

**PARK AGREEMENT
BY AND BETWEEN
THE CITY OF SUNNYVALE, CALIFORNIA
AND
1090 EAST DUANE AVENUE LLC**

This PARK AGREEMENT (this “*Agreement*”), dated for reference purposes as of _____, 2019, is entered into by and between the CITY OF SUNNYVALE, a charter city and municipal corporation (“*City*”), and 1090 EAST DUANE AVENUE LLC, a Delaware limited liability company (“*Developer*”). City and Developer may be referred to herein individually as a “*Party*” or collectively as the “*Parties*” or “Parties to this Agreement.” It is the intent of the Parties that this Agreement shall become operative on the Effective Date (as hereinafter defined).

RECITALS

City and Developer enter into this Agreement on the basis of the following facts, understandings and intentions, and the following recitals are a substantive part of this Agreement.

A. Developer is the fee title owner of that certain real property located in the City and more particularly described on Exhibit A attached hereto (the “*Project Site*”).

B. Developer intends to develop the Project Site with a master-planned residential community including 1,051 residential units (107 townhomes, 887 mid-rise apartments, and 57 low-rise apartments), a 6.5 acre community park, private open space, parking, and other associated improvements (the “*Project*”). City has previously approved a Rezoning, Special Development Permit, Lot Line Adjustment, and Vesting Tentative Map ,for the Project (collectively, together with any and all other approvals, entitlements and permits issued at any time for the Project, the “*Project Approvals*”).

C. Sunnyvale Municipal Code (“*SMC*”) Chapters 18.10 and 19.74 require new residential development to dedicate adequate park and recreational land and/or pay a fee in-lieu of parkland dedication, for the purpose of developing new or rehabilitating existing parks and recreational facilities (the “*Parkland Requirements*”). The development of the Project is made subject to the Parkland Requirements pursuant to applicable conditions of approval of the Project Approvals (collectively, the “*Project Conditions*”).

D. Developer intends to satisfy the Parkland Requirements and applicable Project Conditions for the Project by (i) improving and dedicating 6.5 acres for the “Community Park” as more particularly described on Exhibit B-1 and depicted on the diagram in Exhibit B-2 attached hereto (the “*Parkland*”) to City for parkland and recreational purposes; and (ii) paying a fee in-lieu of parkland dedication (“*In-Lieu Fee*”) for the remaining 2.563 acres; and (iii) providing \$4 million dollars in community benefit funding which will be utilized towards park implementation total costs.

E. Developer intends to construct and improve the Parkland with certain park improvements and recreational facilities (the “*Park Improvements*”), and which will be more

particularly described in the Construction Documents (defined below), and to fully fund the costs of design and construction of the Park Improvements in accordance with this Agreement.

F. Following completion of the Park Improvements, City will accept the Park Improvements as complete and record with the County Recorder's Office a dedication grant deed of the Parkland from Developer and thereafter maintain the Parkland and the Park Improvements constructed thereon in accordance with this Agreement.

G. Developer and City desire to enter into this Agreement in order to satisfy their respective obligations with respect to the improvement and dedication of the Parkland and payment of the In-Lieu Fee consistent with the Parkland Requirements.

NOW, THEREFORE, in consideration of the mutual covenants set forth in this Agreement and for valuable consideration, receipt and sufficiency of which is hereby acknowledged, the Parties hereby agree as follows:

AGREEMENT

1. **Recitals Incorporated.** The foregoing recitals are true and correct, and are part of this Agreement for all purposes.

2. **Park Dedication, In-Lieu Fees and Improvement Security.** In order to satisfy the Parkland Requirements for the 9.063 acre park for the Project, the Developer shall provide the following:

(a) **Offer of Dedication.** Developer agrees to record an Offer of Dedication to City for 6.5 acres for the Parkland to be recorded concurrently with the first final map.

(b) **Park in Lieu Fee.** Developer agrees to pay the Park in Lieu Fee for the remaining 2.563 acres based on the applicable current fee structure and rate for park in lieu fees at the time of payment under SMC Chapters 18.10 and 19.74, minus \$8 million which represents the City's contribution toward the Park Improvements, and shall be paid no later than recordation of the first final map for the Project.

(c) **Park Improvements.** The design and construction of the Park Improvements shall be capped at a maximum of \$12 million which consists of the following: (i) a \$4 million community benefit credit from developer; and (ii) an \$8 million City contribution.

(d) **Improvement Security.** Developer shall deliver to City after the Effective Date of this Agreement, an adequate and acceptable Faithful Performance Bond by a California admitted surety for the construction of the Park Improvements in the amount of Twelve Million and No/100 Dollars (\$12,000,000.00), substantially in the form set forth in California Government Code section 66499.1, to secure Developer's faithful performance in constructing all Park Improvements required by this Agreement (the "***Faithful Performance Bond***"). Promptly after City Acceptance of Completion (as defined and provided in Section 3(g) below) of the Park Improvements, the Bond shall be fully released by City.

3. **Design and Construction of Park Improvements.**

(a) Community Outreach; Preliminary Concept Plan; Schematic Design; Preliminary Budget. Developer and City shall cooperate, with the City leading the process and the Developer providing all design support, to schedule, provide notice, and conduct as soon as practicable following the Effective Date of this Agreement, at least two (2) to three (3) community outreach meetings in order to develop a preliminary concept plan for the Park Improvements (the “**Preliminary Concept Plan**”) and, as soon as practicable following completion of such community outreach meetings, to present the Preliminary Concept Plan to the Sunnyvale Parks and Recreation Commission (the “**P&R Commission**”) and for approval from the City Council. City shall complete its review and approval and issue its written approval of the Preliminary Concept Plan, and shall complete and provide to Developer final approved City standards and specifications for park design (the “**City’s Park Standards**”), within six (6) months of the Effective Date. As soon as practicable following City Council approval of the Preliminary Concept Plan, Developer shall prepare and present to City for approval by City’s Designated Representative a schematic design for the Park Improvements, based upon the approved Preliminary Concept Plan and the City Park Standards (the “**Schematic Design**”), with a maximum budget of \$12 million including design and contingency. City shall complete its review and approval and issue its written approval of the Schematic Design within nine (9) months of the Effective Date. The Parties agree that the Schematic Design may be amended at any stage of the Park Improvements project upon mutual written agreement of the Parties in order to keep the construction costs within the allocated \$12 Million budget. Promptly following City’s approval of the Schematic Design, Developer shall prepare and submit to City, for its review and approval, an estimated preliminary budget for the costs of design and construction of the Park Improvements which shall not exceed \$12 million dollars (the “**Preliminary Budget**”). This Preliminary Budget shall be inclusive of a design budget that shall not exceed 10% of the overall budget and inclusive of a 10% contingency as more fully detailed in Section 3(c). City shall complete its review of the Preliminary Budget and issue its written approval as soon as practicable after Developer’s submittal of the Preliminary Budget.

(b) Construction Documents. As soon as reasonably practicable following City’s approval of the Schematic Design and Preliminary Budget, Developer shall prepare and submit to City, for its review and approval, proposed final plans and specifications for the Park Improvements (the “**Construction Documents**”). City’s review and approval of the Construction Documents pursuant to this Section shall be limited to conformance with the Schematic Design and City’s Park Standards. City shall review and approve in writing the proposed Construction Documents, or review and provide written comments regarding any necessary corrections thereto, in a prompt and timely manner. In the event that City provides comments regarding any necessary corrections to the Construction Documents, Developer shall promptly, within thirty (30) days, revise and resubmit the Construction Documents to City. City shall then promptly approve in writing such revised Construction Documents, or promptly provide any further comments regarding any necessary corrections thereto. In the event that City provides any further comments regarding any necessary corrections to the Construction Documents, Developer shall promptly, within 30 days, revise and resubmit the Construction Documents to City. City and Developer shall repeat this process for the approval of the Construction Documents specified in this Section until the City approves in writing the Construction Documents.

(c) Final Budget and Prevailing Wages. Within ninety (90) days following City’s written approval of the Construction Documents pursuant to Section 3(b), Developer shall prepare and submit to City, for its review and approval, a proposed final budget for the costs of

design and construction of the Park Improvements based upon the approved Construction Documents and not exceeding \$12 million (the “**Final Budget**”). City shall review and approve in writing the proposed Final Budget, or review and provide written comments regarding any necessary corrections thereto, in a prompt and timely manner after receipt of the Final Budget from Developer. In the event that City provides comments regarding any necessary corrections to the Final Budget, Developer shall promptly, within thirty (30) days, revise and resubmit the Final Budget to City. City shall then promptly approve in writing such revised Final Budget after receipt of the revised Final Budget from Developer. The costs of the design and construction of the Park Improvements set forth in the Final Budget approved by City, which includes a 10% contingency, are the “**Budgeted Costs**.” Notwithstanding any provision herein to the contrary, and unless otherwise agreed to in writing by the Parties in their respective sole and absolute discretion, the approved Final Budget and Budgeted Costs shall not exceed \$12 million.

(d) Bidding and Construction. Developer agrees to receive at least three (3) qualified bids for the construction of the Park Improvements. If the low qualified bid received exceeds the approved Final Budget, the Parties agree to meet and confer in good faith in order to modify the approved Schematic Design or adjust the Final Budget; provided, however, that in no event shall the Parties be obligated to accept, agree to, or proceed with any adjustment to the Final Budget in excess of the initial \$12 million Final Budget. Developer shall procure all grading and other permits necessary for construction of the Park Improvements after City’s approval of the Final Budget pursuant to Section 3(c). The identity and contact information for the City’s representative who shall be the Developer’s primary point of contact during the course of construction and inspection of the Park Improvements hereunder (“**City’s Designated Representative**”) is set forth in Section 5 below. The Park Improvements shall be constructed by Developer in compliance with the City-approved Construction Documents, subject to change orders approved in accordance with the provisions of Section 3(e) below. Prior to the commencement of construction of the Park Improvements, City’s Designated Representative, Developer and Developer’s general contractor shall hold a pre-construction meeting to review construction-related matters, including a review of the City’s inspection requirements and anticipated inspection process during construction. Developer shall schedule inspections of the Park Improvements to ensure conformity with the approved Construction Documents. Developer shall commence the construction of the Park Improvements in accordance with the timing requirement set forth in Section 3(f) below, and shall complete such construction in accordance with the timing requirements set forth in Section 3(g) below. Developer shall provide reasonable notice, a minimum of two weeks, to City prior to the start of construction of the Park Improvements.

(e) Change Orders. City and Developer agree that the 10% contingency may be used for change orders. Any change orders that exceed the cumulative total of 50% of the total contingency amount in the Final Budget must be in writing and, except as set forth in this Section, shall be subject to the prior written approval of City and Developer. Notwithstanding any provision herein to the contrary, any change order that falls within any set-aside for contingencies established in the Final Budget shall not require any approval by City. In no event shall the change orders plus the base construction costs and design costs obligate the Parties to more than \$12 million, unless mutually agreed upon by the Parties.

(f) Commencement of Construction. The Project consists of six areas as follows: (1) one area consisting of a low-rise apartment buildings; (2) one area of townhomes; and (3) four areas of four mid-rise buildings. Unless otherwise agreed to by the Parties, Developer shall commence construction of the Park Improvements prior to the issuance of a building permit for the Project's third mid-rise building unless otherwise mutually agreed upon by the Parties or due to City delays or a Force Majeure event as more fully set forth in Section 3(i) below.

(g) Completion of Construction; Final Inspection; Acceptance of Completion. Developer shall complete the construction of the Park Improvements no later than December 31, 2021, unless otherwise mutually agreed upon by the Parties or due to City delays or a Force Majeure event as more fully set forth in Section 3(i) below. When Developer completes construction of the Park Improvements, Developer shall provide written notice of completion to City ("**Notice of Completion**") and request a walk-through inspection. City shall conduct a final inspection of the Park Improvements (the "**Final Inspection**") as soon as practicable following the date of Developer's Notice of Completion. If, during the Final Inspection, City determines that the Park Improvements have not been completed in accordance with the approved Construction Documents, City shall prepare a punch list of all items to be completed by Developer and shall provide such punch list to Developer as soon as practicable following the Final Inspection. If City delivers such punch list to Developer, then Developer shall undertake to correct such punch list items in a diligent manner. Upon completion of the punch list work, Developer shall request another Final Inspection from City and City shall conduct another Final Inspection as soon as practicable following such written notice from Developer. If City determines that the punch list work is complete, City shall immediately deliver to Developer a notification of final completion and City acceptance of the Park Improvements as complete. If City determines that the punch list work is not complete, then City and Developer shall repeat the Final Inspection/punch list procedures specified herein until City accepts the Park Improvements as complete as set forth in this Section ("**City Acceptance of Completion**"). Thereupon City shall promptly provide Developer with written notice of City Acceptance of Completion of the Park Improvements and, subject to prior mutual agreement by the Parties, the Parties may cause such notice to be recorded. The Parties acknowledge and agree that the entry into this Agreement and the completion of the Park Improvements and City Acceptance of Completion of the Park Improvements by City as provided herein satisfies in full any and all of Developer's obligations to construct the Park Improvements under all applicable Parkland Requirements and Project Conditions and this Agreement.

(h) Acceptance of Dedication. Upon City Acceptance of Completion, the Parties shall meet and confer to determine the date the City shall accept the offer of dedication to the Parkland, which shall depend on the level of construction activities at the Project. The Parkland, including the Park Improvements thereon, shall be granted by Developer to City by separate instrument at any time prior to, but no later than, the expiration of the Six Month Developer Maintenance Period (as defined and provided in Section 4 below). City shall accept the offer of dedication of fee title to the Parkland by way of Grant Deed (the "**Parkland Deed**"). City shall accept the dedication of the Parkland no later than the expiration of the Six Month Developer Maintenance Period and in any event prior to any use of the Parkland or Park Improvements by the general public. The Parties acknowledge and agree that the recording of the Parkland Deed satisfies in full the balance of Developer's Parkland dedication obligations under all applicable

City Standards for Acceptance of Land for Park Purposes, Parkland Requirements and Project Conditions, and this Agreement.

(i) Force Majeure.

(i) Defined. As used herein, "*Force Majeure Event*" shall mean any matter or condition beyond the reasonable control of a Party, including war, public emergency or calamity, fire, earthquake, extraordinary inclement weather, Acts of God, strikes, labor disturbances or actions, civil disturbances or riots, litigation brought by third parties against either City or Developer or both, any failure by the other Party to comply with its obligations hereunder, or any governmental order or law (including any order or law of City) which causes an interruption in the performance of this Agreement or prevents timely delivery of materials or supplies.

(ii) Excuse from Performance. Should a Force Majeure Event prevent performance of this Agreement, in whole or in part, the Party affected by the Force Majeure Event shall be excused or performance under this Agreement shall be suspended to the extent commensurate with the Force Majeure Event; provided that the Party availing itself of this Section shall notify the other Party within ten (10) days of the affected Party's knowledge of the commencement of the Force Majeure Event; and provided further that the time of suspension or excuse shall not extend beyond that reasonably necessitated by the Force Majeure Event.

(iii) Exclusions. Notwithstanding the foregoing, the following shall not excuse or suspend performance under this Agreement:

A. Performance under this Agreement shall not be suspended or excused for a Force Majeure Event if such event is not defined as a Force Majeure Event.

B. Negligence or failure of Developer to perform its obligations under this Agreement shall not constitute a Force Majeure Event.

C. The inability of Developer for any reason to have access to funds necessary to carry out its obligations under this Agreement or the termination of any contract by any contractor or subcontractor or for Developer's default under such contract shall not constitute a Force Majeure Event.

4. Maintenance and Repair of Parkland and Park Improvements. Prior to City Acceptance of Completion of the Park Improvements, and for a period of six (6) months following City Acceptance of Completion of the Park Improvements (the "*Six Month Developer Maintenance Period*"), and prior to any use of the Parkland or Park Improvements by the general public, Developer shall, at its sole cost and expense, maintain and repair the Parkland in accordance with the Standards for Acceptance of Land for Park Purposes attached hereto as Exhibit C (the "*City Standards for Acceptance of Land*"). City, at its sole cost and expense, shall maintain and repair the Parkland and Park Improvements after the Six Month Developer Maintenance Period. Concurrently with the release by City of the Faithful Performance Bond, Developer shall provide

a warranty bond or other security acceptable to the City, in the amount of Three Million Dollars (\$3,000,000.00),), warranting the Parkland Improvements against any defective work or labor done, or defective materials furnished, for a period of one (1) year following City Acceptance of Completion of the Park Improvements.

5. Final Actual Costs.

(a) True-Up. As soon as reasonably practical following City Acceptance of Completion of the Park Improvements, Developer, upon City's request, shall submit to City a schedule and reasonable back-up evidence of all costs and expenses actually paid or incurred by Developer in connection with the design and construction of the Park Improvements (collectively, the "**Final Actual Costs**").

(b) Audit. City reserves the right to audit at its expense, one time within one (1) year following City Acceptance of Completion of the Park Improvements, any financial records, invoices or documents of Developer relating to the Final Actual Costs.

6. Notices. All notices, demands, consents, requests, approvals, disapprovals, designations or other communications (all of the foregoing hereinafter referred to as "notice") pursuant to this Agreement shall be in writing and delivered in person, by commercial courier or by first-class certified mail, postage prepaid. Notices shall be deemed to have been properly given if (a) served personally, or (b) mailed, when deposited with the United States Postal Service within the boundaries of the continental United States for registered or certified delivery, return receipt requested, with postage prepaid, or (c) sent by receipted overnight courier, postage prepaid, in each case addressed to the applicable recipient as follows:

If to City:

City of Sunnyvale
Attn: Director of Public Works
456 W. Olive Avenue
Sunnyvale, California
Or by email to: ctaylor@sunnyvale.ca.gov

If to Developer:

1090 East Duane Avenue LLC
c/o Irvine Company
131 Theory
Irvine, CA 92617
Attn: ICAC Director of Landscape
Or by email at: _____

Either Party may change its address for purposes of this Section by giving written notice to the other Party. All notices shall be deemed given and received, if served personally, when actually received and receipt is acknowledged in writing, upon delivery if delivered by commercial courier, or two (2) days after mailing if sent by United States Postal Service. If delivery of a notice is

refused between the hours of 9:00 A.M. and 5:00 P.M. on a business day, or fails because of a changed address of which no notice was given, then such notice shall be deemed given and received, if mailed or sent by courier, at the time delivery was first attempted, as shown by postal or courier receipt.

7. **Entire Agreement.** Except as expressly set forth herein, this Agreement, including all Exhibits attached thereto, constitutes the entire understanding of the Parties as to those matters contained herein.

8. **Amendment.** The provisions of this Agreement may be waived, altered, amended, or repealed, in whole or in part, only by the mutual agreement of the Parties in writing.

9. **Actions by City.** Where this Agreement requires or permits City to act and no officer of the City is specified, the City Manager or the designated representative of the City Manager has the authority to act on City's behalf.

10. **Severability.** If any term, provision, covenant, or condition of this Agreement is held by a court of competent jurisdiction to be invalid, void or unenforceable, it shall in no way affect, impair or invalidate any other provisions hereof, and the other provisions shall remain in full force and effect.

11. **Assignment.** Except as otherwise expressly set forth herein, neither Party shall convey, assign or transfer ("Transfer") any of its interests, rights or obligations under this Agreement without the prior written consent of the other Party, which consent shall not be unreasonably withheld, delayed or conditioned; provided, however, that City acknowledges and agrees that Developer is authorized to hire, and to delegate to, appropriately qualified contractors and/or subcontractors to perform the Parkland Improvements required under this Agreement. A Transfer by Developer to any of the following entities or persons shall not require approval of City and shall automatically result in the release of the assigning Developer from its obligations hereunder: (i) any entity that is an affiliate of Developer; or (ii) any entity or person that acquires or leases all or substantially all of the Project Site. As used herein, an "affiliate of Developer" means any entity that directly or indirectly controls or is controlled by or under common control with Developer (whether through the ownership or control of voting interests, by contract, or otherwise). Except as otherwise expressly provided herein, should Developer transfer any of its interests, rights or obligations under this Agreement, it shall nonetheless remain liable for performance of the obligations for installation of public improvements and payment of fees, unless the transferee executes an Assumption Agreement in a form reasonably acceptable to City whereby the transferee agrees to be bound by the relevant terms of the Agreement, including the obligations for installation of public improvements and payment of fees. During the Term, Developer shall provide City with written notice of a request to make any Transfer of any interest in this Agreement that requires City's consent hereunder ninety (90) days prior to any such contemplated Transfer. Any such request for a Transfer shall be accompanied by quantitative and qualitative information that substantiates, to City's satisfaction, that the proposed transferee has the capability to fulfill the rights and obligations of this Agreement. Within forty-five (45) days of such a request and delivery of information, City Manager shall make a determination, in his or her sole discretion, as to whether the Transfer shall be permitted or whether such Transfer necessitates an Amendment to this Agreement, subject to approval by City Council.

12. Binding Nature. Subject to the provisions of Section 10 and this Section, this Agreement shall be binding upon and inure to the benefit of the Parties and their respective successors, assigns and legal representatives; provided, however, that, notwithstanding the foregoing or any other provision herein to the contrary, this Agreement and the provisions hereof shall not be binding upon (i) any lender or mortgagee of Developer (unless such lender or mortgagee elects in writing, in its sole and absolute discretion, to assume the rights and obligations of Developer hereunder), or (ii) any renter of a rental unit within the Project, or (iii) any homeowners association and any purchaser of an individual townhome or condominium offered for sale at any time within the Project.

13. Construction of Agreement. Section headings in this Agreement are for convenience of reference only and shall not affect the meaning or interpretation of any provision of this Agreement. As used herein: (i) the singular shall include the plural (and vice versa) and the masculine or neuter gender shall include the feminine gender (and vice versa) where the context so requires; (ii) locative adverbs such as “herein,” “hereto,” and “hereunder” shall refer to this Agreement in its entirety and not to any specific Section or paragraph; (iii) the terms “include,” “including,” and similar terms shall be construed as though followed immediately by the phrase “but not limited to;” and (iv) “shall,” “will” and “must” are mandatory and “may” is permissive. This Agreement and each of the provisions herein, has been reached as a result of negotiations between the Parties and their respective attorneys. This Agreement shall not be deemed to have been prepared by, or drafted by, any particular Party or Parties hereto, and the normal rule of construction to the effect that any ambiguities are to be resolved against the drafting Party or Parties shall not be employed in the interpretation of this Agreement. The language in this Agreement in all cases shall be construed as a whole and in accordance with its fair meaning.

14. Attorney’s Fees. In the event of litigation between the Parties, or if a Party becomes involved in litigation because of the wrongful acts of the other Party, the Parties shall each pay their respective attorney’s fees, expert witness costs and cost of suit.

15. Governing Law. This Agreement shall be construed in accordance with and governed by the laws of the State of California. The venue of any suit filed by either Party shall be vested in the state courts of the County of Santa Clara, or if appropriate, in the United States District Court, Northern District of California, San Jose, California.

16. Counterparts. This Agreement may be executed in counterparts, each of which shall be deemed to be an original, but both of which shall constitute one and the same instrument; and, the Parties agree that the signatures on this Agreement, including those transmitted by facsimile, shall be sufficient to bind the Parties.

17. Term. The term of this Agreement (“*Term*”) shall commence upon the Effective Date and shall expire upon the date of City acceptance of the dedication of Parkland hereunder, unless sooner terminated upon the mutual written agreement of the Parties; provided, however, that the rights and obligations of the Parties pursuant to the provisions of the Parkland Deed and Section 4 shall survive any such termination.

[Remainder of Page Intentionally Blank; Signatures Follow]

The Parties acknowledge and accept the terms and conditions of this Agreement as evidenced by the following signatures of their duly authorized representatives. The Effective Date is the date that the final signatory executes the Agreement. It is the intent of the Parties that this Agreement shall become operative on the Effective Date.

CITY OF SUNNYVALE, CALIFORNIA
a California municipal corporation

APPROVED AS TO FORM:

Approved as to Form: _____ Dated: _____

City Attorney

City Manager

“DEVELOPER”

1090 EAST DUANE AVENUE LLC, a Delaware limited liability company

Dated: _____

By (Signature): _____

Name: _____

Title: _____

By (Signature): _____

Name: _____

Title: _____

Business Address: c/o Irvine Company, 131 Theory, Irvine, CA 92617

Email Address: _____

Telephone: () _____

Fax: () _____

“DEVELOPER”

Exhibit A
to
Park Agreement

Legal Description of Project Site

Exhibit B-1
to
Park Agreement

Legal Description of Parkland

LEGAL DESCRIPTION

LOT 1, IN THE CITY OF SUNNYVALE, COUNTY OF SANTA CLARA, STATE OF CALIFORNIA, AS SHOWN UPON THAT CERTAIN MAP ENTITLED "TRACT NO. _____", AS FILED FOR RECORD ON _____, 2019 IN BOOK _____ OF MAPS, PAGES _____ THROUGH _____, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY.

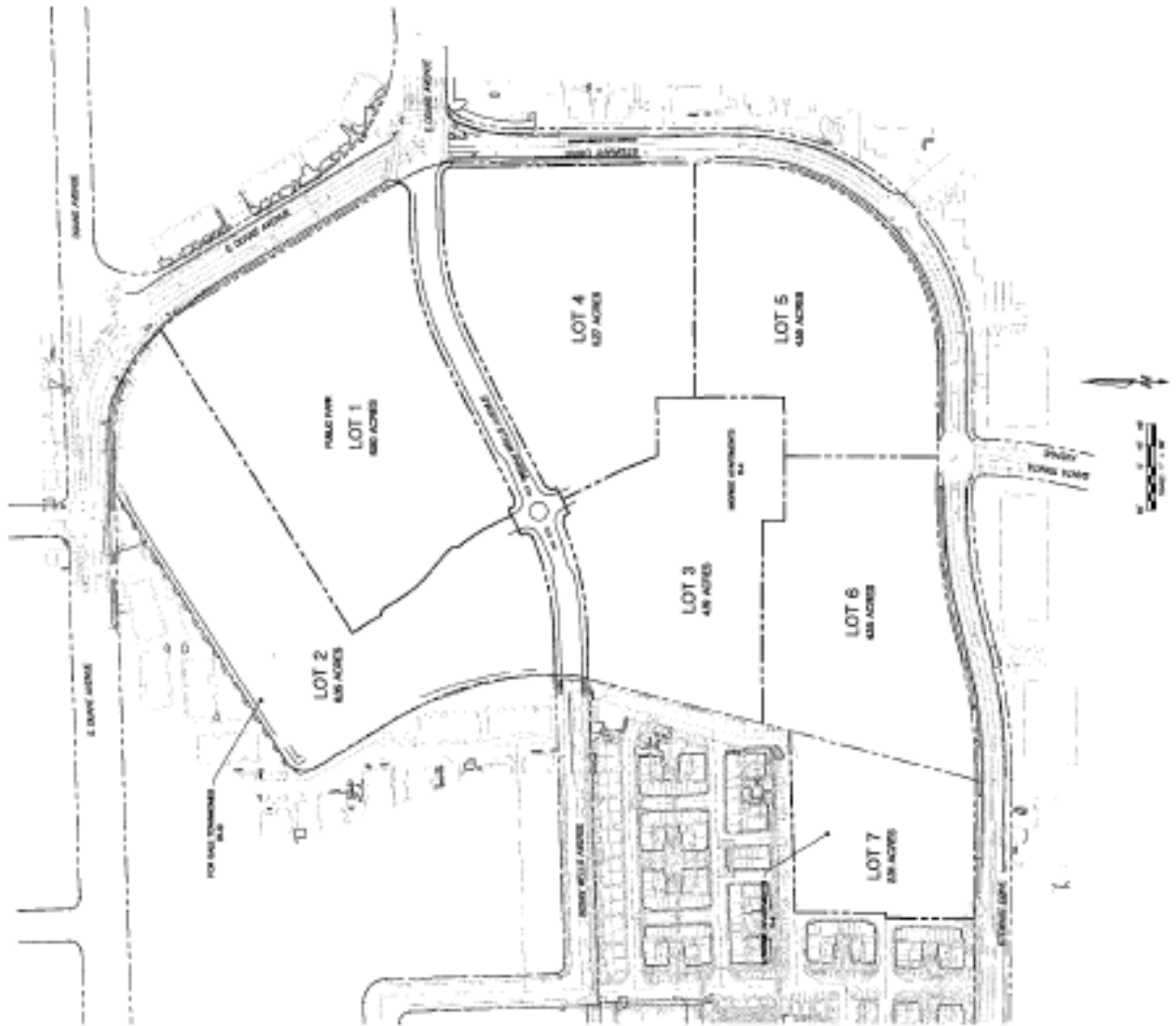


Exhibit B-2
to
Park Agreement
Diagram of Parkland

Exhibit C
to
Park Agreement

City Standards for Acceptance of Land



Department of Public Works Standards for Acceptance of Land for Park Purposes

The following standards apply when the City of Sunnyvale is considering acquiring land for park purposes, whether through dedication by a developer or land purchase.

To maintain the health, welfare and safety of the general public, the City will not accept property for park purposes unless it is “Uncontaminated” and “Clear of Encumbrances.” In addition, when property is being conveyed to the City for park purposes, certain other requirements must be met as well.

“Uncontaminated” is defined as demonstrating to the satisfaction of the City, as determined by the Director of Public Works, that no user or occupant of the park will be exposed to any concentration of chemicals in soil, water, or air where such exposure would be expected to result in a lifetime incremental cancer risk greater than one-chancein-one-million or a threat of non-cancer health effects greater than a Hazard Index of 1 (“Significant Risk”). This is the standard used by the various State and federal agencies to determine screening thresholds for contaminated substances.

“Clear of Encumbrances” means property that is free and clear of both legal and physical encumbrances.

Uncontaminated Property Requirements

1. For the City to accept property, the following is required:
 - A. Both Phase I and Phase II environmental reports conclude there are no hazardous materials or constituents of concern on the property; OR
 - B. If there are hazardous materials or constituents of concern on the property the amount or concentrations shall be below current environmental Screening Levels (SLs) published by the State of California or federal agencies. For soil contamination the concentrations must be below Residential SLs. For vapor contamination, the concentrations must be below

Industrial/Commercial SLs. For groundwater contamination the concentrations must meet the drinking water standard or the use of groundwater must be prohibited. If multiple constituents of concern are present, even at concentrations below SLs, the cumulative risk must not be Significant.

- C. If concentrations or amounts at the site exceed the relevant SLs, then they must be remediated to a non-significant level. If remediation is not feasible, as determined by the Director of Public Works, a site-specific human health risk evaluation for the proposed uses within the park shall be completed by the City's consultant to assess whether exposure to the property would result in a Significant Risk, and whether feasible mitigation measures would reduce the risk. If, as determined by the Director of Public Works based upon his or her review of the consultant studies, exposure to the property would not pose a Significant Risk to users, or any risk can be reduced to insignificant through specified mitigation measures, then the City may accept the property.
 - D. For property that contains contaminants and that is the subject of an open file or case with any regulatory agency, the file must be closed by the agency with "no restriction" on the site in order for the City to consider accepting the property. As a rule case closure with mandatory covenants or deed restrictions, or with the need for ongoing monitoring, or remediation, is not acceptable to the City, even if the property could meet B or C above. Any exception to this standard must be directed and approved by City Council.
2. The person or entity proposing to dedicate the property is responsible for paying for and submitting the following items:
- A. Submit Phase I environmental report showing that there are no hazardous materials or constituents of concern on the property. Prepare a Phase II environmental report (Analysis) as directed by the Director of Public Works. The Analysis proposal will be reviewed and approved by the Director of Public Works prior to on-site testing occurring. The minimum requirements of the Analysis shall include, but are not necessarily limited to the following items:
 - Analysis of the park-land dedication site as a separate parcel, not part of a larger development. Testing should be done on an established grid system with statistically appropriate grid sizes for the proposed park site area. Sampling should also focus on any recognized environmental conditions or environmental issues related to historical property uses.

- Identification of any types of contaminants and constituents of concern within the proposed park site, including qualitative and quantitative measurements. Discrete samples must be used. Blending or averaging is not acceptable. Hot spots (above SLs) must be removed.
 - Proposed remediation and/or clean-up measures so that all contaminants or constituents of concern can be demonstrated to be below any applicable federal and State of California regulatory or advisory agency's respective environmental SLs.
 - Estimated costs for those remediation and/or clean-ups measures identified in bullet item above.
 - Submittal of the Analysis to the City for City's (or a third party selected by the City) peer review, paid for by developer.
 - Completion of all necessary removal/remedial actions as recommended by the Analysis and to the satisfaction of Director of Public Works.
 - Testing of the site, by the developer's environmental consultant, to confirm that the removal or remedial work actually resulted in the area having no contaminants above the SLs or site-specific Significant Risk levels, after any removal or remedial actions.
- B. If the requirements for part A cannot be met and remediation is not feasible, Developer provides funding for the City's consultant to complete a human health risk evaluation. For the property to be acceptable the study would need to conclude that the concentrations of all constituents of concern will not individually or cumulatively result in a Significant Risk to park-land occupants, users, or workers.

Clear of Encumbrances Requirements

1. Property shall be free and clear of encumbrances of all kinds, including both physical facilities and legal or fiscal constraints, such as liens, deed restrictions, etc. Physically, the land should have no buildings, structure, or utilities, above, at, or below ground. The exception would be well-documented utilities in appropriate easements, or other utilities or structures that meet the City's goals. If any structures, utilities, or other facilities will stay in place than those physical encumbrances must also be clear of hazardous materials or constituents of concern, including the bedding and backfill material.
2. The person or entity proposing to dedicate the property is responsible for the following items:
 - a. Remove all existing buildings, structure, or utilities, above, at, or below ground except for those expressly authorized by the City to remain.

- b. Provide a title report.
- c. Prepare and record a grant deed (or other instrument) with notarization for transferring the property to the City.
- d. Pay for all outstanding taxes and clear all outstanding liens as documented in the title report.
- e. Coordinate and pay for the title insurance and escrow fees.

Other Requirements

- 1. Any changes to property, use of the property, storage of material or equipment on the property or other activities that could impact the property, occurring after completion of all environmental reports and analysis, are grounds to require additional investigation.
- 2. The site should be fenced to prevent access or illegal dumping.
- 3. The site should have signs prohibiting dumping or trespassing with a phone number for information that goes to the City.
- 4. Where the developer is required to or agrees to improve the park land, all park land work must be done to City standards, subject to City inspection, and must be maintained by and at the cost to the developer for six months following initial acceptance by the City. The developer is precluded from the determination of when and how the land will be developed as a park.