-81 and specifically set forth in a writing, which refers expressly to this Agreement and is signed by duly authorized representatives of the Parties.

6.2 Recordation. Any amendment, termination or cancellation of this Agreement shall be recorded by the City Clerk not later than ten (10) days after the effective date of the action effecting such amendment, termination or cancellation; however, a failure to record shall not affect the validity of the amendment, termination or cancellation.

6.3 Amendments to Development Agreement Statute. This Agreement has been entered into in reliance upon the provisions of California Government Code Section 65864 et seq. relating to development agreements, as those provisions existed at the date of execution of this Agreement. No amendment or addition to those provisions which would materially affect the interpretation or enforceability of this Agreement shall be applicable to this Agreement unless such amendment or addition is specifically required by the California State Legislature, or is mandated by a court of competent jurisdiction. If such amendment or change is permissive (as opposed to mandatory), this Agreement shall not be affected unless the Parties mutually agree in writing, after following the procedures in Section 6.1, to amend this Agreement to permit such applicability.

6.4 Amendment of Development Approvals. To the extent permitted by local, state, and federal law, any Development Approval may, from time to time, be amended or modified by submittal of an application from the Developers and following the procedures for such amendment or modification contained in the Sunnyvale Municipal Code. Upon any approval of such an amendment or modification, the amendment or modification shall automatically be deemed to be incorporated into the Development Approvals without any further procedure to amend this Agreement.

ARTICLE 7

ANNUAL REPORT

7.1 Time of Review. To determine Developers' good faith compliance with this Agreement, in accordance with Government Code Section 65865.1, and in compliance with the Development Agreement Resolution, Developers shall submit a report approximately every twelve (12) months from the Effective Date, commencing on the first anniversary of the Effective Date, detailing all actions taken with respect to the development of this Property. Upon receipt of the report, the Community Development Director shall schedule an annual review of the report to be

heard by the Planning Commission. This obligation for annual reporting shall expire upon Project occupancy. Consistent with Development Agreement Resolution No. 371-81, or its successor provision, the Community Development Director or designee shall give notice to the Developers that the City intends to schedule an annual review of the Agreement at least thirty (30) days in advance of the time at which the matter will be considered by the Planning Commission and shall include the statement that review may result in an election to terminate this Agreement as provided herein.

7.2 Determination of Good Faith Compliance. Such annual report shall be limited in scope to compliance with the terms of this Agreement pursuant to Government Code Section 65865.1. The Planning Commission shall conduct a public hearing. If the Planning Commission determines that, based upon substantial evidence in the record, Developers have substantially complied in good faith with the terms and conditions of this Agreement during the period under review, the review for that period shall be concluded. If the Planning Commission determines that, in good faith and based upon substantial evidence in the record, Developers have not complied in good faith with the terms and conditions of this Agreement during the period under review, the Planning Commission shall forward its report and recommendation to the City Council. If the City Council determines, in good faith and based upon substantial evidence in the record, that Developers have not complied in good faith with the terms and conditions of this Agreement during the period under review, the City Council may issue a Notice of Breach (as defined in Section 8.2) and exercise the remedies set forth in Section 8.1.

7.3 No Waiver. Failure of Developers to provide an annual report or failure of City to conduct an annual review hearing shall not constitute a default under this Agreement or a waiver by City of its rights to otherwise enforce the provisions of this Agreement nor shall Developers have or assert any defense to such enforcement by reason of any failure to conduct an annual review. City does not waive any claim of defect or breach by Developers if, following periodic review pursuant to this Article 7, City does not propose to modify or terminate this Agreement.

ARTICLE 8

DEFAULT, REMEDIES AND TERMINATION

8.1 Remedies for Breach. City and Developers acknowledge that the purpose of this Agreement is to carry out the Parties' objectives as set forth in the recitals. City and Developers agree that to determine a sum of money which would adequately compensate either Party for choices they have made which would be foreclosed should the Properties not be developed as contemplated by this Agreement is not possible and that damages would not be an adequate remedy. Therefore, City and Developers agree that in the event of a breach of this Agreement, the only remedies available to the Developers and City shall be: (1) suits for specific performance to remedy a specific breach, (2) suits for declaratory or injunctive relief, (3) suits for mandamus under Code of Civil Procedure Section 1085, and/or 1094.5, and (4) termination or cancellation of this Agreement or, at the option of City in the event of breach by Developers, termination of the rights of Developers under this Agreement. Except for attorney's fees and associated costs as set forth herein, monetary damages shall not be awarded to either Party. This exclusion on damages is limited to a breach of this Agreement and shall not preclude actions by a Party to enforce payments of monies due or the performance of obligations requiring the expenditures of money under the terms of this Agreement or Applicable Laws. All of these remedies shall be cumulative and not

exclusive of one another, and the exercise of any one or more of these remedies shall not constitute a waiver or election with respect to any other available remedy.

8.2 Notice of Breach. Prior to the initiation of any action for relief specified in Section 8.1 above because of an alleged breach of this Agreement, the Party claiming breach (the "Complaining Party") shall deliver to the other Party (the "Defaulting Party") a written notice of breach (the "Notice of Breach"). The Notice of Breach shall specify the reasons for the allegation of breach with reasonable particularity. The Defaulting Party shall have thirty (30) days to either: (a) use good faith efforts to cure the breach or, if such cure is of the nature to take longer than 30 days, to take reasonable actions to commence curing the breach during the thirty (30) day period and diligently complete such cure; or (b) if in the determination of the Defaulting Party, the event does not constitute a breach of this Agreement, the Defaulting Party, within thirty (30) days of receipt of the Notice of Breach, shall deliver to the Complaining Party a "Notice of Non-Breach," which sets forth with reasonable particularity the reasons that a breach has not occurred. Failure to respond within the thirty (30) days shall not be deemed an admission of the breach, but the Complaining Party may proceed to pursue its remedies under this Article 8.

8.2.1 Mutual Agreement for Cure of Certain Defaults. If the Defaulting Party believes that the breach cannot practically be cured within the thirty (30)-day period, the Defaulting Party shall not be deemed in breach provided that: (a) the cure shall be commenced during the thirty (30)-day period after receipt of the Notice of Breach; (b) within the thirty (30)-day period, the Defaulting Party provides a schedule to the Complaining Party for cure of the breach, subject to the reasonable approval of the Complaining Party; and (c) the cure is completed in accordance with the schedule agreed to by the Parties, or such additional time as may be agreed to by the Complaining Party. If the Parties cannot mutually agree on a schedule for cure of the breach, at the conclusion of the initial thirty (30)-day period, the Complaining Party may issue a Notice of Breach and proceed to pursue its remedies under this Article 8.

8.3 Failure to Assert; No Waiver. Any failures or delays by a Complaining Party in asserting any of its rights and remedies as to any breach shall not operate as a waiver of any breach or of any such rights or remedies. Delays by a Complaining Party in asserting any of its rights and remedies, irrespective of the length of the delay, shall not deprive the Complaining Party of its right to institute and maintain any actions or proceedings which it may deem necessary to protect, assert, or enforce any such rights or remedies, nor constitute a waiver of such party's right to demand strict compliance by such other Party in the future. No waiver by a Party of a breach shall be effective or binding upon such Party unless made in writing by such Party, and no such waiver shall be implied from any omission by a party to take any action with respect to such breach.

8.4 Termination by Mutual Consent. This Agreement may be voluntarily terminated in whole or in part by the mutual consent of the Parties or their successors in interest, in the sole and absolute discretion of each as to its consent, in accordance with the provisions of Resolution No. 371-81 and the Development Agreement Statute.

8.5 Effect of Termination on Developers' Obligations.

8.5.1 Notwithstanding any other provision to the contrary, termination or cancellation of this Agreement or termination of the rights of Developers as to the Properties, or

either of the Properties, shall not affect any requirement to comply with the Vested Rights, the terms and conditions of any other Subsequent Approval, nor any payments then due and owing to City, nor shall it affect the covenants of Developers specified in Section 8.5.2 below, to continue after the termination or cancellation of this Agreement, nor shall termination of this Agreement as to all or any portion of the Properties result in termination of Subsequent Approvals that would not otherwise have expired pursuant to Existing City Laws.

8.5.2 Notwithstanding anything in this Agreement to the contrary, the following provisions of this Agreement shall survive and remain in effect following termination or cancellation of this Agreement for so long as necessary to give them full force and effect with respect to claims or rights of City arising prior to termination or cancellation:

- (a) Section 8.1 (Remedies; limitation on damages and exceptions thereto; accrued obligations);
- (b) Section 8.5.1 (Developers' obligations upon termination or cancellation);
- (c) Section 12.2 (Indemnification); and
- (d) Section 14.1 and 14.1.1 (Third Party Challenges; Indemnification).

ARTICLE 9

ESTOPPEL CERTIFICATE

Either Party may, at any time, and from time to time, deliver written notice to the other Party requesting such Party to certify in writing that, to the knowledge of the certifying Party, (a) this Agreement is in full force and effect and is a binding obligation of the Parties, (b) this Agreement has not been amended or modified or, if so amended or modified, identifying the amendments or modifications, and (c) the requesting Party is not in default in the performance of its obligations under this Agreement, or if in default, to describe the nature of any defaults, and (d) such other information as the other Party may reasonably request. The Party receiving a request under Article 9 shall execute and return the certificate within thirty (30) days following receipt of the request. The City Manager shall be authorized to execute any certificate requested by Developers. Developers and City acknowledge that a certificate hereunder may be relied upon by transferees, tenants, investors, partners, bond counsel, underwriters, and Mortgagees. The request shall clearly indicate that failure of the receiving Party to respond within the thirty (30) day period will lead to a second and final request. Failure to respond to the second and final request within fifteen (15) days following receipt of the second request shall be deemed approval of the estoppel certificate.

ARTICLE 10

TRANSFERS, ASSIGNMENTS

10.1 Agreement Runs with the Land.

10.1.1 This Agreement and all of its provisions, agreements, rights, powers, standards, terms, covenants and obligations, shall be binding upon the Parties and their respective heirs, successors (by merger, consolidation, or otherwise) and assigns, devisees, administrators,

representatives, lessees, and all other persons or entities acquiring the Properties or any portion thereof, or any interest therein, whether by sale, operation of law, or in any manner whatsoever, and shall inure to the benefit of the Parties and their respective heirs, successors (by merger, consolidation or otherwise) and assigns.

10.1.2 All of the provisions of this Agreement shall be enforceable during the Term as equitable servitudes and constitute covenants running with the land pursuant to applicable law, including, but not limited to Section 1468 of the California Civil Code. Each covenant to do or refrain from doing some act on the Properties hereunder, (a) is for the benefit of the Properties and is a burden upon the Properties, (b) runs with the Properties, and (c) is binding upon Developers and each successive owner during its ownership of the Properties or any portion thereof (subject to the terms of Section 11.2 below), and each person or entity having any interest in the Properties. Every person who now or hereafter owns or acquires any right, title or interest in or to any portion of the Properties is and shall be conclusively deemed to have consented and agreed to every provision contained herein, whether or not any reference to this Agreement is contained in the instrument by which such person acquired an interest in the Properties.

10.2 Right to Assign. Developers shall have the right to assign (by sale, transfer, or otherwise) its rights and obligations under this Agreement as to any portion of the Properties and Projects to any person, business entity, association, organization, or other similar entity ("Assignee"). Developers' right to assign shall not be subject to City's approval.

10.3 Release Upon Assignment. Upon the express written assumption by the Assignee of Developers' rights and interests under this Agreement (the "Assignment Agreement"), and Developers' delivery of a conformed copy of the recorded Assignment Agreement to City, Developers (and Land Owner if applicable) shall be free from any and all liabilities accruing on or after the date of assignment with respect to those obligations assumed by the Assignee pursuant to the Assignment Agreement.

ARTICLE 11

MORTGAGEE PROTECTION

11.1 Mortgage Protection. This Agreement shall be superior and senior to any lien placed upon the Property or any portion of the Property after the date of recording of this Agreement, including the lien of any deed of trust or mortgage ("Mortgage"). Notwithstanding the foregoing, no breach of this Agreement shall defeat, render invalid, diminish, or impair the lien of any Mortgage made in good faith and for value, but all of the terms and conditions contained in this Agreement (including but not limited to City's remedies to terminate the rights of Developers (and its successors and assigns) under this Agreement, to terminate this Agreement, and to seek other relief as provided in this Agreement) shall be binding upon and effective against any person or entity, including any deed of trust beneficiary or mortgagee ("Mortgagee") who acquires title to the Property, or any portion thereof, by foreclosure, trustee's sale, deed in lieu of foreclosure, or otherwise.

11.2 Mortgagee Not Obligated. Notwithstanding the provisions of Section 11.1 above, no Mortgagee shall have any obligation or duty under this Agreement to construct or complete the construction of improvements on the Property, or to guarantee such construction or completion;

provided, however, that a Mortgagee shall not be entitled to devote the Property to any uses or to construct any improvements on the Property other than those uses or improvements provided for or authorized by this Agreement, or otherwise under Applicable Law.

11.3 Notice of Default to Mortgagee. If City receives a written notice from a Mortgagee, Developers or any approved assignee requesting a copy of any notice of default given Developers or any approved or permitted assignee and specifying the address for service, then City shall deliver to the Mortgagee at Mortgagee's cost (or Developers' cost), concurrently with service to Developers, any notice given to Developers with respect to any claim by City the Developers are in default under this Agreement, and if City makes a determination of default, City shall if so requested by the Mortgagee likewise serve at Mortgagee's cost (or Developers' cost) notice of noncompliance on the Mortgagee concurrently with service on Developers. Each Mortgagee shall have the right during the same period available to Developers to cure or remedy, or to commence to cure or remedy, the event of default claimed or the areas of noncompliance set forth in City's notice.

11.4 No Supersedure. Nothing in Article 11 shall be deemed to supersede or release a Mortgagee or modify a Mortgagee's obligations under any subdivision improvement agreement or other obligation incurred with respect to the Property outside this Agreement, nor shall any provision of Article 11 constitute an obligation of City to the Mortgagee, except as to the notice requirements of Section 11.3.

11.5 Technical Amendments to this Article 11. City agrees to reasonably consider approval of interpretations and/or technical amendments to the provisions of this Agreement that are required by lenders for the acquisition and construction of the improvements on the Properties or any refinancing thereof and to otherwise cooperate in good faith with a Developer at Developer's expense to facilitate Developer's negotiations with lenders.

ARTICLE 12

INDEMNIFICATION

12.1 No Duty of City; Hold Harmless. It is specifically understood and agreed by the Parties that the development contemplated by this Agreement is a private development, that City has no interest in or responsibility for or duty to third persons concerning any of said improvements, and that Developers shall have full power over and exclusive control of the Property subject only to the limitations and obligations of Developers under this Agreement.

12.2 Indemnification and Duty to Defend.

(a) To the fullest extent permitted by law, Developers hereby agree to and shall immediately defend, indemnify, and hold City and its elected and appointed representatives, officers, agents, and employees harmless from any liability for damage or claims for damage for personal injury, including death, as well as from claims for property damage which may arise from Developers' operations under this Agreement, excepting suits and actions brought by Developers for default of the Agreement or to the extent arising from the intentional acts, sole negligence, or willful misconduct of City, its elected

and appointed representatives, officers, agents, employees, contractors or subcontractors, or of a third party ("Indemnified Party").

(b) This indemnification and hold harmless agreement apply to all damages and claims for damages suffered or alleged to have been suffered by reason of Developers' performance of its obligations under this Agreement, regardless of whether or not City prepared, supplied, or approved plans or specifications for the Property, but does not apply to damages and claims for damages caused by City with respect to public improvements and facilities after City has accepted responsibility for them.

(c) The duty to defend is a separate and distinct obligation from Developers' duty to indemnify. Subject to the limitations or requirements stated in this Agreement, Developers shall be obligated to defend, in all legal, equitable, administrative, or special proceedings, with counsel reasonably approved by the Indemnified Party immediately upon tender to Developers, which shall be made to Developers promptly upon it becoming known to the Indemnified Party. An allegation or determination of the sole negligence or willful misconduct by the Indemnified Party shall not relieve Developers from its separate and distinct obligation to defend the Indemnified Party. The obligation to defend extends through final judgment, including exhaustion of any appeals. The defense obligation includes the obligation to provide independent defense counsel of Developers' sole choosing if Developers assert that liability is caused in whole or in part by the sole negligence or willful misconduct of the Indemnified Party. If it is finally adjudicated that liability was caused by the sole negligence or willful misconduct of the Indemnified Party, Developers may submit a claim to City for reimbursement of its reasonable attorneys' fees and defense costs.

ARTICLE 13

NOTICES

13.1 Notices. Any notice to either Party shall be in writing and given by delivering the notice in person or by sending the notice by registered or certified mail, or Express Mail, return receipt requested, with postage prepaid, to the Party's mailing address.

13.2 Mailing Addresses. The respective mailing addresses of the Parties are, until changed as hereinafter provided, the following:

City: City of Sunnyvale
456 W. Olive Avenue
Sunnyvale, CA 94088
Attn: Director of
Community
Development

With a copy to: City of Sunnyvale
456 W. Olive Avenue
Sunnyvale, CA 94088
Attn: City Attorney

Developers: 1154 Sonora Court, LLC and 1170 Sonora Court, LLC
c/o SKS Partners
601 California St. Suite 1310
San Francisco, CA 94108
Attn: Pamela Izzo and Alexandra Lee

With a copy to: Holland & Knight LLP
560 Mission St., Suite 1900
San Francisco, CA 94105
Attn: Tamsen Plume and
Genna Yarkin

Either Party may change its mailing address at any time by giving ten (10) days' notice of such change in the manner provided for in this section. All notices under this Agreement shall be deemed given, received, made or communicated on the date personal delivery is effectuated or, if mailed, on the delivery date or attempted delivery date shown on the return receipt. Nothing in this provision shall be construed to prohibit communication by facsimile transmission or email, so long as an original is sent by first class mail, commercial carrier or is hand-delivered.

ARTICLE 14

MISCELLANEOUS

14.1 Third-Party Legal Challenge. In the event of any legal action, claim, or proceeding instituted by a third party or other governmental entity or official to attack, set aside, void, or annul or otherwise challenge the validity of any provision of this Agreement, the CEQA Clearance or any other Development Approval ("Third Party Challenge"), the responsibilities of the Parties shall be as follows.

14.1.1 Indemnification

(a) The Developers shall defend, indemnify, and hold harmless the City or its agents, officers, and employees from any Third Party Challenge, as defined above, against the City or its agents, officers, and employees and shall indemnify and hold harmless City against any and all third-party attorneys' fees, court costs and other liabilities determined by a court to be arising out of such Third Party Challenge.

(b) The City shall promptly notify the Developers of the Third Party Challenge and shall cooperate fully in the defense of the Third Party Challenge, including but not limited to decisions about selection of counsel, settlement, preparation of the administrative record (if any) and litigation strategies.

(c) Under no circumstances shall subsections (a) – (b) above require Developers to pay or perform any settlement arising out of a Third Party Challenge unless the settlement is expressly approved by Developers.

14.1.2 Invalidity. If any part of this Agreement is held by a court of competent jurisdiction to be invalid or unlawful as the result of a Third Party Challenge or otherwise, the

Parties shall use their best efforts to cure any inadequacies or deficiencies identified by the court in a manner consistent with the express and implied intent of this Agreement, and then to adopt or re-enact such part of this Agreement as necessary or desirable to permit implementation of this Agreement.

14.2 Applicable Law/Venue/Attorneys' Fees and Costs. This Agreement shall be construed and enforced in accordance with the laws of the State of California, excluding its conflict of laws provisions. Any legal actions under this Agreement shall be brought only in the Superior Court of the County of Santa Clara, State of California. Should any legal action or arbitration be brought by either Party because of breach of this Agreement or to enforce any provision of this Agreement, the prevailing Party shall be entitled to reasonable attorney's fees and such other costs as may be found by the court.

14.3 Severability. Invalidation of any of the provisions contained in this Agreement, or of the application thereof to any person, by judgment or court order, shall in no way affect any of the other provisions hereof or the application thereof to any other person or circumstance and the same shall remain in full force and effect, unless enforcement of this Agreement as so invalidated would be unreasonable or grossly inequitable under all the circumstances or would frustrate the purposes of this Agreement.

14.4 Nondiscrimination Clause. Developers covenant by and for itself and any successors in interest that there shall be no discrimination against or segregation of any person or group of persons on account of race, color, creed, religion, sex, marital status, ancestry, or national origin in the development of the Property in furtherance of this Agreement. The foregoing shall run with the land.

14.5 Construction of Agreement. The provisions of this Agreement and the Exhibits shall be construed as a whole according to their common meaning and not strictly for or against any Party in order to achieve the objectives and purpose of the Parties. The captions preceding the text of each Article, Section, Subsection and the Table of Contents are included only for convenience of reference and shall be disregarded in the construction and interpretation of this Agreement. Wherever required by the context, the singular shall include the plural and vice versa, and the masculine gender shall include all genders, or vice versa. All references to "person" shall include, without limitation, any and all corporations, partnerships or other legal entities.

14.6 Other Necessary Acts. Each Party covenants, on behalf of itself and its successors, heirs and assigns, to take all actions and do all things, and to execute, with acknowledgment or affidavit if required, any and all further instruments, documents and writings as may be reasonably necessary or proper to achieve the purposes and objectives of this Agreement and to secure the other party the full and complete enjoyment of its rights and privileges hereunder.

14.7 Applicable Law. This Agreement, and the rights and obligations of the Parties, shall be construed by and enforced in accordance with the laws of the State of California, excluding its conflict of laws provisions.

14.8 Equal Authorship. This Agreement has been reviewed by legal counsel for both the Developers and City, and no presumption or rule that ambiguities shall be construed against the drafting Party shall apply to the interpretation or enforcement of this Agreement.

14.9 Time. Time is of the essence of this Agreement and of each and every term and condition hereof.

14.10 Subsequent Projects. After the Effective Date of this Agreement, the City may approve other projects that place a burden on the City's infrastructure; however, it is the intent and agreement of the Parties that the Developers' right to build and occupy the Projects, as described in this Agreement, shall not be diminished despite the increased burden of future approved development on public facilities.

14.11 Entire Agreement. This written Agreement and the Exhibits contain all the representations and the entire agreement between the Parties with respect to the subject matter hereof. Except as otherwise specified in this Agreement, any prior correspondence, memoranda, agreements, warranties or representations are superseded in total by this Agreement and Exhibits.

14.12 Form of Agreement; Exhibits. This Agreement is executed in three duplicate originals, each of which is deemed to be an original. This Agreement, including its exhibits constitutes the entire understanding and agreement of the parties. Said exhibits are identified as follows:

Exhibit A-1 and A-2: 1154 Sonora Court Property Descriptions
Exhibit A-3 and A-4: 1170 Sonora Court Property Descriptions
Exhibit B: Impact Fees

14.13 No Third Party Beneficiary. This Agreement and all of its terms, conditions, and provisions are entered into only for the benefit of the Parties executing this Agreement (and any successor in interest) and not for the benefit of any other individual or entity.

14.14 Authority. The Parties hereby represent that the person hereby signing this Agreement on behalf of each respective Party has the authority to bind the Party to the Agreement.

14.15 Counterpart Signatures. This Agreement may be executed in counterparts, each of which shall be an original, but all of which shall constitute one and the same Agreement.

(SIGNATURES ARE ON THE FOLLOWING PAGE)

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the day and year first above written.

"City"

CITY OF SUNNYVALE,
A Charter City

By: _____
Kent Steffens
City Manager

Date: _____

Attest:

David Carnahan, City Clerk

Approved as to Form:

John A. Nagel, City Attorney

"Developers"

1154 SONORA COURT, LLC, A
DELAWARE limited liability company

By: _____
Name: Dan Kingsley
Title: Managing Member

Date: _____

1170 SONORA COURT, LLC, a
Delaware limited liability
company

By: _____
Name: Dan Kingsley
Title: Managing Member

Date: _____

Land Owner Consent to Recording:

A&F Properties, LLC, a California limited
liability company

By: _____
Name: Baha Hararri
Its: Manager

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 _____)

On _____ before me, _____
(insert name and title of the officer)

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(ies), and that by his/her/their signature(s) on the instrument the
person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the
foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature _____ (Seal)

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 _____)

On _____ before me, _____
(insert name and title of the officer)

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(ies), and that by his/her/their signature(s) on the instrument the
person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the
foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature _____ (Seal)

EXHIBIT "A-1"
1154 Sonora Court Property Legal Description

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

Parcel 4 as shown on that Parcel Map filed in Book 357 of Maps, at Page 26, Santa Clara County Records.

Excepting therefrom all oil, gas, petroleum and other mineral or hydrocarbon substances in and under the land, together with the right to use that portion only of said land which underlies a plane parallel to and 500 feet below the present surface of said land for the purpose of prospecting for, developing and/or extracting said oil, gas, petroleum and other hydrocarbon substances from said land by means of wells drilled into said subsurface of said land from drill sites located on other land with no rights of surface entry, as reserved in the deed from Robert L. Chambers, et al to West Bay Industrial Corp., dated May 13, 1974 and recorded July 19, 1974 in Book B001 of Official Records, Page 243.

Excepting therefrom that portion conveyed to Peninsula Corridor Joint Powers Board in that certain Grant Deed recorded February 22, 2018 in Official Records, as Document No. 23873592, Santa Clara County Records.

APN: 205-50-016

EXHIBIT “A-2”
1154 Sonora Court Property Plat

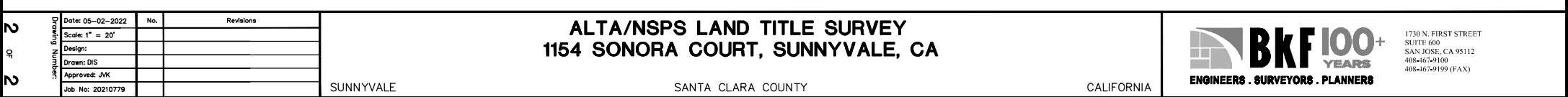


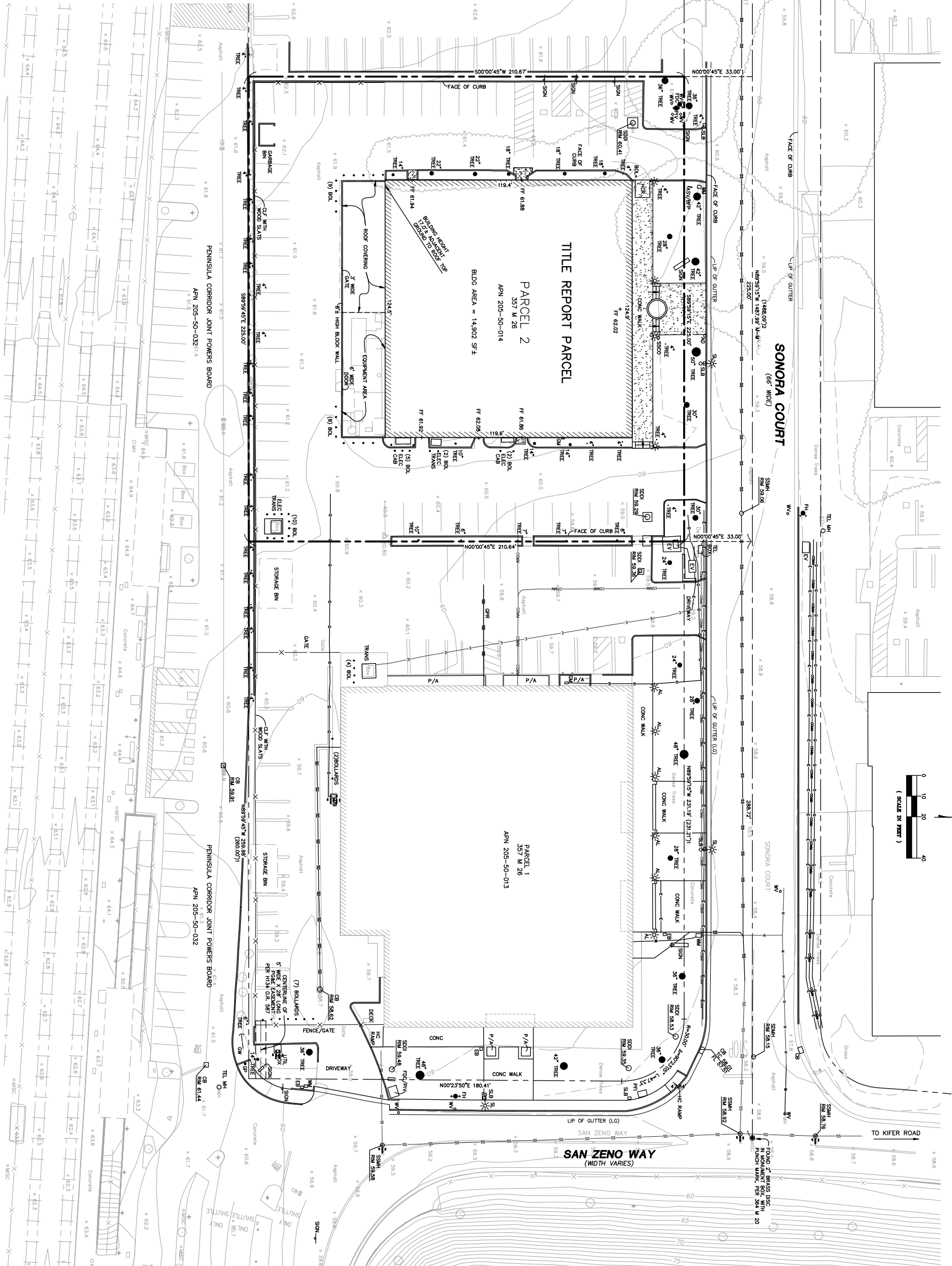
EXHIBIT "A-3"
1170 Sonora Court Property Legal Description

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

PARCEL 2, as shown on Parcel Map filed June 12, 1975 in Book 357 of Maps, Page 26, Santa Clara County Records. EXCEPTING THEREFROM all oil, gas, mineral and other hydrocarbon rights and substances in and under the land, but beneath a plane of 500 feet below the surface of the land, but without any right of surface entry, as reserved in Deed from Robert L. Chambers et al, recorded June 19, 1974 in Book B001 of Official Records, Page 243.

205-50-014

**EXHIBIT “A-4”:
1170 Sonora Court Property Plat**



4. FOR ADDITIONAL TREE INFORMATION, SEE THE TOPOGRAPHIC SURVEY OF THIS SITE DATED JULY 13, 2021 WITH REVISION DATE APRIL 19, 2022.

No.	Revisions

ALTA/NSPS LAND TITLE SURVEY
1170 SONORA COURT, SUNNYVALE, CA

SANTA CLARA COUNTY

CALIFORNIA



1730 N. FIRST STREET
SUITE 600
SAN JOSE, CA 95112
408-467-9100
408-467-9199 (FAX)

EXHIBIT B:
Impact Fees