ORDINANCE NO. 3164-20

AN ORDINANCE OF THE CITY OF SUNNYVALE APPROVING AND ADOPTING A DEVELOPMENT AGREEMENT BETWEEN STC VENTURE LLC AND ITS RELATED ENTITES AND THE CITY OF SUNNYVALE FOR THE DEVELOPMENT OF PROPERTY COMMONLY KNOWN AS BLOCK 18 OF THE DOWNTOWN SPECIFIC PLAN

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, STC Venture LLC and its related entities (Applicant) proposes to develop a portion of the property located within the area generally bounded by Mathilda Avenue on the West, Washington Avenue on the North, Sunnyvale Avenue on the East and Iowa Avenue on the South ("Project Area"), the development of which will require future approvals from the City, potentially including, but not limited to, use permits, special development permits, tentative maps, final subdivision maps, easement vacations, encroachment permits, demolition permits, grading permits, building permits and certificates of occupancy; and

WHEREAS, the Project is a large multiphase development and includes public service and facilities installations that may require several years to complete, and 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 Downtown Specific Plan (DSP), as amended on August 11, 2020, contemplates that the City will use development agreements in order to approve additional height and density of development in the Downtown Specific Plan 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 DSP, the City prepared a Draft and Final Environmental Impact Report (collectively, "EIR") (State Clearinghouse #2018052020) pursuant to the California Environmental Quality Act (Public Resources Code Sections 21000 et seq., "CEQA"), the Guidelines for Implementation of the California

Environmental Quality Act (14 California Code of Regulations, Sections 15000 et seq., the "State EIR Guidelines") and the City's Local Guidelines for Implementing CEQA (the "Local Guidelines"); and

WHEREAS, the EIR provides a program-level review of the environmental impacts of the DSP amendments as well as a project-level review of six specific development proposals within the DSP, including the developments proposed by the Applicant in the Project Area; and

WHEREAS, the EIR identified measures to mitigate, to the extent feasible, the significant adverse project and cumulative impacts associated with the buildout anticipated by the DSP and the six specific development proposals. In addition, the EIR identified significant and unavoidable impacts with regard to cultural and historic resources, noise, traffic, and utilities; and

WHEREAS, on August 11, 2020, the City Council made Findings, adopted a Statement of Overriding Considerations and a Mitigation Monitoring and Reporting Program, certified the EIR for the DSP amendments and the six specific development proposals; and

WHEREAS, pursuant to the Development Agreement Statute and City regulations, the Planning Commission held a duly noticed public hearing on July 27, 2020, 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 August 11, 2020, 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 DSP as they will exist on the effective date of this ordinance, and hereby incorporates the findings regarding General Plan and DSP conformity contained in the Planning Commission findings dated July 27, 2020. 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 order 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, making a substantial monetary contribution to the City’s Community Benefits fund and providing below-market rate housing units, all-electric

appliances in residential units, publicly accessible park space, a winter-season ice rink or other winter recreational activities for three winter seasons, publicly available parking, a dynamic parking system, LED streetlights and outdoor lights, 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 Downtown Specific Plan, and 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 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 Downtown Specific Plan Environmental Impact Report (the "EIR"), SCH #2018052020. The City Council has reviewed the EIR and finds that it reflects the independent judgment of the City Council and its staff. 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 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 certain impacts on cultural and historic resources, traffic, noise, and utilities, and adopted a Mitigation Monitoring and Reporting Program. The City Council incorporates by this reference the findings and mitigations measures contained in the EIR 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 August 11, 2020, and adopted as an ordinance of the City of Sunnyvale at a regular meeting of the City Council held on August 25, 2020, by the following vote:

AYES:
NOES:
ABSTAIN:
ABSENT:
RECUSAL:

ATTEST: APPROVED:

City Clerk Mayor
Date of Attestation: _____

(SEAL)

APPROVED AS TO FORM:

_____
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 § 6103

DEVELOPMENT AGREEMENT

by and between

STC VENTURE LLC and CITY OF SUNNYVALE

Project name: CityLine Sunnyvale

THIS DEVELOPMENT AGREEMENT, dated for convenience _____ ___, 2020, at Sunnyvale, California ("**Agreement**") is entered into by and between 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, and STC Venture LLC, a Delaware limited liability company; STC Venture Block B, LLC, a Delaware limited liability company; STC Venture 200WA, LLC, a Delaware limited liability company; STC Venture Block 3RWS, LLC, a Delaware limited liability company, and STC Venture Block 6, LLC, a Delaware limited liability company (each a "**Landowner**" and collectively the "**Landowners**"). City and Landowner are collectively referred to in this Agreement as the "Parties" and singularly as a Party. The Agreement creates legal obligations pertaining to parcels comprising a portion of the CityLine Sunnyvale development as more particularly described below.

RECITALS

A. Defined Terms. Defined terms used in these Recitals and not otherwise defined herein shall have the definitions set forth in Article 1.

B. 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

development agreement with any person having a legal or equitable interest in real property for the development of the property as provided in the Development Agreement Statute.

C. 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 the Development Agreement Resolution.

D. Landowner. Each Landowner is a limited liability company organized under the laws of the State of Delaware and is qualified to do business in the State of California. In this Agreement, each Landowner may at times be described by referring to that portion of the Property owned by that Landowner (e.g., the Sub-Block 3 Landowner).

E. Property. The subject of this Agreement is the development of a portion of the property located within the block generally bounded by Mathilda Avenue on the West, Washington Avenue on the North, Sunnyvale Avenue on the East and Iowa Avenue on the South. The Property consists of seven (7) legal ground parcels more particularly described in Exhibit A-1 and depicted in Exhibit A-2, attached hereto and incorporated herein by reference (the "**Property**"). The Property is located within Block 18 of the Specific Plan. Landowners hold legal interests in the Property. 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.

F. Project. Landowner (or an affiliate thereof) proposes to develop the Project on the Property.

G. Environmental Review. The City examined the environmental effects of this Agreement, the Project, and the Development Approvals (as defined below) in the Downtown Specific Plan EIR prepared pursuant to CEQA. On _____ __, 2020, the City Council reviewed and certified as adequate and complete the EIR by adopting Resolution No. _____-20, and the MMRP. The EIR contained a thorough analysis of the Project and Project alternatives and specifies the feasible mitigation measures available to eliminate or reduce to an acceptable level adverse impacts of the Project. The Parties acknowledge that the EIR and MMRP do not require construction of any off-site sewer, stormwater, water or other utility infrastructure. The City Council adopted a Statement of Overriding Considerations in connection with its approval of the Specific Plan pursuant to Section 15093 of Title 14 of the CEQA Guidelines.

H. Purposes. Landowner and City desire to enter into an agreement for the purpose of implementing the plan for development of the Project as provided for in the Specific Plan and Development Approvals, and for mitigating the environmental impacts of such development as identified in the EIR. The City has determined that the development of the Project pursuant to the Specific Plan and the Development Approvals is a development for which a development agreement is appropriate. A development 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 Property in accordance with the policies and goals set forth in the City's General Plan, and will otherwise achieve the goals and purposes of the Development Agreement Resolution which was enacted by the City. Landowner has incurred and will incur substantial costs in order to comply with the conditions of approval and to assure development of the Property in accordance with this Agreement. In exchange for these benefits to the City and

the public, Landowner desires to receive assurance that the City shall grant permits and approvals required for the development of the Project over the Term of this Agreement in accordance with the procedures and requirements of 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 Landowner. The Parties specifically acknowledge that the Project is a private (and entirely privately funded) development. It is understood that this Agreement is a contract that has been negotiated and voluntarily entered into by City and Landowner and that Landowner is an independent contracting entity and not an agent or partner of City. City and Landowner 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 Landowner joint ventures or partners.

J. Development Agreement Adoption. On _____, 2020, the Planning Commission conducted a duly noticed public hearing on this Agreement, made certain findings and determinations with respect thereto, and recommended to the City Council of the City that this Agreement be approved. After conducting a duly noticed public hearing and making the requisite findings, the City Council approved and introduced this Agreement by the first reading of Ordinance No. ____-20 on _____, 2020. On _____, 2020 the City Council adopted this Agreement by second reading of Ordinance No. ____-20. Ordinance No. __-20 became effective on the Effective Date.

K. Consistency with Sunnyvale General Plan and Specific Plan. Development of the Property in accordance with this Agreement will provide for orderly growth and development in accordance with the policies set forth in the City General Plan, the Specific Plan, 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 Specific Plan, the General Plan of the City and with the Development Approvals. This Agreement satisfies the requirements of Government Code Section 65867.5.

L. Project Entitlements; Existing Approvals. The following approvals, entitlements, and findings have been adopted, certified, or recently amended by the City with respect to the Property, and collectively constitute the Existing Approvals:

i. The EIR and the MMRP.

ii. The Specific Plan.

iii. Ordinance No. _____

M. Development Agreement Resolution. City and Landowner 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 the Development Agreement Statute and the Development Agreement Resolution, and in consideration of the mutual

covenants and promises contained herein, the adequacy and sufficiency of which is hereby acknowledged, Landowners and the City 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. If any capitalized terms contained in this Agreement, are not defined, then any such terms shall have the meaning ascribed to them elsewhere in this Agreement.

1.2.1 2016 MRADDOPA. The 2016 Modified and Restated Amended Disposition and Development and Owner Participation Agreement by and between the Successor Agency to the Sunnyvale Redevelopment Agency and STC Venture LLC, a Delaware limited liability company, recorded on September 28, 2016 in the Official Records as Instrument No. 23445289.

1.2.2 Adoption Date. The date of adoption of the Ordinance approving this Agreement, _____, 2020.

1.2.3 Affiliate. An entity controlled by, controlling, or under common control with Landowner. For purposes of this definition, the terms "controls," "controlling," or "under common control with" mean that the controlling party(ies) (A) owns directly or indirectly through one or more intermediaries fifty percent (50%) or more of the profits, capital or equity interest of the affiliated entity(ies) and (B) has the direct or indirect power to direct the affairs or management of the affiliated entity(ies), whether by contract, ownership of voting securities, other governing documents, operation of law, or otherwise.

1.2.4 Affordable Housing Density Bonus Units. Two Hundred Ten (210) Market Rate Units that are in addition to the Base Residential Units.

1.2.5 Agreement. This CityLine Sunnyvale Development Agreement as it may be amended from time to time by mutual agreement of the Parties pursuant to the provisions hereof.

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

1.2.7 Area-Wide. An area covering the entire Property and at least all parcels included (in whole or in part) within the Specific Plan.

1.2.8 Assignee. Any person, business entity, association, organization or other similar entity succeeding to some or all of Landowners' 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 Property.

1.2.9 Assignment Agreement. An express written assumption by an Assignee of Landowner's rights and interests under this Agreement, substantially in the form set forth in Exhibit I to this Agreement.

1.2.10 Base Office Square Footage. Three Hundred Eighty-Seven Thousand (387,000) gross square feet of new office space authorized by the Specific Plan, before the application of any Bonus Office Square Footage authorized by this Agreement.

1.2.11 Base Residential Units. Five Hundred Twenty-Five (525) Residential Units authorized by the Specific Plan, before the application of any density bonus units authorized by the Specific Plan, this Agreement, Applicable Laws, and other Existing City Laws.

1.2.12 Below Market Rate Units or BMR Units. An amount of Residential Units equal to a cumulative total of fifteen percent (15%) of the Base Residential Units (78 Units upon completion of all Residential Units) for occupancy by and being affordable to Low Income Households and Very-Low Income Households (as those terms are defined in the Inclusionary Housing Ordinance), and an additional ten (10) Residential Units (which comprise a subset of the Commercial Core Community Benefits Housing Bonus) for occupancy by and being affordable to Moderate-Income Households.

1.2.13 Bonus Office Square Footage. New office square footage within the Property in excess of the Base Office Square Footage (not including office space completed prior to the Effective Date). Landowner has the vested right to construct 265,801 square feet of Bonus Office Square Footage.

1.2.14 CC&Rs. Covenants, conditions and restrictions recorded in the Official Records on all or any portion of the Property, imposing covenants running with the land, equitable servitudes and/or easements governing the maintenance, operation, access and other matters in connection with the real property affected by the CC&Rs.

1.2.15 CEQA. The California Environmental Quality Act, codified at Public Resources Code Section 21000 *et seq*.

1.2.16 CEQA Guidelines. Title 14, Division 6, Chapter 3 (Sections 15000 – 15387) of the California Code of Regulations.

1.2.17 City. The City of Sunnyvale, a charter city, created and existing under the laws of the State of California.

1.2.18 City Laws. The ordinances, resolutions, codes, rules, regulations and official policies of the City governing the permitted uses of land, density, design, improvements, specifications and procedures applicable to the development of the Property and property upon which required off-site public improvements (if any) will be constructed. Specifically, but without limiting the generality of the foregoing, City Laws shall include the City's General Plan,

the Specific Plan, 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).

1.2.19 Citywide Laws. Any City Laws generally applicable to a category of development or use of one or more kinds, wherever the same may be located in the City, including but not limited to, a general or special tax adopted in accordance with California Const. Art XIII C and D *et seq*., otherwise known as Proposition 218; provided, however, that ordinances, resolutions, codes, rules, regulations, taxes and official policies of the City which only and/or disproportionately apply to or impact the Project or any elements thereof, shall not be considered Citywide Laws. For the purposes hereof, "Citywide Laws" includes the variant "Citywide."

1.2.20 City Manager. The City Manager of the City of Sunnyvale.

1.2.21 Commercial Core Community Benefits Housing Bonus. Fifty-Eight (58) Residential Units that are in addition to the Base Residential Units, Forty-Eight (48) of which shall be Market Rate Units and Ten (10) of which shall be Moderate Income Units.

1.2.22 Community Benefit Fund Contribution. The amount paid by Landowner to the City pursuant to Section 5.1.2 of this Agreement.

1.2.23 Complaining Party. A Party claiming a breach of this Agreement in accordance with the requirements of Section 8.2 of this Agreement.

1.2.24 Complete Building Permit Application. An application for a building permit that the City's Chief Building Official or designee finds to contain the required documents and information necessary to allow the application to be substantively reviewed. City acknowledges and agrees that Complete Building Permit Applications will typically be subject to corrections and may contain minor omissions. Solely for purposes of this Agreement, an application for a building permit that has been accepted by the City shall conclusively be determined to be a Complete Building Permit Application if the City's Chief Building Official or designee fails to notify the applicant in writing prior to twenty-one (21) days after acceptance that the application does not constitute a Complete Building Permit Application.

1.2.25 Completed. For office uses, issuance of any Final Inspection for a core and shell; for residential and parking uses, issuance of any Final Inspection; for Retail uses, completion of all obligations and requirements of the building permit for the shell as determined by the City's Chief Building Official, excluding storefronts and tenant improvements. For Park Space, issuance of any Final Inspection for the Park Space. For the purposes hereof, "Completed" includes the variants "Complete" and "Completion."

1.2.26 Construction. Physical development of private improvements within the Property, including without limitation, vertical construction, foundation work, grading, and interior tenant improvements.

1.2.27 Defaulting Party. A Party alleged to be in breach of this Agreement and who has received a Notice of Breach pursuant to Section 8.2 of this Agreement.

1.2.28 Development. Any Construction, staging, alteration, demolition, installation, site preparation, installation and/or construction of infrastructure, and/or environmental remediation that is performed under contract, and is both substantially consistent with, and reasonably necessary to satisfy, the conditions required to complete one or more elements of the Project authorized by this Agreement, the Existing Approvals, or a Subsequent Approval.

1.2.29 Development Agreement Resolution. Resolution No. 371-81 adopted by the City Council on December 15, 1981.

1.2.30 Development Agreement Statute. Section 65864 *et seq.* of the Government Code of the State of California.

1.2.31 Development Approvals. Any and all permits or approvals (including conditions of approval imposed in connection therewith) of any kind or character (whether issued prior to, concurrently with, or subsequent to the Effective Date) necessary or appropriate under the City Laws to confer the requisite lawful right on Landowner to develop the Project, including, but not limited to, tentative and final subdivision maps, design review, building permits, use permits, variances, site clearance, grading plans and permits, written interpretations, Final Inspections, cooperative agreements, sign permits and programs, abandonment of streets or rights-of-way and right-of-way transfers. The term "Development Approvals" shall include, without limitation, the Existing Approvals and the Subsequent Approvals.

1.2.32 Director. The Director of the Community Development Department or Director's designee.

1.2.33 Effective Date. The effective date of the Enacting Ordinance, namely _____, 2020.

1.2.34 EIR. Final Environmental Impact Report (SCH# 2018052020)

1.2.35 Enacting Ordinance. Ordinance No._____, introduced by the City Council on _____, 2020, and adopted by the City Council on _____, 2020 approving this Agreement.

1.2.36 Exactions. All exactions, costs, fees, in-lieu fees, payments, charges, assessments, dedications and other requirements (whether monetary or non-monetary) charged or imposed by City or by City through an assessment district (or similar entity) by any mechanism, procedure, description and authority whatsoever in connection with the Development and occupancy of, and Construction on, the Property. Exactions include without limitation transportation improvement fees, art fees, housing impact fees, below market rate housing requirements, dedication requirements, reservation requirements, obligations for on- or off-site improvements, public services, and other conditions called for in connection with the Development and Construction of the Project. Notwithstanding the foregoing, Exactions shall not include Processing Fees nor shall Exactions include conditions of approval imposed on a Subsequent Approval consistent with Section 4.4 that do not conflict with the Landowner's Vested Rights.

1.2.37 Existing Approvals. The approvals and entitlements approved by the City that are or were existing, obtained or enacted by City as of the date first set forth above, as each may be updated, amended or modified from time to time upon application of Landowner. The Existing Approvals are listed in Recital L of this Agreement.

1.2.38 Existing City Laws. The City Laws in effect as of the Adoption Date.

1.2.39 Final Inspection. The completion of all obligations and requirements of a building permit that allows occupancy of a building or structure or use of Park Space without conditions or limitations.

1.2.40 Finally Concluded. The date of the entry of a final, non-appealable order or judgment in a legal proceeding upholding the validity to a Third-Party Challenge of the Enacting Ordinance, the EIR, Specific Plan or other Development Approval, on terms and condition acceptable to Landowner.

1.2.41 Inclusionary Housing Ordinance. Chapters 19.67 and 19.77 of the Sunnyvale Municipal Code, attached to this Agreement as Exhibit B.

1.2.42 ITE. The Institute of Transportation Engineers, and any designated successor organization mutually agreed to by the Parties.

1.2.43 Landowner. The owners of the Property (individually or collectively as the context may require but expressly excluding the City and/or any other public agency or body) and their respective Assignees.

1.2.44 Maintenance Transfer Date. The date, if any, that (a) Landowner forms the Property Owner's Association, (b) the CC&Rs have been approved by the City as provided for in Section 5.1.4 and recorded in the Official Records, and (c) Landowner notifies the City in writing that maintenance responsibilities for the Park Space and the Public Improvements have been transferred to the Property Owner's Association and delivers to the City a conformed copy of the recorded Assignment Agreement between the Property Owner's Association and Landowner.

1.2.45 Market Rate Units. Residential Units that are not BMR Units.

1.2.46 Moderate-Income Household. A household with a gross annual household income between eighty (80%) percent to one hundred twenty percent (120%) of Area Median Income, as that term is defined in the Inclusionary Housing Ordinance.

1.2.47 Mortgage. A mortgage or deed of trust, or other transaction, in which the Property, or a portion thereof or an interest therein, or any improvements thereon, is conveyed or pledged as security, contracted in good faith and for fair value, or a sale and leaseback arrangement in which the Property, or a portion thereof or an interest therein, or improvements thereon, is sold and leased back concurrently therewith in good faith and for fair value.

1.2.48 MMRP. The Mitigation Monitoring and Reporting Program approved by the City by Resolution No. _____-20.

1.2.49 Notice of Breach. A written notice of Breach issued by a Complaining Party to a Defaulting Party pursuant to Section 8.2 of this Agreement.

1.2.50 Official Records. The Official Records of Santa Clara County.

1.2.51 Park Space. The publicly accessible area denoted as Redwood Square on Exhibit A-2 to this Agreement, comprised of approximately 32,360 square feet.

1.2.52 Party. A signatory to this Agreement, or a successor or assign of a signatory to this Agreement.

1.2.53 Processing Fee. A standard fee imposed by the City payable on a Citywide basis upon the submission of an application for a permit or approval, which covers only the estimated actual costs to the public entity of processing that application, and is not an Exaction, and is not only or disproportionately applicable to the Project, including but not limited to encroachment permit fees, plan check fees, building permit fees, planning permit application fees, sewer connection fees, and water connection fees.

1.2.54 Project. A development consisting of office, residential, Retail and the Park Space. The Project will consist of the following densities and intensities of development, except as reduced at the request of Landowner. Increases to the following densities and intensities of development require an amendment to this Agreement.

	Residential Units	Retail Square Footage*	Office Square Footage
Base	525	181,931	387,000
Affordable Housing Density Bonus	210	N/A	N/A
Commercial Core Community Benefit Housing Bonus	58	N/A	N/A
Office Bonus		N/A	265,801
TOTAL	*793*	*181,931**	*652,801*

*Retail square footage is allowable new construction; net new retail square footage is 4,131 square feet after demolition of the existing 177,800 square foot building on Sub-Block 3.

At the election of Landowner and in accordance with the Specific Plan, office square footage may be substituted with Retail subject to an appropriate Subsequent Approval.

1.2.55 Property. The Property legally described and depicted on Exhibits A-1 and A-2.

1.2.56 Property Owner's Association. A property owner's association or another entity or mechanism (including without limitation one or more sub-associations) created pursuant to the CC&Rs to undertake maintenance and operation of the Project.

1.2.57 Public Improvements. The Public Parking Structures and the Public Street and Utility Improvements.

1.2.58 Public Parking Structures. The publicly accessible portions of the parking structures located on Sub-Block 1, Sub-Block 2, Sub-Block 5 and Sub-Block 6.

1.2.59 Public Street and Utility Improvements. The Public Street and Utility Improvements consist of the publicly owned streets running through Block 18 as designated in the Specific Plan and the sidewalks on the exterior of Block 18 as well as the public utility facilities located within public streets and utility easements granted to the City within Block 18.

1.2.60 Residential Unit. Any building or portion thereof, intended for occupancy, by one household as a residence or living quarters, with cooking, sleeping and sanitary facilities, and having not more than one full kitchen.

1.2.61 Retail. All retail, service and other commercial uses authorized by the Existing City Laws and Development Approvals, including without limitation the definitions in the Zoning Code (Chapter 19.12) and Table 19.28.070 (as each may be renumbered from time to time); provided, that where Table 19.28.070 requires a miscellaneous plan permit for a given use, such use may, at the request of Landowner, alternatively be approved by City through a special development permit relating to all or any portion of the Project.

1.2.62 Shared Parking Study. A parking study (which may be updated from time to time at the election of Landowner) prepared by the City and paid for by Landowner, calculating the required parking based upon estimated actual parking demand generated by the uses assumed in the study in the manner and pursuant to the requirements described in Section 4.3 of this Agreement.

1.2.63 Specific Plan. The Downtown Specific Plan, originally adopted by the City in 1993, comprehensively amended on October 4, 2003, and as amended from time to time up to and including that certain amendment adopted pursuant to Resolution No. _____ on _____, 2020.

1.2.64 Sub-Block. A portion of Block 18, generally bordered by public right of way or property lines, as depicted on Exhibit A-1 to this Agreement and delineated as Sub-Block 1 through Sub-Block 6, inclusive.

1.2.65 Sub-Block 3 Residential Occupancy. Issuance of the last, Final Inspection for Residential Units within Sub-Block 3 pursuant to all Subsequent Approvals authorized as part of the Project, consisting of approximately four hundred sixty-nine (469) Residential Units.

1.2.66 Sub-Block 6 Residential Occupancy. Issuance of the last, Final Inspection for Residential Units within Sub-Block 6 pursuant to all Subsequent Approvals authorized as part of the Project, consisting of approximately three hundred twenty-four (324) Residential Units.

1.2.67 Subsequent Approvals. Any and all Development Approvals applied for by Landowner and approved by City following the Effective Date of this Agreement.

1.2.68 Successor Agency. Successor Agency to the Sunnyvale Redevelopment Agency, a public body, corporate and politic.

1.2.69 Term. The term of this Agreement (including both the Initial Term and the Extended Term), as set forth in Section 1.4.

1.2.70 ULI. The Urban Land Institute and any designated successor organization mutually agreed to by the Parties.

1.2.71 Uniform Building Codes. The California Building Standards Code (Title 24 of the California Code of Regulations), as it may be updated by the California Building Standards Commission from time to time (although generally on a triennial basis), and which currently consists of the California Building Code, the California Residential Code, the California Electrical Code, the California Mechanical Code, the California Plumbing Code, the California Energy Code, the California Historical Building Code, the California Fire Code, the California Existing Building Code, the California Green Building Standards Code (also referred to as CALGreen), and the California Referenced Standards Code. Uniform Building Codes shall include local amendments to the Uniform Building Codes only if such local amendments have been filed with, and approved, by (i) the California Building Standards Commission pursuant to California Health & Safety Code Sections 18941.5, and (ii) for local amendments relating to Part 6 of Title 24 of the California Code of Regulations (the California Energy Code), Part 11 of Title 24 of the California Code of Regulations (the California Green Building Standards Code) and any successor regulations, the California Energy Commission pursuant to California Public Resources Code Section 25402.1(h)(2); provided, however, that notwithstanding anything to the contrary contained in this Agreement, local amendments contemplated by clause (ii) shall only apply to Complete Building Permit Applications initially submitted from and after January 1, 2023.

1.2.72 Vested Rights. Landowner's right to develop the Project on the Property in accordance with the terms and conditions of this Agreement, the Existing Approvals, the Existing City Laws, the EIR and the MMRP, together with Subsequent Approvals applied for by Landowner and approved by City consistent with the requirements of this Agreement, as more particularly described in Section 3.1 below.

1.3 Effective Date; Recordation. The Enacting Ordinance became effective on the Effective Date of this Agreement. Not later than ten (10) days after the Effective Date, the Parties shall cause this Agreement to be recorded in the Official Records, as provided for in Government Code Section 65868.5 and the Development Agreement Resolution. 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 initial term of this Agreement (the "**Initial Term**") shall commence on the Effective Date and terminate upon the date that is ten (10) years thereafter, as such date shall be automatically extended for a period equal to any Permitted Delay(s). The Term of this Agreement shall be automatically extended for a single, additional period of ten (10) years (the "**Extended Term**") commencing on the first to occur of (i) Sub-Block 3 Residential Occupancy, or (ii) Sub-Block 6 Residential Occupancy, and terminating

upon that date that is ten (10) years thereafter, as such date shall be automatically extended for the sum of the following: (1) the period equal to any Permitted Delay(s) occurring prior to the termination of this Agreement, and (2) the periods (if any) accruing pursuant to Section 1.4.1 of this Agreement. Following the expiration of the Term, as it may have been extended, 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 Development Approvals that are vested under Applicable Laws (absent this Agreement). Landowner shall thereafter comply with the provisions of all City Laws then in effect or subsequently adopted with respect to the Property and the Project. Termination of the Agreement shall not affect the validity of any building or improvement within the Property which is completed as of the date of termination. Furthermore, no termination shall prevent Landowner from completing and occupying any building or other improvement authorized pursuant to a Development Approval for which a valid building permit has been previously issued by the City.

1.4.1 Extension of Term Due to Litigation. If a legal proceeding is initiated challenging the validity of the Enacting Ordinance, the MMRP, the EIR, the Project, the Specific Plan, this Agreement, and/or any Subsequent Approval, the expiration of this Agreement shall be automatically extended for the number of days between the date such action is initiated and the date such legal proceeding is Finally Concluded, or the date the Landowner commences Construction of the portion of the Project subject to the legal proceeding (whichever occurs first).

1.4.2 Term Extension Document. At any time following the extension of the Initial Term as a result of litigation or a Permitted Delay, and at any time following the commencement of the Extended Term, the City Manager and Landowner shall, not later than thirty (30) days following a request from the other Party therefor, confirm in a written document, executed and acknowledged so as to be recordable in the Official Records, (i) that the Term of this Agreement has been extended and (ii) the date on which the Agreement is then-scheduled to terminate as a result of the extension(s) that have occurred up to and including the date of the requesting Party's request.

ARTICLE 2
BENEFITS TO THE CITY AND LANDOWNER

2.1 City Benefits. Landowner shall provide the following benefits to the City, which are more particularly described in Section 4.2 and Article 5 below:

2.1.1 Community Benefit Fund Contribution. Landowner to contribute up to Ten Million Six Hundred Thirty-Two Thousand and Forty Dollars ($10,632,040) to the Community Benefit Fund.

2.1.2 BMR Units. Landowner to construct up to a total of eighty-eight (88) BMR Units of which, if all eighty-eight (88) Units are constructed, twenty-six (26) would be affordable to Very-Low Income Households, fifty-two (52) would be affordable to Low Income Households and ten (10) would be affordable to Moderate Income Households.

2.1.3 All Electric Appliances. In furtherance of the City's Climate Action goals, all appliances provided in Residential Units shall use electric power only; natural gas shall be prohibited for such uses.

2.1.4 Publicly Accessible Park Space. Landowner to design, construct and maintain the Park Space at no cost to the City.

2.1.5 Ice Rink. Landowner to operate at no out-of-pocket cost to the City a winter-season ice rink or such other recreational opportunities as are mutually agreed by Landowner and City for three (3) winter seasons.

2.1.6 Publicly Available Parking. Landowner to construct publicly available parking in new parking garages in Sub-Blocks 3 and 6 at no cost to the City, which parking shall be available to serve (among others) Historic Murphy Avenue.

2.1.7 Dynamic Parking Supply System. Landowner to provide a dynamic parking supply system for new public parking on Sub-Blocks 3 and 6, which will be interconnected to and coordinated with the existing public parking throughout Block 18.

2.1.8 LED Streetlights and Outdoor Lights. Landowner to install LED outdoor lights including streetlights (wherever new streetlights are required as part of the Construction of the Project) on public and private streets within Block 18 and the Park Space in furtherance of the City's Climate Action Plan goals.

2.1.9 Point of Sale for Project Construction. Landowner to designate the City as the point of sale for California sales and use tax purposes during Project Construction.

2.1.10 Community Room. Landowner to provide a community room for use by Community Groups (as defined in Section 5.1.9) at no rental cost, subject to Community Room Rules (as defined in Section 5.1.9) established by Landowner and approved by the City Manager.

2.1.11 VTA Passes. Upon occupancy of each BMR unit, Landowner shall provide to the initial household of each BMR Unit a three-month set of monthly Santa Clara Valley Transportation Authority ("VTA") passes (equating to a cumulative total of 264 months of VTA passes for all BMR Units contemplated by this Agreement). If the Landowner implements a transit pass program as part of a multi-family residential transportation demand management program, then the obligation imposed by this Section 2.1.11 may be superseded by the requirements of the implemented transportation demand management program.

2.2 Landowner Benefits. City shall provide the following benefits to the Landowner as more particularly described in this Agreement.

2.2.1 Density Bonuses:

(a) Additional Housing Units: Landowner shall have the Vested Right to a forty percent (40%) density bonus of two hundred ten (210) Residential Units, similar to the density bonus enabled through the state density bonus law provisions, and fifty-eight (58) additional Residential Units through the Commercial Core Community

Benefits Housing Bonus program; and,

(b) Bonus Office Square Footage: Landowner shall have the Vested Right to build 265,801 gross square feet of office development over the amount allowed in the Specific Plan.

2.2.2 Increased Height Limit. Landowner shall have the Vested Right (but not the obligation) to build additional height above the seventy-five (75) feet allowed in the Specific Plan, as follows:

(a) Ninety (90) feet in height (appears as five (5) stories above grade on Mathilda and McKinley Avenues and six (6) stories above grade on Booker Avenue and Aries Way, excluding any underground parking) for the Office Building on Sub-Block 1;

(b) One Hundred Forty-Two (142) feet in height (appears as twelve (12) stories above grade, excluding two (2) levels of underground parking) for the Residential buildings on Sub-Block 3;

(c) One Hundred Eleven (111) feet in height (appears as seven (7) stories above grade, excluding two (2) levels of underground parking) for Office buildings on Sub-Block 3; and

(d) Eighty-Five (85) feet in height (appears as seven (7) stories above grade, excluding any underground parking) for the portion of Sub-Block 6 south of the private drive aisle.

Exhibit F provides general height information for the buildings described in (a) through (d). Landowner agrees that the foregoing are maximum heights and that individual buildings will be constructed with a step back and have variation in height as shown on Exhibit F in order to achieve the design standards of the Specific Plan as, determined by Subsequent Approvals.

2.2.3 Freeze on Impact Fees. Landowner will receive a freeze on the monetary exactions set forth in Exhibit E for a period of thirty (30) months from the Effective Date.

2.2.4 No New City Fees. Landowner shall not be subject to any new City impacts fees other than those set forth in Exhibit D and Exhibit E for the periods set forth in Section 3.8 of this Agreement.

2.2.5 Building Code. Landowner shall not be subject to local amendments to the Uniform Building Code relating to Part 6 of Title 24 of the California Code of Regulations (the California Energy Code), Part 11 of Title 24 of the California Code of Regulations (the California Green Building Standards Code) and any successor regulations, the California Energy Commission pursuant to California Public Resources Code Section 25402.1(h)(2) for Complete Building Permit Applications submitted prior to January 1, 2023.

2.2.6 City Cooperation on Outside Permits. City will cooperate with Landowner to obtain any permits or approvals required of other governmental or quasi-governmental

agencies having jurisdiction over the Project as may be required for the development of the Project.

2.2.7 City Processing of Medical Clinics. The City will consider applications for Medical Clinics, as defined in the City's Zoning Code, in accordance with the provisions of Chapter 19.82 of the City's Zoning Code providing for the issuance of a Miscellaneous Plan Permit ("**MPP**"), including for Sub-Blocks not part of the Property, subject to the following conditions.

(a) The total square footage of any one proposed Medical Clinic does not exceed five thousand (5,000) square feet and the total square footage of all Medical Clinics approved pursuant to this Section does not exceed fifteen thousand (15,000) square feet; and

(b) Any application for a Medical Clinic is submitted on or before the first anniversary of the Effective Date.

Applications for Medical Clinics that do not meet the above conditions will be subject to the requirements of the City's Zoning Code in effect at the time of the submission of the application.

2.2.8 Application Approvals. City shall use good faith efforts to process applications for Subsequent Approvals in accordance with expedited and collaborative processing procedures.

2.2.9 Infrastructure Guarantee. Landowner receives assurance that City ensures the availability of City infrastructure necessary to serve the Project and the Property.

2.2.10 Biweekly Meetings. Landowner and City will meet approximately every two (2) weeks to track progress and work on resolution of issues associated with Subsequent Approvals and Construction.

ARTICLE 3
GENERAL DEVELOPMENT

3.1 Project; Vested Rights.

3.1.1 Landowner shall have the vested right to develop the Project on the Property in accordance with the terms, procedures, development standards, and conditions of this Agreement, the Development Approvals (including conditions imposed by City consistent with Section 4.4 of this Agreement), and the Existing City Laws in accordance with this Agreement. Except as otherwise expressly specified herein (including the allowance for conditions of approval that are consistent with Section 4.4 of this Agreement), this Agreement, the Existing Approvals, and the Existing City Laws 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 Property, density and intensity of uses, the maximum height and sizes of buildings, the allowable floor area, the

number of required or allowable parking spaces, and all other Exactions imposed by the City. By stating that the terms and conditions of this Agreement, the Existing Approvals (including without limitation the Specific Plan), and the Existing City Laws shall control the overall design, development and Construction of the Project, this Agreement is consistent with the requirements of California Government Code Section 65865.2 requiring development agreements to state permitted uses of the property, the density or intensity of use, the maximum height and size of proposed buildings, and provisions for reservation or dedication of land for public purposes. In the event of any inconsistency between the Specific Plan, Existing City Laws, and this Agreement, the provisions of this Agreement shall govern and control. During the Term of this Agreement, new development on the Property commenced on and after the Effective Date shall be consistent with the Project described in this Agreement, except as otherwise authorized by the City through a Subsequent Approval.

3.1.2 This Agreement does not impose affirmative obligations on Landowner to commence development of the Project, or any phase thereof, in advance of its decision to do so. Landowner therefore shall have the right to develop the Project in phases in such order and at such times as Landowner deems appropriate within the exercise of its subjective business judgment, except to the extent this Agreement expressly sets forth phasing requirements.

3.1.3 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 Vested Rights, and shall act upon such applications in a diligent and timely manner as set forth in this Agreement, including without limitation Article 4 hereof.

3.2 Project Phasing.

3.2.1 Landowner and City acknowledge and agree that the Project is designed to be developed in phases. This Agreement and the Vested Rights make express provision for such phased development. The Parties also acknowledge and agree that presently Landowner cannot predict the timing of the Project phasing. Because the California Supreme Court held in *Pardee Construction Co.* v. C*ity 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 Landowner shall have the right to develop the building components of the Project in phases in accordance with this Agreement, the Development Approvals and at such times as Landowner deems appropriate within the exercise of its subjective business judgment.

3.2.2 Notwithstanding the foregoing, Landowner agrees to the following phasing conditions (in addition to the provisions regarding the Park Space and automobile parking set forth in Article 4 of this Agreement), provided, however, that the City Manager shall have the authority (but not the obligation) to approve, if and as requested by Landowner, a modification to the phasing conditions set forth herein without notice or public hearing:

(a) Use commercially reasonable efforts to submit, and process to completion, its first planning applications for the first portion of anticipated Development no later than six (6) months from the later of (i) the Effective Date, and (ii) the date that

any legal proceedings concerning the validity of the EIR, the Specific Plan, and this Agreement are Finally Concluded.

(b) Commence Development of (and diligently pursue to Completion) three hundred (300) Residential Units (not including the 292 units allowed within Block 18 prior to the Effective Date) within the Property prior to the City's issuance of Final Inspections for any new office square footage in excess of Two Hundred Thousand (200,000) square feet of new office space (not including office space Completed within Block 18 prior to the Effective Date).

(c) Retain surface parking spaces on a portion of Sub-Block 6 as publicly accessible parking spaces in the number and location(s) set forth on Exhibit C to this Agreement during Construction on Sub-Block 3. City acknowledges that the precise layout of parking within the general area set forth on Exhibit C may change with the approval of Director as Construction on Sub-Block 3 progresses.

(d) For any building where the Specific Plan or an Existing or Subsequent Approval requires ground-floor uses below a different primary use (for example, a vertical mixed-use building with ground-floor Retail uses and residential uses on upper floors), the shell of the ground-floor uses shall be Completed concurrently with the primary use; provided, however, that Landowner shall have no obligation to Complete (concurrently or otherwise) storefronts or tenant improvements. City acknowledges that leasing of Retail space depends on economic factors beyond Landowner's control and, accordingly, Landowner cannot predict or control the timing of leasing, occupancy, and completion of storefronts or tenant improvements for Retail space. Landowner shall have no obligation to enter into leases and/or construct storefronts or tenant improvements.

3.3 Compliance with Requirements of Other Government Entities.

3.3.1 During the term of this Agreement, Landowner, 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 Landowner's activities in furtherance of this Agreement. Landowner shall pay all required fees when due to Federal, State, regional, or other local governmental agencies and acknowledges that City does not control the amount of any such fees. City shall cooperate with Landowner in its endeavors to obtain such permits and approvals and, from time to time at the request of Landowner and at no cost to the City, shall use best efforts to enter into binding agreements with any such entity in order to assure the availability of such permits and approvals or services. To the extent allowed by law, Landowner shall be a party or third party beneficiary to any such agreement entitled to enforce the rights of Landowner or City thereunder or the duties and obligations of the parties thereto.

3.3.2 As provided in California Government Code Section 65869.5, this Agreement shall not preclude the application to the Property 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. 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 laws or regulations. 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 the law and City and Landowner 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 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 laws or regulations. Nothing in this Agreement shall preclude the City or Landowner from contesting by any available means (including administrative or judicial proceedings) the applicability to the Property of any such State or Federal laws or regulations.

3.4 Reservations of Authority. Notwithstanding any other provision of this Agreement, including the granting of Vested Rights in accordance Section 3.1.1, the following regulations and provisions shall apply to the Development of the Project:

3.4.1 Processing Fees payable in connection with Development, including application, inspection, and monitoring fees, shall be those which are in force and effect on a Citywide basis, within the jurisdiction of the City for the class of Subsequent Approvals being applied for, and shall be paid at the rate then in effect.

3.4.2 Except as otherwise set forth in this Agreement (including by way of emphasis but not limitation Section 3.8 hereof), Citywide fees and Citywide monetary Exactions that are in effect at the time of a Complete Building Permit Application shall apply to the Development of that portion of the Project for which a Complete Building Permit Application has been submitted.

3.4.3 If the City forms an assessment district including the Property and the assessment district is Citywide or Area-wide, 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 and of similar kind. In no event, however, shall Landowners' obligation to pay such assessment result in a cessation or postponement of Construction of the Project or affect in any way the development rights for the Project.

3.4.4 Engineering specifications for construction of any public improvements such as curbs, gutters and sidewalks, to the extent such engineering specifications would not require modification of the density or intensity of uses of the Project as set forth in this Agreement.

3.4.5 The Specific Plan and Section 19.28.070 of the Sunnyvale Municipal Code (Table 19.28.070) (as such sections may be renumbered or renamed) set forth uses that are permitted, conditionally permitted and prohibited within the Property. The Director has the authority to, from time to time, determine other uses in addition to those expressly listed in Section 19.28.070 that are similar to those uses listed as being permitted, conditionally permitted or prohibited, and to interpret the meaning of expressly listed uses when their meaning is not clear. For example, when a new technology or industry emerges, the Director may elect to issue a determination that the new technology or industry is similar to an expressly permitted,

conditionally permitted or prohibited use and should be permitted, conditionally permitted or prohibited in the same manner as the expressly listed use. This Agreement shall not preclude the Director from exercising this authority with respect to the Property, including, for example, by determining that marijuana dispensaries constitute a prohibited, permitted or conditionally permitted use.

3.4.6 Any subsequently enacted City Laws that are either consented to in writing by Landowner or are applicable pursuant to Section 3.5.

3.4.7 Regulations governing construction standards and specifications set forth in Uniform Building Codes which are in force and effect within the jurisdiction of the City for the class of Subsequent Approvals being applied at the time of the Complete Building Permit Application.

3.5 Subsequently Enacted Rules and Regulations.

3.5.1 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 review and consideration of Subsequent Approvals being applied for to the extent they meet either or both of the following criteria:

(a) fall within the City's Reservations of Authority set forth in Section 3.4 of this Agreement, and

(b) are not inconsistent or in conflict with:

(i) Landowner's benefits set forth in Section 2.2 (and its subparts),

(ii) the intent or purposes of this Agreement, and

(iii) any terms, standards or conditions of this Agreement or the Existing Approvals.

3.5.2 To the extent any changed City Law is in conflict with the terms of this Agreement, the terms of this Agreement shall prevail. For the avoidance of doubt, any action or proceeding of the City (whether enacted by the legislative body, a City commission, City staff or the electorate) that has any one or more of the following effects on the Project shall be considered in conflict with this Agreement and the Existing City Laws:

(a) limiting or reducing the density, height, or intensity of all or any part of the Project, or otherwise requiring any reduction in the square footage or total number of developable Residential Units, office square footage, Retail space or other improvements;

(b) limiting the timing or phasing of the Project in any manner inconsistent with this Agreement or the Development Approvals;

(c) limiting the location of structures, grading, streets or other improvements on the Property in a manner that is inconsistent with or more restrictive than the limitations included in the Development Approvals or this Agreement;

(d) applying to the Project or the Property any law, regulation, or rule otherwise allowed by this Agreement which is not uniformly applied on a Citywide basis to all substantially similar types of development projects or project sites in the City;

(e) limiting or restricting the availability of public utilities, services, infrastructure of facilities (for example, but not by way of limitation, water rights, water connection or sewage capacity rights, sewer connections, etc.) to the Project;

(f) precluding compliance with any conditions of approval or other requirements applicable to the Project; and

(g) imposing new or further Exactions on the Project, except as expressly authorized by Section 3.8 (including its subparts) of this Agreement.

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 or sequencing of development) affecting subdivision maps, building permits or other Approvals shall apply to the Property. Landowner agrees and understands 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 Property.

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.

3.8 No Further Exactions. Except to the extent expressly set forth below in Sections 3.8.1 and 3.8.2, City shall not impose any further or additional Exactions on the development of the Project other than those set forth in the Existing Approvals, the Mitigation Measures, the Existing City Laws and this Agreement. The Parties acknowledge that the provisions contained in this Section 3.8 are intended to implement the intent of the Parties that Landowner has the right to develop the Project pursuant to specified and known criteria, development standards and rules, and that City receives the benefits which will be conferred as a result of such development without abridging the right of City to act in accordance with its powers, duties and obligations.

3.8.1 Except to the extent expressly set forth below in Section 3.8.2, the amount and categories of the monetary Exactions applicable to the Project are set forth in Exhibit D and Exhibit E. During the Term of this Agreement, the monetary Exactions set forth on Exhibit D may be increased by the City, but only to the extent the fee increases are applicable Citywide. For the first thirty (30) months following the Effective Date (the "**Freeze Period**"), no increase in the monetary Exactions set forth on Exhibit E shall be applied to the Project. For portions of the Project for which a Complete Building Permit Application is first submitted after the Freeze Period, Landowner shall pay when due the monetary Exactions set forth on Exhibit E in the

dollar amount that applies Citywide at the time that Landowner submits its first Complete Building Permit Application for that portion of the Project.

3.8.2 Notwithstanding anything to the contrary set forth in Section 3.8 and 3.8.1 above: (1) from and after that date which is thirty (30) months after the Effective Date, this Agreement shall not prevent the City from imposing on the portions of the Project located on Sub-Blocks 1 and 3 Citywide impact fees adopted in accordance with California Government Code Section 66000 *et seq.*, otherwise known as the Mitigation Fee Act; and (2) from and after that date which is sixty (60) months after the Effective Date, this Agreement shall not prevent the City from imposing on the portion of the Project located on Sub-Block 6 Citywide impact fees adopted in accordance with California Government Code Section 66000 *et seq.*, otherwise known as the Mitigation Fee Act. Nothing herein shall prevent the City from imposing on the Project 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.

3.9 No Further Concessions, Incentives and Waivers. Landowner acknowledges and agrees that the provisions of this Agreement provide the Landowner with all concessions, incentives and waivers that Landowner is entitled to pursuant to Government Code Section 65915 or any similar City density bonus provisions and the Landowner shall not be entitled to any further density bonus concessions, incentives or waivers.

ARTICLE 4
SPECIFIC CRITERIA OF THE PROJECT AND SUBSEQUENT APPROVALS

4.1 Permitted Floor Area, Height and Density. Notwithstanding anything to the contrary herein or in the Development Approvals, Landowner is hereby allowed to develop the Project, conditioned upon Landowner meeting the requirements of the Specific Plan, including but not limited to the design standards set forth therein, and the conditions in the Development Approvals, including any Subsequent Approvals that are consistent with Section 4.4 of this Agreement, and in all cases consistent with the Landowner's rights and obligations of this Agreement. The allocation of residential density, and office and Retail square footages to individual lots or sub-blocks within the Property shall be at the discretion of Landowner, conditioned upon Landowner meeting the objective requirements expressly set forth in the Specific Plan, the Development Approvals, and this Agreement (including without limitation the requirement that parking be provided within the Property pursuant to Section 4.3 of this Agreement). The heights to which Landowner shall have the right to build within each Sub-block of the Project, subject to Federal Aviation Administration limitations (if any), are set forth in Section 2.2.2. of this Agreement; provided, however, that Landowner agrees that the heights set forth in Section 2.2.2 reflect maximum heights and that individual buildings will step back and have variation in height as shown on Exhibit F in order to achieve the design standards of the Specific Plan, as determined by any Subsequent Approval. Landowner shall have the right to further increase building heights to the full extent authorized by Section 19.32.030 of the Zoning Code, as such section exists on the Effective Date provided, however, that the City may authorize machinery penthouses to exceed twenty-five (25%) percent of the roof area on which the penthouse is located through approval of a Special Development Permit.

4.2 Design, Construction and Maintenance of Publicly Accessible Park at Park Space.

4.2.1 As a condition precedent to Sub-Block 3 Residential Occupancy, the Sub-Block 3 Landowner shall provide parkland and open space through dedication of a perpetual public open space easement over the Park Space. As additional consideration for this Agreement, Landowner shall (i) at its sole cost and expense design and construct all Park Space in the Project consistent with the requirements of the Specific Plan and Subsequent Approvals applicable to such improvements; and (ii) substantially Complete Construction of the parkland and open space improvements within the Park Space.

4.2.2 Consistent with the provisions of Chapter 19.74 of the Sunnyvale Municipal Code, Landowner shall be granted a credit against the park dedication requirements, based on the square footage of Park Space of Thirty-One Thousand One Hundred Sixteen (31,116) square feet of land dedication credit.

4.2.3 In the event that Construction of Sub-Block 6 commences prior to the commencement of Construction on Sub-Block 3, the temporary open space within Redwood Square shall be maintained in substantially the condition that exists on the Effective Date of this Agreement until such time as Development commences on Sub-Block 3.

4.2.4 After the Effective Date, as a condition precedent to the issuance of any building permit within Sub-Block 3, the Sub-block 3 Landowner shall submit an easement and maintenance agreement (the "**Park Space Easement and Maintenance Agreement**") substantially in the form attached to this Agreement as Exhibit G. The Park Space Easement and Maintenance Agreement shall establish the Landowner's maintenance obligations with respect to the Park Space and the public use of Park Space and expressly provide the City a third party right to enforce the provisions thereof upon a default of Landowner's obligations thereunder and Landowner's failure to cure same. The final recordable version of the Park Space Easement and Maintenance Agreement shall be subject to reasonable review and approval as to form and consistency with Exhibit G by the City Manager. The Park Space Easement and Maintenance Agreement shall be recorded as a condition precedent to any Final Inspection of the Park Space improvements.

4.2.5 The Park Space Easement and Maintenance Agreements required by Section 4.2.3 shall additionally obligate Landowner to allow the City to use the Park Space for up to sixteen (16) days per year (not to exceed three (3) days per month) for special events that (i) are City sponsored, and not sponsored by a private, for-profit corporation unless approved in writing by Landowner which approval may be granted, conditioned or denied in its sole discretion, (ii) will not interfere with the operations of the occupants of the Project; and (iii) do not conflict with the provisions of any legal restriction, including without limitation the 2016 MRADDOPA and the CC&Rs (once such CC&Rs are recorded). The Park Space Easement and Maintenance Agreements shall provide for reimbursement of any costs that Landowner incurs as a result of the special events, including without limitation, security, clean-up, insurance, and maintenance / repair expenses.

4.3 Parking Requirements. The number of parking spaces needed to serve the entire Property shall be determined based on a Shared Parking Study conducted in a manner consistent with Existing City Laws and the procedures set forth herein. The Parties acknowledge that the most recent Area-Wide Shared Parking Study indicates that the approximately 2,326 parking

spaces to be built for the Project, of which approximately 325 will be publicly available parking spaces during all hours of operations (and approximately 1,100 additional spaces reserved for office uses which will be publicly available evenings and weekends) satisfy the total parking requirement for the Project. The approximately 2,326 parking spaces to be built for the Project will be in addition to parking on Block 18 of the Specific Plan that is existing as of the Effective Date, with surface spaces on Sub-Block 6 and the temporary parking on Sub-Block 3 to be removed. Upon a request from Landowner, which may be made from time to time, the City shall prepare a Shared Parking Study, to be paid for by the Landowner, to evaluate alternative or reduced parking options. Following such a request (if any) from Landowner, the above-listed number of parking spaces may be adjusted by the Director based on (a) the Shared Parking Study's compliance with the then-most recent edition of Shared Parking published by the ULI, Parking Generation published by the ITE, or if the ULI and ITE are no longer in existence, such other methodology as is then widely accepted in the industry as reasonably determined by the City; (b) a determination that parking is adequately dispersed throughout the Property, subject to limitations on the location and design of parking structures expressly set forth in Existing City Laws; (c) a determination that parking for the Residential Units is within reasonable proximity to the Residential Units; and (d) a phasing analysis that proportionately ties the number of parking spaces to a specific amount of development of each component of the Project (e.g., number of Residential Units, square footage of office or other quantity of land uses). At the election of Landowner, valet parking and/or other operational or transportation demand management strategies may be utilized to satisfy parking requirements, if approved by the Director.

4.4 Subsequent Approvals. The Project has been subject to review as part of the EIR and the Specific Plan. The development of the Project will require future discretionary and ministerial Development Approvals from the City, potentially including, but not limited to, special development permits, use permits, miscellaneous plan permits, tentative maps, final subdivision maps, private streets, easement vacations, encroachment permits, demolition permits, grading permits, building permits and Final Inspections, and sign permits. Landowner recognizes that City retains discretion with respect to its approval of applications for Subsequent Approvals, including without limitation determinations of consistency with the Specific Plan. City additionally retains discretion to impose conditions on Subsequent Approvals that are not in express or implicit conflict with the Landowner's Vested Rights; provided, however, that City shall exercise City's discretion in a manner which will not prevent (and will affirmatively allow) the development of the Project with the uses, heights, densities, and intensities specified in this Agreement. Conditions imposed on Subsequent Approvals shall not modify nor conflict with any provision, requirement, finding, or development standard set forth in this Agreement or in the Existing Approvals.

4.4.1 In connection with any Subsequent Approval, City shall accept applications for Subsequent Approvals for processing and review, and exercise City's discretion to take action, in a good faith manner and which complies with and is consistent with Landowner's rights under this Agreement, and City shall approve any application for an approval which so complies and is so consistent with this Agreement. Landowner, in a timely manner, shall provide City with all fees, charges, documents, applications, plans and other information necessary for City to carry out its obligations. Landowner shall additionally cause its planners, engineers, architects, and all other consultants to submit in a timely manner all necessary materials and documents. The Parties expressly intend to cooperate with one another and

diligently work to implement all land use and building approvals for development of the Project in accordance with the Development Approvals. Accordingly, City agrees that upon submission of applications and Processing Fees for all or any component of the Project, City shall, to the full extent allowed by law, promptly and diligently commence and complete all steps necessary or reasonably helpful to act on Landowners' applications for Subsequent Approvals, including without limitation: (i) providing at Landowners' sole cost and expense, and subject to Landowners' request and prior written approval, reasonable overtime staff assistance, additional staff and/or staff consultants for expedited planning and processing of each pending application; (ii) promptly scheduling and providing notice of all public hearings necessary to consider and approve the Subsequent Approvals requested by Landowner; and (iii) acting on any and all such pending applications.

4.4.2 Commencing as of the Effective Date, the Parties further agree to convene joint meetings approximately every two (2) weeks with one or more representatives of Landowner and appropriate representatives of City departments responsible for reviewing and approving Subsequent Approvals. These joint meetings shall be for the purposes of facilitating an efficient use of City and Landowner time on an ongoing and comprehensive review of pending applications for Subsequent Approvals, Development Approvals and Construction, and a work session for resolving areas of concern. The parties may mutually agree in writing (including in an email) to schedule additional meetings or cancel a scheduled meeting.

4.4.3 With the approval of the Specific Plan and this Agreement, the City has made a final policy decision that the development of the Property with the Project in accordance with Existing City Laws is in the best interests of the public health, safety, and general welfare. Landowner shall have the vested right to develop the Project on the Property in accordance with the Vested Rights. Accordingly, the City shall not use its authority in considering any application for a Subsequent Approval that is substantially consistent with the Specific Plan and this Agreement to change the policy decisions reflected hereinabove. Nothing herein shall limit the ability of the City to require the necessary reports, analyses, or studies to assist in determining whether the requested Subsequent Approval is consistent with Existing City Laws and this Agreement. City's review and approval of the Subsequent Approvals shall be consistent with this Agreement, including without limitation Sections 3.1, 3.2, 3.4, 3.5, 3.8, and 4.1 of this Agreement. For the reasons set forth in Recital G (among others), no further review or mitigation under CEQA shall be required by City for any Subsequent Approvals implementing the Project unless the provisions of CEQA Section 21166 apply.

4.4.4 Any conditions, terms, restrictions, procedures or requirements imposed by the City on Subsequent Approvals shall not prevent development of the Property for the uses and to the density and heights of development, and at the rate, timing and sequencing contemplated by this Agreement except as and to the extent expressly required by state or federal law.

4.4.5 The Parties acknowledge and agree that the Project is composed of multiple project elements on multiple parcels that will be developed at different times, be subject to separate and independent Subsequent Approvals, may be operated separately, and potentially owned by different parties. Accordingly, conditions and Subsequent Approvals applicable to individual uses and/or structures shall only apply to the use or structure that is the subject of the

applicable Subsequent Approval, and shall only apply to the owner of the individual lot on which the use or structure is located, except to the extent that such conditions and Subsequent Approvals are conditioned upon uses on other lots or within other structures.

4.4.6 For the avoidance of doubt, and subject to the rights of public utility easement holders, conditions imposed on Subsequent Approvals may include requirements for the customary dedication of public street or sidewalk easements and rights of way to complete the street configuration widths described in the Specific Plan and to accommodate the safe pick-up and drop-off of vehicle and bus passengers including requirements to improve the streets and sidewalks in compliance with the Downtown Streetscape Standard Details and Specifications at the Landowner's cost, including in ground street trees and structural soil; provided, however, that Landowner shall have the right to reserve out of any such dedication those property rights that Landowner reasonably determines to be necessary or convenient to allow for the construction, use and occupancy of underground parking facilities.

4.4.7 The City shall consider applications for Medical Clinics in accordance with Section 2.2.7 of this Agreement.

4.5 Subdivisions for Funding or Sale. Consistent with this Agreement, Landowner shall have the right (but not the obligation) to from time to time or at any time subdivide the Property into smaller lots for leasing purposes, financing purposes or disposition of a separate portion of the Property and/or to create airspace lots. Upon application of Landowner, a subdivision map shall be reviewed by the City for compliance with Existing City Laws and the Specific Plan, including the Subdivision Code and condominium conversion requirements (Sunnyvale Municipal Code Chapter 19.70), if applicable, and approved if consistent with the requirements thereof. Applications for subdivision maps shall conform to submittal requirements of the City and shall be reviewed in accordance with the review procedures in place at the time such submittals are made. Such subdivision of the Property, or the filing of a parcel map or subdivision map that creates new legal lots, shall not require an amendment to this Agreement, provided the subdivision does not change any requirements set forth under the Specific Plan, the Existing Approvals, and/or this Agreement. As required by Government Code Section 65867.5, any tentative map prepared for a subdivision of the Property shall comply with the provisions of Government Code Section 66473.7. As authorized by Government Code Section 66434(g), Landowner shall have the right to elect whether to process the abandonments for any public utility easements and right of way abandonments through the public process for the approval of subdivision maps, or to process such abandonments through the vacation procedures set forth in the Streets and Highways Code Section 8300 *et seq*. or in any other provision of law. City shall have the right, but not the obligation, to exercise its authority for the disposition of such vacated right of way pursuant to Streets and Highways Code Section 8356(a) and Government Code Section 54221(f)(1), subsections (B) and (E).

4.6 Life of Development Approvals and Subsequent Approvals. The terms of the Development Approvals and Subsequent Approvals shall automatically be extended for the duration of this Agreement (including any extensions of this Agreement as permitted by the terms hereof).

ARTICLE 5
LANDOWNER OBLIGATIONS AND EXTRAORDINARY CITY BENEFITS

5.1 Landowner 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, Landowner has offered and agreed to provide the public benefits to the City listed in this Article 5, and has further agreed to comply with all of its obligations under this Agreement, including in particular the obligations set forth in Section 4.2 with respect to the design and Construction of the Park Space.

5.1.1 Below Market Rate ("BMR") Units.

(a) In accordance with, and in full satisfaction of, Existing City Laws, including without limitation the Inclusionary Housing Ordinance, Landowner shall set aside the BMR Units. Of the BMR Units, fifty-two (52) units shall be set aside for Low Income Households, and twenty-six (26) units shall be set aside for Very-Low Income Households (these numbers of units assume construction of the maximum number of Residential Units contemplated by this Agreement, and would be adjusted based on the actual number of Residential Units Constructed within the Project). In addition, the Landowner will set aside ten (10) BMR Units for the Commercial Core Community Benefits Housing Bonus Units for Moderate Income Households, subject to the City guidelines.

Since Development will be planned and implemented on a Sub-Block-by-Sub-Block basis, and notwithstanding any provision in the City's Inclusionary Housing Ordinance to the contrary, the Sub-Block constitutes the development project "site" for purposes of applying the BMR Unit requirements and the fifteen (15%) percent requirement of Base Residential Units shall accordingly be applied on a Sub-Block by Sub-Block basis and the ten (10) Moderate Income Units shall be phased and distributed proportionately throughout the Project. The BMR Units shall be dispersed throughout the Sub-Block in accordance with the provisions of the Inclusionary Housing Ordinance. The number of BMR Units required as a result of the Construction of an individual building would be proportionately based on the number of Residential Units Constructed within that building. The units shall be administered in accordance with the Inclusionary Housing Ordinance and the applicable guidelines adopted by the City to implement the Inclusionary Housing Ordinance and all documents used with respect to the BMR Units shall substantially conform to the City's standard documents in use at the time a Complete Building Permit Application for the BMR Units is submitted so long as such documents would not require modification of the density or intensity of uses of the Project as set forth in this Agreement or would otherwise be inconsistent with Landowner's rights under this Agreement.

In lieu of the foregoing requirements, in accordance with, and in full satisfaction of the Existing City Laws, including without limitation, the Inclusionary Ordinance, Landowner shall have the unfettered right, but not the obligation, to submit for City Council consideration and approval an alternative BMR Compliance Plan as defined in the Inclusionary Housing Ordinance. Any such alternative BMR Compliance Plan may be

submitted for City Council consideration when Landowner submits applications for the first Subsequent Approval(s) for Residential Units.

(b) Prior to issuance of a new or revised building permit for any residential building, Landowner shall submit a BMR Compliance Plan to the City that establishes the affordable units and the type, size and location of the affordable units within the Project.

(c) The City agrees that Landowner is and shall be entitled, in addition to the Base Residential Units, to (i) the Affordable Housing Density Bonus Units consisting of 210 Market Rate units in addition to the Base Residential Units, and (ii) the Commercial Core Community Benefits Housing Bonus in accordance with this Agreement.

5.1.2 Contribution to Community Benefit Fund. Landowner shall pay to City a total of up to Ten Million Six Hundred Thirty-Two Thousand Forty Dollars ($10,632,040) to be deposited in the City's Community Benefit Fund. Landowner intends this Community Benefit Fund Contribution to be in addition to any other fee or other Exaction which is in force and effect within the jurisdiction of the City. Landowner shall pay the Community Benefit Fund Contribution based on the actual Bonus Office Square Footage for which a building permit is issued at the rate of Forty Dollars ($40) per square foot of Bonus Office Square Footage, which per-square footage amount shall be paid by Landowner prior to issuance of a building permit for Bonus Office Square Footage; provided, however, that no commercial space located above the ground-floor that is devoted to Retail uses (available to the general public) contemplated at time of issuance of the building permits for the core and shell pursuant to an executed lease shall be counted as new office square footage (nor shall it be counted as Bonus Office Square Footage). Accordingly, no Community Benefit Fund Contribution shall be due or payable on retail square footage, but if such retail square footage located above the ground floor is converted to office use at any time within ten (10) years after the Final Inspection of such retail square footage, Landowner shall be obligated to pay to the City the Community Benefit Fund Contribution at the rate of Forty Dollars ($40) per square foot of such retail square footage converted to office use as a condition of such conversion.

5.1.3 Dynamic Parking System. Concurrently with the Final Inspection for the new public parking structure on each of Sub-Blocks 3 and 6, Landowner shall provide a dynamic parking supply system indicating the available number of parking spaces within each public parking structure in Block 18, which system shall consist of a single parking "totem" sign located adjacent to each of the Sub-Block 3 and Sub-Block 6 parking structures substantially similar to the sign and system in place adjacent to the Sub-Block 5 parking structure as of the Effective Date. The dynamic system shall be WiFi-internet compatible, and shall be technologically capable of allowing the City to link the information to a website or Mobile App.

5.1.4 Ongoing Maintenance. The Parties agree that Landowner shall maintain in good, clean and presentable appearance, condition and repair the Park Space and the improvements located therein, and the Public Improvements until the Maintenance Transfer Date. Prior to the Maintenance Transfer Date, Landowner shall prepare CC&Rs imposing against Landowner (and its successors and assigns, including, to the extent designated by the

CC&Rs, a Property Owner's Association) the obligation to maintain the Park Space and Public Improvements in good, clean and presentable appearance, condition and repair. The CC&Rs shall include: (a) requirements that the Property Owner's Association provide all necessary and ongoing maintenance and repairs to the Public Improvements and Park Space; (b) provisions intended to ensure the ongoing, economically sound funding of such obligations; and (c) provisions granting the City an express third party right to enforce (at no out of pocket cost to the City) the Park Space and Public Improvements maintenance and repair provisions in the event of a default of the Property Owners' Association's obligation to perform such functions and the Property Owners' Association's failure to cure same in accordance with the provisions of the CC&Rs. From and after the Maintenance Transfer Date, any failure of the Property Owners' Association to perform its obligations to provide all necessary and ongoing maintenance and repairs shall not be considered an event of default or otherwise be held against Landowner under this Agreement and the City's remedy shall be its enforcement rights under the CC&Rs. The provisions in the CC&Rs referenced herein shall be subject to review and approval by the City Manager and the City Attorney for consistency with the requirements of this Section 5.1.4 and consistency with the existing agreements between City and Landowner regarding maintenance of the Public Improvements, including but not limited to the 2007 Maintenance Agreement, as defined below, as its provisions and the Parties' respective obligations may be modified from time to time.

(a) Additional Agreements. As a component of the CC&Rs, or at the election of Landowner through one or more separate agreements, the Parties mutually intend to consolidate, eliminate, and/or update as appropriate the provisions currently contained in the existing agreements set forth on Exhibit H to this Agreement. The Parties intend that the consolidation, elimination, or updating of existing agreements occur as soon as it is practicable to do so to the extent of the City's authority from time to time; provided, however, that the Parties acknowledge that consolidation, elimination, and/or updating of certain of the agreements entered into with the Former Sunnyvale Redevelopment Agency and/or the Successor Agency can occur only after the City succeeds to the rights of the Successor Agency, which is presently expected to occur in October 2022. At the written request of the City, Landowner shall reimburse the City for reasonable outside attorney's fees the City actually incurs in order to consolidate, eliminate or update the pre-existing separate agreements in an amount not to exceed Seventy-Five Thousand ($75,000) Dollars.

(b) Construction Agreements. In connection with the Development and Construction of the Project, including without limitation additional parking garages within Block 18, Landowner may request that the City approve shoring agreements, tie-back, crane and staging easements, and encroachment permits (collectively, "**Construction Agreements**") in the street rights of way. City consideration of such Construction Agreements will be consistent with City Laws and standard City practices and procedures.

(c) Public Street Maintenance Reimbursement Agreement. Pursuant to that certain Public Street and Utility Maintenance Agreement, dated September 28, 2007, executed by the Sunnyvale Redevelopment Agency, and Downtown Sunnyvale Mixed Use, LLC, a Delaware limited liability company, and recorded October 1, 2007, as

Instrument No. 19602168 (the "**2007 Maintenance Agreement**"), Landowner is responsible for the operation and maintenance of the Public Street Parcel and the City-owned Utility Facilities (as such terms are defined in the 2007 Maintenance Agreement) pursuant to, and to the extent of, the terms of that Agreement. The Parties ultimately intend to, and shall, consolidate such maintenance obligations into the CC&Rs; provided, however, that the Parties agree that the private policing obligations set forth in Section 6 of 2007 Maintenance Agreement are obsolete, shall not be incorporated into the CC&Rs, and shall be terminated by separate written agreement of the Parties at the soonest practicable date following the Effective Date of this Agreement. As a component of the reimbursement agreement provided for in the following paragraph, the Parties shall additionally provide for the maintenance of the sidewalk and street trees located along the entire Washington Avenue frontage immediately north of Sub-Block 3 (a portion of this frontage is excluded from the scope of the 2007 Maintenance Agreement).

In advance of the creation of the CC&Rs, Landowner and City shall use good faith efforts to enter into a mutually acceptable reimbursement agreement within ninety (90) days of the Effective Date whereby Landowner would provide agreed-upon funding to City in exchange for the City undertaking the Landowner's 2007 Maintenance Agreement obligations.

5.1.5 Outdoor Lights and Streetlights. All new outdoor lights and street lights on public and private streets within Block 18 (including out to the perimeter sidewalks immediately surrounding Block 18) and within the Park Space shall comply with the City standards, including without limitation for the use of LED lights, when the permit for such new lighting is issued in connection with initial Construction of the Project.

5.1.6 All-Electric Residential Units. All appliances provided in Residential Units shall use electric power only; natural gas shall be prohibited for such uses.

5.1.7 Jobsite Sub-permit. Landowner shall cause all contractors and subcontractors to apply for a jobsite sub-permit with the California Department of Tax and Fee Administration prior to the purchase of any materials, fixtures, furniture, machinery, equipment and supplies for any construction work to be performed on the Project (a "**Jobsite Sub-Permit**"). Landowner shall furnish a copy of contractors' application for Jobsite Sub-Permit prior to the issuance of any building permit.

5.1.8 Ice Rink. Landowner shall operate, at no out-of-pocket cost to the City, a winter-season ice rink or such other recreational opportunities as are mutually agreed by Landowner and City for no fewer than three (3) winter seasons. This obligation shall be performed not later than three (3) years after Completion of the Park Space.

5.1.9 Community Room. From and after the date on which Construction within Sub-Block 3 or Sub-Block 6 commences (whichever occurs first), and continuing until that date that is ten (10) years thereafter, Landowner shall provide a community room for use by "**Community Groups**", defined as follows:

(a) the City;

(b) the Downtown Sunnyvale Association;

(c) the Sunnyvale Chamber of Commerce;

(d) School Districts that serve Sunnyvale residents ("Sunnyvale School Districts");

(e) youth athletic programs affiliated with Sunnyvale School Districts; and/or

(f) other local community-based charitable organizations approved by Landowner.

The community room shall be provided to such Community Groups at no rental cost (this provision shall not preclude charges and expenses authorized by the Community Room Rules, defined below, such as insurance requirements, safety and cleaning expenses, and security deposits). Landowner shall be responsible for the costs of building-out and furnishing the community room. The community room shall:

(i) be approximately 1,200 - 2,000 square feet;

(ii) provide seating, tables, and audio-visual capabilities, including monitor and wi-fi; and

(iii) be located on the ground floor within Block 18 with a pedestrian entrance directly accessing a public sidewalk.

Landowner shall have the right to relocate the community room from time to time to another area of Block 18 that otherwise satisfies the requirements set forth above, in which case Landowner (or its designee) shall provide the City Manager a written notice of its intent to relocate the community room and the proposed new location at least thirty (30) days prior to date the relocation will occur. Landowner shall construct the replacement community room at its cost and such replacement community room must be available for use by the Community Groups prior to the closure of the existing community room. Landowner may, from time to time, establish commercially reasonable rules and requirements for use of the community room, including without limitation, insurance requirements, safety and cleaning protocols, reservation systems, security deposits, and allowed uses of the community room, which rules and requirements shall be subject to the approval of the City Manager ("**Community Room Rules**"). Landowner may utilize the community room for public or private events when it is not in use by Community Groups.

5.1.10 VTA Passes. Upon occupancy of each BMR unit, Landowner shall provide to the initial household of each BMR Unit a three-month set of monthly VTA passes (equating to a cumulative total of 264 months of VTA passes across all BMR Units contemplated by this Agreement). If the Landowner implements a transit pass program as part of a multi-family residential transportation demand management program, then the obligation imposed by this Section 5.1.10 may be superseded by the requirements of the implemented transportation demand management program.

ARTICLE 6
AMENDMENT OF AGREEMENT AND DEVELOPMENT APPROVALS

6.1 Amendment or Cancellation. Either 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 the Development Agreement Resolution. 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 the Development Agreement Resolution 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 Legislation. 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 Landowner 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 REVIEW

7.1 Time of Review. To determine Landowner's good faith compliance with this Agreement, in accordance with Government Code Section 65865.1, and in compliance with the Development Agreement Resolution, the Planning Commission shall review this Agreement and all actions taken with respect to the development of the Property approximately every twelve (12) months from the Effective Date, commencing on the first anniversary of the Effective Date. The date for review may be modified either by written agreement between the Parties or, at the City's initiation, upon recommendation of the Director and by the affirmative vote of the majority of the Planning Commission.

The Director shall give notice to Landowner that the City intends to undertake 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. Upon receipt of this notice from City, Landowner shall submit to the Director a letter setting forth Landowner's good faith compliance with the terms and conditions of this Agreement. Such letter may be accompanied by such documents and other information as may be reasonably necessary and available to Landowner to enable the Planning Commission to undertake the annual review of Landowner's good faith compliance with the terms of this Agreement, and shall also state that such letter is submitted to City pursuant to the requirements of Government Code Section 65865.1 and this Article 7.

7.2 Determination of Good Faith Compliance. Such annual review 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. At least five (5) days prior to each of the Planning Commission and City Council rendering a decision, the City shall provide to Landowner copies of all staff reports and other information concerning Landowner's compliance with the terms of this Agreement. If the Planning Commission determines that, based upon substantial evidence in the record, Landowner has 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, in good faith and based upon substantial evidence in the record, Landowner has 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 that Landowner has complied in good faith with the terms and conditions of this Agreement, the review for that period is concluded. A finding by the City Council of good faith compliance by Landowner with the terms of this Agreement shall conclusively determine the issue up to and including the date of such review. If, however, the City Council determines, in good faith and based upon substantial evidence in the record, that Landowner has 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 and exercise the remedies set forth in Section 8.1. If the City finds good faith compliance by Landowner with the terms of this Agreement, upon request by Landowner, the City Manager shall provide to Landowner written confirmation of such finding.

7.3 No Waiver. Failure of City to conduct an annual review shall not constitute a default by Landowner under this Agreement or a waiver by City of its rights to otherwise enforce the provisions of this Agreement nor shall Landowner 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 Landowner 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 Landowner acknowledge that the purpose of this Agreement is to carry out the Parties' objectives as set forth in the recitals. City and Landowner 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 Property not be developed as contemplated by this Agreement is not possible and that damages would not be an adequate remedy. Therefore, City and Landowner agree that in the event of a breach of this Agreement, the only remedies available to the non-breaching Party 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 Sections 1085 and/or 1094.5, or special writs, and (4) termination or cancellation of this Agreement or, at the option of City in the event of breach by Landowner, termination of the rights of Landowner 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 Complaining Party shall deliver to the Defaulting Party 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 thirty (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. The Parties acknowledge and agree that the Project is composed of multiple project elements on

multiple parcels that will be developed at different times, operated separately, and potentially owned by different parties. Accordingly, conditions applicable to individual uses and/or structures shall only be enforced against the owner of the legal parcel on which the offending use or structure is located. Notwithstanding any other provision set forth in this Agreement to the contrary, in the event that a default exists with respect to one or more but not all of said separate legal parcels, the default shall not be considered to be a default as to the separate legal parcel or parcels as to which no such default exists and City shall not be entitled to any legal or equitable remedies with respect to the non-defaulted parcel or parcels of the Property or to enforce or terminate this Agreement with respect thereto. Also notwithstanding any other provision set forth in this Agreement to the contrary, in the event that this Agreement is assigned by Landowner in connection with the sale, lease, sublease, or other transfer of all or a portion of the Property and a default exists with respect to any part of the Property so sold, leased, subleased, or otherwise transferred, such default shall not be considered a default as to any portion of the remaining Property and the City shall not be entitled to any legal or equitable remedies with respect to the non-defaulted portion of the Property.

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 the Development Agreement Resolution and the Development Agreement Statute.

8.5 Effect of Termination on Landowner's Obligations.

8.5.1 Notwithstanding any other provision to the contrary, termination or cancellation of this Agreement or termination of the rights of Landowner as to the entire Property, or any part the Property, shall not affect any requirement to comply with the Development Approvals, 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 Landowner 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 Property result in termination of Development Approvals that would not otherwise have expired pursuant to Existing City Laws.

Landowner understands and agrees that the City Approvals may be substantially modified in light of the circumstances resulting from the termination or cancellation of this Agreement or Landowner's rights under this Agreement, and Landowner shall have no rights to

challenge such a modification by reason of this Agreement other than the rights, if any, Landowner would have in the absence of this Agreement.

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 (Landowner's obligations upon termination or cancellation);

c. Section 12.2 (Indemnification); and

d. Sections 14.1 and 14.9 (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, (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 this 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 Landowner. Landowner and City acknowledge that a certificate hereunder may be relied upon by Landowners, 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 Property 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 Civil Code of the State of California. Each covenant to do or refrain from doing some act on the Property hereunder, (a) is for the benefit of the Property and is a burden upon the Property, (b) runs with the Property, and (c) is binding upon Landowner and each successive owner during its ownership of the Property or any portion thereof (subject to the terms of Section 11.2 below), and each person or entity having any interest in the Property. Every person who now or hereafter owns or acquires any right, title or interest in or to any portion of the Property 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 Property.

10.2 Right to Assign. From and after the Maintenance Transfer Date, Landowner shall have the right to assign (by sale, transfer, or otherwise) its rights and obligations under this Agreement as to all or any portion of the Project to any Assignee, and Landowner's right to assign shall not be subject to City's approval. Prior to the Maintenance Transfer Date Landowner shall have the right to assign (by sale, transfer, or otherwise) its rights and obligations under this Agreement as to all or any portion of the Project to an Assignee, subject to the approval of the City Manager, which approval shall not be unreasonably withheld, conditioned, or delayed. Notwithstanding the foregoing, Landowner, without the approval of the City, shall have the immediate and unfettered right to assign its rights and obligations under this Agreement to an Assignee in connection with the following permitted transfers: (1) a security interest, mortgage (and/or a foreclosure or deed in lieu of foreclosure), and/or any other financing mechanism; (2) a collateral assignment of all or any part of the Property or all or any part of the beneficial ownership interest of Landowner; (3) any transfer to an Affiliate of Landowner, including without limitation, any transfer resulting from the addition or removal of a member of Landowner or any other reorganization of Landowner; and (4) any transfer to a Property Owner's Association.

10.3 Release Upon Assignment. Upon the express written assumption by the Assignee of Landowner's rights and interests under this Agreement (the "**Assignment Agreement**") substantially in the form set forth in Exhibit I to this Agreement and Landowner's delivery of a conformed copy of the recorded Assignment Agreement to City, Landowner 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. 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 Landowner (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 authorized under Applicable Law.

11.3 Notice of Breach to Mortgagee. If City receives a written notice from a Mortgagee, Landowner or any approved Assignee requesting a copy of any notice of default or breach given Landowner or any approved or permitted Assignee and specifying the address for service, then City shall deliver to the Mortgagee at Mortgagee's cost (or Landowner's cost), concurrently with service to Landowner, any notice given to Landowner with respect to any claim by City that Landowner is in breach of this Agreement, and if City makes a determination of breach, City shall, if so requested by the Mortgagee, likewise serve at Mortgagee's cost (or Landowner's cost) the Notice of Breach on the Mortgagee concurrently with service on Landowner. Each Mortgagee shall have the right (but not the obligation) during the same period available to Landowner 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 of Breach.

11.4 No Supersedure. Nothing in this 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 this Article 11 constitute an obligation of City to the Mortgagee, except as to the notice requirements of Section 11.3.

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 entirely funded by Landowner without the use of public funds, that City has no interest in or responsibility for or duty to third persons concerning any of said improvements, and that Landowner shall have full power over and exclusive control of the Property subject only to the limitations and obligations of Landowner under this Agreement.

12.2 Indemnification and Duty to Defend.

(a) To the fullest extent permitted by law, Landowner hereby agrees to and shall immediately defend, indemnify, and hold City and its elected and appointed representatives, officers, agents, and employees ("**Indemnified Party**") 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 Landowner's operations under this Agreement, excepting suits and actions brought by Landowner for default of the Agreement or to the extent arising from the intentional acts, gross negligence, or willful misconduct of Indemnified Party.

(b) This indemnification and hold harmless agreement applies to all damages and claims for damages suffered or alleged to have been suffered by reason of Landowner's performance of its obligations under this Agreement, regardless of whether or not City prepared, supplied, or approved plans or specifications for the Property.

(c) The duty to defend is a separate and distinct obligation from Landowner's duty to indemnify. Subject to the limitations or requirements stated in this Agreement, Landowner shall be obligated to defend, in all legal, equitable, administrative, or special proceedings, with counsel reasonably approved by the City immediately upon tender to Landowner, which shall be made to Landowner promptly upon it becoming known to the City. An allegation or determination of the sole negligence or willful misconduct by Indemnified Party shall not relieve Landowner 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 if Landowner asserts 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, Landowner 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: Director of Community Development
City of Sunnyvale
456 W. Olive Avenue
P.O. Box 3707
Sunnyvale, CA 94088-3707
Email: comdev@sunnyvale.ca.gov

With a copy to: City Attorney
City of Sunnyvale
456 W. Olive Avenue
P.O. Box 3707
Sunnyvale, CA 94088-3707
Email: cityatty@sunnyvale.ca.gov

Landowner: STC Venture LLC
c/o J.P. Morgan Investment Management Inc.
2029 Century Park East, Suite 4150
Los Angeles, California 90067
Attention: Lauren Graham
Email: lauren.b.graham@jpmchase.com

With a copy to: Sunnyvale Acquisition LLC
c/o J.P. Morgan Investment Management Inc.
277 Park Avenue, 36th Floor
New York, New York 10172

Hunter/Storm, LLC
10121 Miller Avenue, Suite 200
Cupertino, California 95014
Attention: Derek K. Hunter, Jr.
Email: Deke@hunterproperties.com

Sares Regis Group of Northern California, LLC
901 Mariners Island Boulevard, Suite 700
San Mateo, California 94404
Attention: Mark R. Kroll
Email: MKroll@srgnc.com

Gibson, Dunn & Crutcher LLP
333 South Grand Avenue, Suite 4900
Los Angeles, California 90071
Attention: Ben Saltsman, Esq.
Email: bsaltsman@gibsondunn.com

Either Party may change its notice 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 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 challenging the validity of any provision of this Agreement, the Specific Plan, the EIR or other CEQA approvals and/or the Development Approvals ("**Third Party Challenge**"), the responsibilities of the Parties shall be as follows.

14.1.1 Indemnification

(a) Landowner shall defend, indemnify, and hold harmless the Indemnified Party from any Third Party Challenge against the Indemnified Party to attack, set aside, void, or annul this Agreement or the Development Approvals and shall indemnify and hold harmless Indemnified Party 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 Landowner 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. The City shall be considered to have failed to give prompt written notification of a Third Party Challenge if the City, after being served with a lawsuit or other legal process unreasonably delays in providing written notice thereof to the Landowner. As used herein, "unreasonably delay" shall mean any delay that, in the reasonable opinion of Landowner, materially adversely impacts the Landowner's ability to defend against the Third Party Challenge. If Landowner defends any Third Party Challenge, so long as Landowner is not in default hereunder, City shall not allow any default or judgment to be taken against it or compromise the defense of the action without Landowner's prior written approval. The Parties shall act jointly in filing motions, briefs, trial statement, and other appropriate court documents and in approving settlement of such Third Party Challenge. Nothing herein shall obligate or allow a Party to settle such Third Party Challenge on terms that would constitute an amendment or modification to this Agreement, the Existing City Laws, the Specific Plan, or that would materially impact the beneficial uses of that Party's property.

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

14.2 Venue/Attorneys' Fees and Costs. 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 any 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. Landowner covenants 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 the feminine or neuter 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 for the other Party the full and complete enjoyment of its rights and privileges hereunder. This paragraph shall be interpreted in light of the policy decision that the development of the Property with the Project in accordance with Existing City Laws is in the best interests of the public health, safety, and general welfare, and Landowner's vested right to develop the Project on the Property and shall extend (to the extent of the City's authority from time to time) to actions, instruments, documents and writings originally entered into by the Former Sunnyvale Redevelopment Agency or the Sunnyvale Successor Agency with respect to the Property, and shall include without limitation any need to amend or supplement such agreements in order to allow for development of the full Project contemplated by this Agreement in accordance with the terms hereof and to achieve the Parties' objectives as set forth in the recitals.

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 Landowner 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 Prevailing Wage. The City acknowledges and agrees that it is not providing any monetary compensation or financing for development of the Project, and that City is not independently requiring that any labor standards, including without limitation those under California Labor Code Section 1720 *et seq*., apply to the development of the Project. Landowner hereby agrees that, with respect to the Project, Landowner shall be fully responsible for determining the applicability of federal and State labor laws. Landowner further agrees to indemnify, defend and hold the City and its elected and appointed officials, employees, agents, attorneys, affiliates, representatives, contractors, successors and assigns free and harmless from and against any and all claims arising from or related to compliance by Landowner or its officers, directors, employees, agents, representatives, consultants and/or contractors (at every tier) in construction of the Project with prevailing wage requirements (if any) imposed by any applicable federal and State labor laws, including, without limitation, California Labor Code Section 1720 *et seq*.

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

14.11 Subsequent Projects. After the Effective Date, the Parties acknowledge that 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 Landowners' right to build and occupy the Project, as described in this Agreement, shall not be diminished despite the increased burden of future approved development on public facilities (including, without limitation, roads, sewers, water systems, drainage, parks, utilities, traffic signals, landfills and public services). Accordingly, City shall (i) to the extent the City or City controlled agency or special district retains responsibility for completing infrastructure and public services necessary to serve all or any portion of the Project, ensure that such infrastructure and public services are available in a timely fashion so as not to delay the occupancy of all or any portion of the Project; and (ii) require projects outside of the Property which may significantly impact the infrastructure and public services necessary to serve the Project to mitigate any such impacts in the manner required by CEQA and any other law, ordinance, rule or regulation, including without limitation, bearing their appropriate share of any tax, assessment, fee or similar charge imposed to finance infrastructure or other public service or improvement.

14.12 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.

14.13 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:

14.13.1 Exhibit A-1 and Exhibit A-2: Legal Description and Site Map

14.13.2 Exhibit B: Inclusionary Housing Ordinance

14.13.3 Exhibit C: Interim Sub-Block 6 Parking

14.13.4 Exhibit D: Monetary Exactions Subject to Immediate Increases

14.13.5 Exhibit E: Monetary Exactions Subject to Increases After Thirty Months

14.13.6 Exhibit F: Approved Heights

14.13.7 Exhibit G: Form of Park Space Easement and Maintenance Agreement

14.13.8 Exhibit H: Existing Agreements to be Updated, Eliminated or Consolidated

14.13.9 Exhibit I: Form of Assignment Agreement

14.14 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 successors in interest) and not for the benefit of any other individual or entity.

14.15 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.

14.16 Approvals. Unless otherwise herein provided, whenever a determination, approval, consent or satisfaction (herein collectively referred to as "consent") is required of a Party pursuant to this Agreement, such consent shall not be unreasonably withheld or delayed. If a Party shall not consent, the reasons therefore shall be stated in reasonable detail in writing. Consent by a Party to or of any act or request by the other Party shall not be deemed to waive or render unnecessary consent to or of any similar or subsequent acts or requests. The City Manager is hereby authorized to give any consent required by this Agreement. Notwithstanding the authorization given to the City Manager herein, the City Manager may elect to submit any such item requiring consent to the City Council.

14.17 Not a Public Dedication. Except as provided herein and in the Development Approvals, nothing contained herein shall be deemed to be a gift or dedication of the Property, or of the Project, or portion thereof, to the general public, for the general public, or for any public use or purpose whatsoever. Landowner shall have the right to prevent or prohibit the use of the Property, or the Project, or any portion thereof, including common areas and buildings and improvements located thereon, by any person for any purpose inimical to the operation of a private Project as contemplated by this Agreement.

14.18 Excuse for Nonperformance. Notwithstanding anything to the contrary in this Agreement, Landowner and City shall be excused from performing any obligation or undertaking provided in this Agreement, except any obligation to pay any sum of money under the applicable provisions hereof, in the event and so long as the performance of any such obligation is prevented or delayed, or hindered, by acts of nature, fire, earthquake, flood, explosion, unusually severe weather, war, invasion, insurrection, riot or civil disturbances, mob violence, sabotage, terrorist actions, inability to procure or general shortage of labor, equipment,

facilities, materials or supplies in the open market, failure of transportation, strikes, lockouts, condemnation, requisition, laws, litigation, orders of governmental, civil, military or naval authority, acts or omissions of the other Party, epidemic, pandemic, soil, water, or environmental conditions, or any other cause, whether similar or dissimilar to the foregoing, not within the control of the Party claiming the extension of time to perform (a "**Permitted Delay**"). In addition to the foregoing, the Term of this Agreement shall be extended by a period of time equal to the number of days during which a Permitted Delay existed, provided that the Party claiming such extension shall send written notice of the claimed extension to the other Party within sixty (60) days from the commencement of the cause entitling the Party to the extension. Times for performance under this Agreement may be extended by mutual written agreement of the City Manager and Landowner.

14.19 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.

[*Signature pages follow*]

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

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

_____
Name: _____
Notary Public

S-1A

“Landowner”

STC VENTURE LLC,
a Delaware limited liability company

By: _____
Name: _____
Its: _____

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

_____
Name: _____
Notary Public

“Landowner”

STC VENTURE BLOCK B, LLC,
a Delaware limited liability company

By: _____
Name: _____
Its: _____

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

_____
Name: _____
Notary Public

S-3A

“Landowner”

STC VENTURE 200WA, LLC,
a Delaware limited liability company

By: _____
Name: _____
Its: _____

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

_____
Name: _____
Notary Public

“Landowner”

STC VENTURE BLOCK 3RWS, LLC,
a Delaware limited liability company

By: _____
Name: _____
Its: _____

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

_____
Name: _____
Notary Public

“Landowner”

STC VENTURE BLOCK 6, LLC,
a Delaware limited liability company

By: _____
Name: _____
Its: _____

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

_____
Name: _____
Notary Public

Exhibit A-1

LEGAL DESCRIPTION

Lot 1 of Block 1 of Tract Map No. 9925, filed for record in the Office of the Recorder of Santa Clara County, California on October 1, 2007 in Book 818 of Maps at Pages 45 through 55, inclusive.

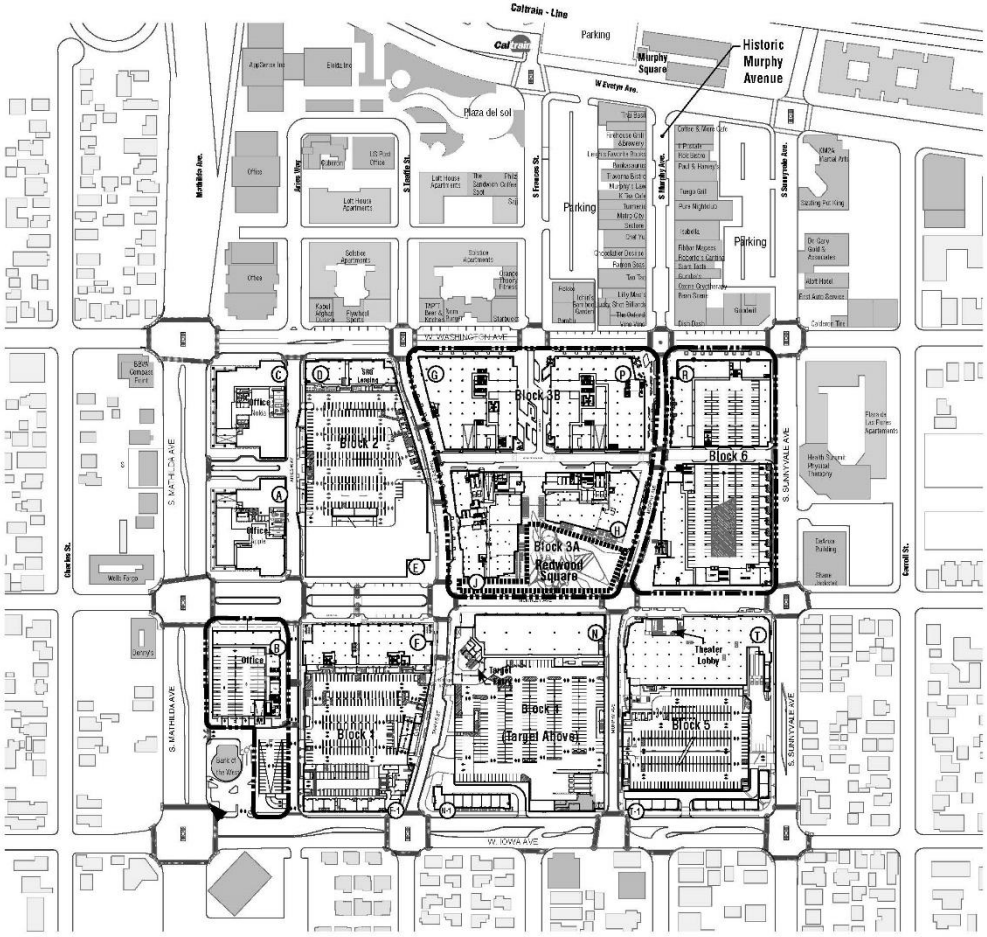
Parcels A and B of that certain Certificate of Compliance (Lot Line Adjustment) recorded October 30, 2008 as Instrument No. 20033369 in the Official Records of Santa Clara County.

Lots 1, 2, 3 and 4 of Block 6 of Tract Map No. 9925, filed for record in the Office of the Recorder of Santa Clara County, California on October 1, 2007 in Book 818 of Maps at Pages 45 through 55, inclusive.

Exhibit A-2

SITE MAP

EXHIBIT A-2



Overall Site Plan

CITYLINE | HUNTER STORM Project No.: 21109-P50 06/17/20 | 0' 100' 200' | SGPA ARCHITECTURE AND PLANNING | 1

Exhibit B

INCLUSIONARY HOUSING ORDINANCE

[Attached.]

ORDINANCE NO. 3147-19

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF SUNNYVALE TO ADD CHAPTER 19.77 (INCLUSIONARY BELOW MARKET RATE RENTAL HOUSING) OF TITLE 19 (ZONING) OF THE SUNNYVALE MUNICIPAL CODE CREATING AN INCLUSIONARY RENTAL HOUSING PROGRAM

WHEREAS, the City of Sunnyvale ("City") desires to adopt a Citywide Inclusionary Rental Housing Program to enhance the public welfare by establishing policies that require the development of rental housing affordable to households of very low- and low-incomes, enable the City to meet its share of regional housing needs, and implement the City's Housing Element goals and objectives; and

WHEREAS, since 1980, the City has implemented a successful below market-rate ("BMR") Program that provides affordable ownership opportunities for moderate-income households and rental opportunities for low and very-low income households; and

WHEREAS, in 2009, the California court case *Palmer/Sixth Street Properties, L.P. v. City of Los Angeles* eliminated rental housing inclusionary programs across the state and the City could no longer require inclusionary housing in new rental development projects; and

WHEREAS, in 2015 City Council adopted a Rental Housing Impact Fee for new residential rental development projects; and

WHEREAS, the State of California Legislature enacted Assembly Bill ("AB") 1505 in 2017 which restores the authority of local governments to impose inclusionary housing requirements on residential rental housing; and

WHEREAS, in 2017, the City Council approved Study Issue 17-09, the 2017 Housing Strategy, of which a main goal is to enact a rental inclusionary ordinance consistent with AB 1505; and

WHEREAS, the City desires to establish an Inclusionary BMR Rental Housing Ordinance and affordable housing in-lieu fees to mitigate the impacts of new market-rate housing development on the need for affordable housing, assist in meeting the City's share of the Regional Housing Needs Allocation ("RHNA"), and assist in implementing the goals, policies and actions specified in the Housing Element of the City's General Plan.

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

SECTION 1. CHAPTER 19.77 ADDED. Chapter 19.77 (Inclusionary Below Market Rate Rental Housing) of Title 19 (Zoning) of the Sunnyvale Municipal Code is hereby added to read as follows:

CHAPTER 19.77

INCLUSIONARY BELOW MARKET RATE RENTAL HOUSING

19.77.010. Purpose.
19.77.020. Definitions.
19.77.030. Applicability.
19.77.040. Exemptions.
19.77.050. Base inclusionary requirement.
19.77.060. Density bonus.
19.77.070. Required affordability.
19.77.080. Affordable housing unit development standards.
19.77.090. Affordability term.
19.77.100. Alternative compliance options.
19.77.110. Annual report.
19.77.120. Enforcement.
19.77.130. Appeals.
19.77.140. Severability.
19.77.150. Waiver.

19.77.010. Purpose.

(a) Findings. The city council finds that:

(1) A shortage of affordable housing is detrimental to the public health, safety and welfare in the city of Sunnyvale;

(2) Persons with low incomes who work or live in the city are experiencing a shortage of affordable housing opportunities and those with very low incomes are increasingly excluded from living in the city;

(3) Federal and state housing subsidy programs are not sufficient by themselves to satisfy the housing needs of low income households;

(4) Continued new development without housing at prices affordable to these persons will worsen the shortage of affordable housing; and

(5) It is the city's goal and a public policy of the state of California to ensure there is adequate supply of housing for persons of all economic segments of the community.

(b) Purpose. This chapter establishes requirements for affordable housing in new rental housing developments for projects with applications that are first complete after November 8, 2019. This Chapter does not supersede

Chapters 19.67 or 19.69, which shall continue to apply to all ownership housing developments and rental housing developments with applications that were first complete on or prior to November 8, 2019, respectively.

(c) The City Council desires to provide affordable housing opportunities in the community through an affordable housing program for rental housing, and, in furtherance of that goal, includes rental affordable housing requirements in this chapter consistent with Government Code Sections 65850(g) and 65850.01. These requirements assure that the city's affordable housing stock increases in proportion to the overall increase in new housing; to achieve the housing objectives contained in state law and in the general plan; and to enhance public welfare.

(d) The City Council also desires to provide the rental housing developer community with alternatives to construction of the affordable rental units on the same site as the market rate units. Therefore, this chapter includes options from which a developer may select an alternative to the construction of affordable rental units on the same site as the market rate units.

19.77.020. Definitions.

When used in this chapter, these terms mean the following:

(a) "Adjacent lots" mean parcels with boundary lines that touch at any point. "Adjacent lots" include parcels that are separated only by a private or public street, other than highways and expressways, or that are separated only by other parcels owned or controlled by the same owner or applicant.

(b) "BMR Compliance Plan" means a plan on the application form, and containing all of the information required by, the Community Development Department to specify the manner in which affordable rental units will be provided.

(c) "Affordable rent" means the maximum monthly rent, including an allowance for tenant paid utilities, that is calculated at the specified income level in accordance with the Community Development Director's determination and published in the BMR Rental Housing Guidelines as described in Section 19.77.070.

(d) "Affordable rental units" means dwelling units developed to be rented and affordable to low to very low income households and regulated by this chapter. "Affordable housing unit" means one affordable housing dwelling unit.

(e) "Assumed household size" means, for the purposes of establishing affordable rents, a household with a total number of members equal to the number of bedrooms in the below market rate unit, plus one. For example, the assumed household size for a three-bedroom home is a four-person household.

(f) BMR Rental Housing Guidelines. The Community Development Director shall maintain detailed procedures and guidelines which may be amended from time to time to ensure the orderly and efficient administration of the requirements of this chapter. These procedures and guidelines are incorporated into this chapter as the BMR Rental Housing Guidelines

(g) "Decision-making body" means the body that is authorized to approve or deny a project application for land use approvals.

(h) "Density bonus units" means rental units approved in a residential development pursuant to California Government Code Section 65915 et seq. and Section 19.18.025 that are in excess of the maximum allowable residential density otherwise permitted by the City of Sunnyvale.

(i) "Household" means all those persons – related or unrelated – who occupy a single housing unit.

(j) "Inclusionary units" shall mean affordable rental units as defined in this section.

(k) "Low income household" means a household whose income exceeds the income for a very low income household but does not exceed the low income limits applicable to Santa Clara County, as published and periodically updated by the State Department of Housing and Community Development. (or its successor provision).

(l) "Market rate unit" means a dwelling unit that is not subject to the occupancy or rental regulations in this chapter or any other affordability restrictions or covenants.

(m) "Monthly rent" means the monthly payment by tenants for a rental unit.

(n) "Multi-family dwelling" means three or more separate dwelling units such as apartments, townhouses, condominiums or other community housing projects used for occupancy by households living independently of one another.

(o) "Project" means one or more applications filed for City approval of a residential development. "Project" includes a development across adjacent lots or a multi-phased development, on the same or adjacent lots. "Project" also includes developments on adjacent lots for which applications are filed by the same owner or applicant within a period of ten years.

(p) "Rental unit" means a residential unit that is not ownership housing.

(q) "Special housing needs" means housing needs serving those of the elderly; persons with disabilities, including a developmental disability, as defined in Section 4512 of the Welfare and Institutions Code; large families; farmworkers; families with female heads of households; and families and persons in need of emergency shelter.

(r) "Very low income household" means a household whose income does not exceed the very low income limits applicable to Santa Clara County as defined in California Health and Safety Code Section 50105 and published annually by the California Department of Housing and Community Development in California Code of Regulations Title 25, Section 6932 (or its successor provision)

19.77.030. Applicability.

(a) New Multi-family Dwelling Projects with Three or More Units. This chapter applies to any project that would construct three or more rental units with an application that is complete after November 8, 2019, unless an exemption defined in Section 19.77.040 applies.

(b) Projects with applications that are complete on or before November 8, 2019, are subject to Chapter 19.75. Projects subject to this Chapter are not subject to Chapter 19.75.

19.77.040. Exemptions.

(a) Rental housing projects of fewer than three units.

(b) Multi-family dwelling rental projects that have received Planning approval and those with planning applications deemed complete by the Planning Division by November 8, 2019.

(c) Affordable housing projects in which one hundred percent of the rental units to be built will be subject to a recorded restriction limiting occupancy to very low income or low income households at affordable rents.

19.77.050. Base Inclusionary Requirement.

(a) Inclusionary Requirement. At least fifteen percent (15%) of the total number of rental units in a project shall be developed as affordable rental units, unless the decision-making body allows the affordable rental housing requirement to be satisfied through alternatives under Section 19.77.100 of this Chapter. In calculating the number of affordable rental units required, any fraction of a whole number shall be rounded pursuant to 19.77.070 and the number of affordable rental units required by this section shall be based on the number of rental units in the project, excluding any density bonus units.

Affordability requirements for inclusionary units are listed in Section 19.77.070 of this Chapter.

(b) Application. An applicant for a project consisting of three or more rental units must submit an BMR Compliance Plan concurrently with the application for the first approval of the project. If an BMR Compliance Plan is required, no application may be deemed complete until a complete BMR Compliance Plan is submitted.

Any BMR Compliance Plan shall be processed concurrently with all other permits required for the project. Before approving the BMR Compliance Plan, the decision-making body shall find that the BMR Compliance Plan conforms to this section. The approved BMR Compliance Plan may be amended before issuance of a building permit for the development project. A request for a minor modification of an approved BMR Compliance Plan may be granted by the Community Development Director if the modification is substantially in compliance with the original BMR Compliance Plan and conditions of approval. Other modifications to the BMR Compliance Plan shall be processed in the same manner as the original plan.

19.77.060. Density Bonus.

The city, upon request, shall approve an increase in the number of units permitted in a proposed residential development governed by the Chapter, when such an increase in density is consistent with State Density Bonus Law per Sections 65915 through 65918 of the California Government Code and Section 19.19.18.025 of the Sunnyvale Municipal Code. The dwelling units or parcels

designated to meet the City's inclusionary housing requirement may count toward qualifying the proposed development for a density bonus if the residential development meets all of the applicable requirements to qualify for a density bonus under Government Code Section 65915 and Section 19.19.18.025 of the Sunnyvale Municipal Code.

19.77.070. Required Affordability.

(a) At least ten percent (10%) of total project rental units shall be affordable to low-income households at an affordable rent. At least five percent (5%) of total project rental units shall be affordable to very low-income households at an affordable rent.

The Community Development Director shall establish and publish annually the maximum rent amount for each unit size in the BMR Rental Housing Guidelines. The Director may adjust the applicable initial affordable rent calculation within a range to address major shifts in prevailing market rate rents for comparable dwellings or other related economic conditions affecting the demand for affordable rental housing.

TABLE 19.77.070.A REQUIRED AFFORDABILITY LEVELS

Income Level	Percentage of Project Units Required to be Affordable
Very Low Income	5%
Low Income	10%

The application of the minimum distributions will be as set forth in the following table:

TABLE 19.77.070.B

Total Number of Affordable Units to be Built	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15
Very Low Income Units	-	1	1	1	1	2	2	2	3	3	3	4	4	4	5
Low Income Units	1	1	2	3	4	4	5	6	6	7	8	8	9	10	10

Variations of affordability levels to satisfy the affordable rental unit requirement, relating only to projects using State Density Bonus Law, shall be subject to approval by the Community Development Director.

(b) **Fractional Unit Requirements.** In calculating the number of affordable units required, any fraction of a whole number shall be rounded up or down to the nearest whole number as shown in this section.

Fractions of 0.00 to 0.49 shall be rounded down, but no less than one affordable rental unit per project shall be required unless an alternative compliance option is

satisfied as set forth in Section 19.77.100; while inclusionary fractions of 0.50 to 0.99 shall round up to the nearest whole unit. Rounding of fractions shall occur for each income category, as opposed to the inclusionary requirement as a whole. Example: a 50-unit development has an inclusionary requirement of 15 percent. 10 percent low income units yields 5 units, and 5 percent very low income yields 2.5 units. Final inclusionary requirement would be 5 low income unit and 3 very low income units.

TABLE 19.77.090.C SAMPLE BREAKDOWNS WITH ROUNDED NUMBER OF AFFORDABLE UNITS

Project Unit Total	**10**	**20**	**30**	**40**	**50**
Very Low Income – 5 percent (rounded)	1	1	2	2	3
Low Income – 10 percent (rounded)	1	2	3	4	5

19.77.080. Affordable Housing Unit Development Standards.

Affordable units are subject to the following development standards:

(a) Location. Affordable units shall be distributed evenly throughout the project. The Community Development Director may waive distribution requirement if:

(1) Significant physical site constraints prevent even distribution; or

(2) Granting the waiver would result in improved site or building design, or a more favorable location of the affordable units than would otherwise be provided.

(3) A portion of the land is being carved out to allow for structuring of a tax credit project that would provide greater affordability or services.

(b) Bedroom Count and Unit Size. Affordable units shall be a pro-rata share by plan type. Average bedroom count shall be the same as the average bedroom count in the market rate units in the project. Deviations from this requirement are subject to the Community Development Directors' decision.

(c) Exterior. The exterior shall be consistent with the market rate units in the project in terms of details, materials, and visual appeal. There shall be no significant identifiable differences visible from the exterior.

(d) Interior. Interiors finishes and amenities shall be consistent with those of the market rate units in the project and shall incorporate principles and specifications of Universal Design. Affordable rental units shall be renovated on a similar schedule as market rate units.

(e) Timing of Construction. Affordable units shall be constructed in proportion to construction of the market rate units, unless otherwise approved by the Community Development Director.

(f) Parking. Parking for projects shall meet parking requirements as set forth in the City's Municipal Code and/or State Density Bonus Law.

19.77.090. Affordability Term.

Prior to the issuance of any building permit for the project, an Affordable Housing Regulatory Agreement shall be recorded against the parcel(s) which sets rent and occupancy restrictions for fifty-five (55) years and shall run with the land through any change of ownership, or if the project is a phased project, an Affordable Housing Developer Agreement may be recorded against the parcel prior to issuance of any building permit with an Affordable Housing Regulatory Agreement recorded prior to issuance of a Certificate of Occupancy.

19.77.100. Alternative Compliance Options.

(a) City Council Approval. The applicant may satisfy the affordable rental housing requirement of a project using one or more of the alternatives in this section, subject to recommendation by the Housing and Human Services Commission and final approval by the City Council, except that the payment of an in lieu fee for small projects as set forth in Section 19.77.100 (b)(1) is at the discretion of the applicant and does not require the approval of the City Council. The applicant shall identify the required affordable housing units in the BMR Compliance Plan submitted with the project application materials regardless of a request to use an alternative to meet the affordable rental housing requirement. An BMR Compliance Plan requesting an alternative compliance option may only be considered once a project has received all other planning entitlements.

(b) Payment of In-Lieu Fee. The applicant may pay an in-lieu fee, as follows:

(1) Rental Housing Projects with three to six housing units ("Small Project"): At the applicant's option, rental housing projects with between three and six rental units may choose to fulfill some or all of their inclusionary rental housing obligation by paying the applicable Small Rental Housing In-Lieu Fee. Council approval is not required for payment of an in-lieu fee for small projects

(2) Rental Housing Projects with seven or more rental units ("Large Project"): At the discretion of the City Council, applicants of rental housing projects with seven or more rental units may request to fulfill some or all of their inclusionary rental housing obligation by paying the applicable Large Rental Housing In-Lieu Fee.

(3) Amount of In-Lieu Fee. The amount of the in-lieu fee shall be equal to the affordable rental housing in-lieu fee based on the size of the rental development as published by the City on an annual basis. All fees are due prior to issuance of any building permit.

(4) In-Lieu Fee funds will be deposited in the City's Housing Mitigation Fund.

(c) Partnership. The applicant may satisfy the inclusionary requirement established under Section 19.77.070 through a partnership with another developer providing affordable housing units in another project, if the following requirements are met:

(1) Proof of Partnership. Legal agreements between the applicant and the partner show that the applicant is providing reasonable

funding, land, development services, or other support to the affordable housing units;

(2) Financial Contributions. The applicant's financial contributions to the partnership shall be at least equal to the amount of the in-lieu fee that would otherwise be due from the project and shall be held in trust by the city until needed by the partner to develop the affordable housing units. The proposed project with the Partner shall not have received other City financial contributions (such as land lease, Housing Mitigation Fund or Low/Mod Impact Fund Loan);

(3) Site Acquired. The applicant or the partner has control of or the right to build on the site where the affordable housing units will be developed;

(4) Affordable Housing Development Application. The affordable housing development application has been approved or at least deemed complete at the time the project required to provide affordable housing is approved;

(5) Funding Acquired. The partner has obtained legal commitments for all necessary financing, or the city has approved the financing plan for the affordable housing development;

(6) Construction in Two Years. The affordable housing units can be constructed and occupied within two years of completion of the applicant's project, unless the Community Development Director approves an extension not to exceed an additional two years. If the development is not completed within this time period, the city may transfer the applicant's financial contributions to the Below Market Rate Housing Mitigation Fund; and

(7) Average Number of Bedrooms Per Unit. The average number of bedrooms per unit of the affordable housing units in the other project is comparable to the average number of bedrooms per unit in the project required to provide affordable rental housing. This requirement may be modified if the affordable housing units in the other project is designed to serve those with special housing needs which would not require an equivalent number of bedrooms per unit.

(d) Unit Conversion or Preservation Program. The applicant may convert an existing market rate unit into deed-restricted affordable housing or preserve an expiring affordable housing development through the city's unit conversion or preservation program, in compliance with Government Code Section 65583.1, as follows:

(1) Affordability. Rental units shall be made affordable to low and very low income households;

(2) For every required affordable rental unit, at least two rental units shall be converted or preserved, as approved by the decision-making body. Approval shall be based on a finding that the benefit of the number of affordable rental units preserved has a greater benefit than providing the units within the original project;

(3) Declaration of Restrictions. Dwellings converted into affordable rental housing shall be secured by recording a declaration of restrictions to bind the units to the requirements of Section 19.77.070; and

(4) Timing of Completion. Dwellings shall be converted or rehabilitated and available for occupancy before or at the same time the project required to provide affordable rental housing is available for occupancy, unless a modified schedule is approved by the Community Development Director.

(5) Displacement. The conversion or preservation shall not displace any tenants, regardless of income level, through the following measures:

(A) First right of return. The developer of a new development or rehabilitation project that would displace existing tenants shall provide each tenant the following rights:

1. The ability to return to a unit at the same level of affordability (measured in monthly rent) as the prior unit.

2. The ability to return to a unit of comparable size with the same or greater number of bedrooms.

(B) Relocation plan. Prior to project approval, conversion or preservation projects that would add, demolish, and/or rehabilitate rental units shall prepare, subject to approval by the Community Development Director, a relocation plan that accounts for all tenants displaced by new construction or rehabilitation. The relocation plan shall ensure tenants are provided housing from the moment they are displaced until they are relocated into a replacement unit. The relocation plan must meet the following criteria:

1. Provide temporary housing within Sunnyvale or within 10 miles of the prior home.

2. Must not pay more in rent than paying in the prior home.

3. All costs of relocation must be paid for by the project sponsor.

4. Moving process between units must occur quickly and efficiently and to minimize the inconvenience of the tenant.

5. Replacement housing must be completed within one and a half years to minimize impacts to tenants.

(e) Land Dedication. Dedicate a parcel of land large enough to accommodate the project's inclusionary requirement plus thirty five percent (35%) additional units. Any rezone or land use change required by the City needed to construct residential units shall be completed prior to issuance of building permit of market rate units.

(f) Other methods of mitigating affordable housing may be approved at the sole discretion of City Council.

19.77.110. Annual Report.

The Community Development Director shall provide an annual informational report to the city council on the status of affordable rental units developed under this chapter. The report shall include the number, size, type, tenure, and general location of each affordable rental unit completed during the year.

19.77.120. Enforcement.

In addition to the provisions in Chapter 19.98.140 (Violations), the following provisions also apply to the enforcement of this chapter:

(a) Agents, Successors and Assigns. The provisions of this chapter apply to all agents, successors and assigns of the applicant.

(b) Penalties and Fines. Any person, firm, or corporation, whether as principal or agent, violating or causing the violation of this chapter is guilty of a misdemeanor. Each offense shall be punishable by a fine in the amount established in the city fee schedule, or by imprisonment in the Santa Clara County jail for a term up to six months, or both. Such person, firm, or corporation shall be deemed to be guilty of a separate offense for each and every day during any portion of which any violation of this chapter is commenced, continued, or permitted by such person, firm, or corporation, and may be punishable as provided in this section.

(c) Civil Action. Any tenant who rented an affordable rental unit for rents in excess of those allowed by this Chapter, and who has given written notice to the Community Development Director, may file a civil action to recover the excess costs, whether rental of such affordable rental unit was prohibited by this chapter or expressly permitted in writing by the director as an exception or alternative to the standard affordable housing requirement. The tenant shall have met the income eligibility requirements of this Chapter 19.77, as applicable, during the period of time for which the individual seeks reimbursement of the excess costs.

(d) Fines. If it is determined that unauthorized or excess rents have been charged to a tenant or subtenant of an affordable rental unit of any kind subject to the restrictions of this chapter, the property owner and/or landlord shall be subject to a civil penalty. The civil penalty amount shall be as set forth in Chapter 1.04 or 1.05, as amended from time to time, and any excess rent proceeds not recovered by a tenant under subsection (c) of this section. If the city does not otherwise recover its reasonable attorney fees and other legal costs from the landlord, the city shall deduct these costs from the amounts collected under this section and deposit the balance into the Below Market Rate Housing Mitigation Fund.

(e) Legal Action. The city may institute injunction, mandamus, or any appropriate legal actions or proceedings necessary for the enforcement of this chapter, including actions to suspend or revoke any permit, including a development approval, building permit or certificate of occupancy; and for injunctive relief or damages.

19.77.130. Appeals.

Any person aggrieved by a decision pursuant to this Chapter may appeal the decision following the procedures in Section 19.98.070 (Appeals and calls for review.).

19.77.140. Severability.

If any portion of this chapter is held to be invalid, unconstitutional, or unenforceable by a court of competent jurisdiction, that decision shall not affect the validity of the remaining portions of this zoning code. The city council declares that this chapter and each portion would have been adopted without regard to whether any portion of this chapter would be later declared invalid, unconstitutional, or unenforceable.

19.77.150. Waiver.

Notwithstanding any other provision of this chapter, the requirements of this chapter may be waived, adjusted, or reduced by the decision-making body based upon a showing that applying the requirements of this chapter would result in an unconstitutional taking of property or would result in any other unconstitutional result. The waiver, adjustment or reduction may be approved only to the extent necessary to avoid an unconstitutional result, after adoption of written findings, based on substantial evidence, supporting the determinations required by this section. If a reduction, adjustment, or waiver is granted, any change in the residential development shall invalidate the reduction, adjustment, or waiver, and a new application shall be required for a reduction, adjustment, or waiver pursuant to this section.

Any request for a waiver, adjustment, or reduction under this section shall be submitted to the City concurrently with the BMR Compliance Plan. The request for a waiver, adjustment, or reduction shall set forth in detail the factual and legal basis for the claim. The request for a waiver, adjustment, or reduction shall be reviewed and considered in the same manner and at the same time as the BMR Compliance Plan. In making a determination on an application for waiver, adjustment, or reduction, the applicant shall bear the burden of presenting substantial evidence to support the claim. The City may assume each of the following when applicable:

(a) That the applicant will provide the most economical affordable units feasible, meeting the requirements of this chapter; and

(b) That the applicant will benefit from the incentives for the project as described in this chapter and elsewhere in the City Code.

SECTION 2. CEQA - EXEMPTION. The City Council finds, this action is not a project for purposes of the California Environmental Quality Act (CEQA) because it is general policy and procedure making that will not result in a direct or indirect physical change in the environment (Guideline 15378(b)(2)).

SECTION 3. CONSTITUTIONALITY; SEVERABILITY. If any section, subsection, sentence, clause or phrase of this ordinance is for any reason held to be invalid, 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 passed this ordinance, and each section, subsection, sentence, clause and phrase thereof irrespective of the fact that any one or more sections, subsections, sentences, clauses or phrases be declared invalid.

SECTION 4. EFFECTIVE DATE. This ordinance shall be in full force and effect thirty (30) days from and after the date of its adoption.

SECTION 5. 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 once in The Sun, the official publication of legal notices of the City of Sunnyvale, of a notice 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 September 24, 2019, and adopted as an ordinance of the City of Sunnyvale at a regular meeting of the City Council held on October 8, 2019, by the following vote:

AYES: KLEIN, MELTON, LARSSON, HENDRICKS, SMITH, GOLDMAN, FONG
NOES:
ABSTAIN:
ABSENT:
RECUSAL:

ATTEST:

DAVID CARNAHAN
City Clerk
Date of Attestation: October 11, 2019

APPROVED:

LARRY KLEIN
Mayor

(SEAL)

APPROVED AS TO FORM:

ROBERT BOCO
Sr. Assistant City Attorney

T-CDD-190085/ 41388
Council Agenda: 10/8/19
Item No.: 1.I

Chapter 19.67. BELOW MARKET RATE OWNERSHIP HOUSING

19.67.010. Purpose.

(a) Findings. The city council finds that:

(1) A shortage of affordable housing is detrimental to the public health, safety and welfare in the city of Sunnyvale;

(2) Persons with lower to moderate incomes who work or live in the city are experiencing a shortage of affordable housing opportunities and those with very low incomes are increasingly excluded from living in the city;

(3) Federal and state housing subsidy programs are not sufficient by themselves to satisfy the housing needs of lower to moderate income households;

(4) Continued new development without housing at prices affordable to these persons will worsen the shortage of affordable housing; and

(5) It is the city's goal and a public policy of the state of California to ensure there is adequate supply of housing for persons of all economic segments of the community.

(b) Purpose. This chapter establishes requirements for below market rate housing in new ownership housing developments. These requirements assure that the city's affordable housing stock increases in proportion to the overall increase in new housing; to achieve the housing objectives contained in state law and in the general plan; and to enhance public welfare. (Ord. 2976-12 § 1).

19.67.020. Definitions.

When used in this chapter, these terms mean the following:

(1) "Adjacent lots" mean parcels with boundary lines that touch at any point. "Adjacent lots" include parcels that are separated only by a private or public street, other than highways and expressways, or that are separated only by other parcels owned or controlled by the same owner or applicant.

(2) "Area median income (AMI)" means the median household income of households in Santa Clara County, adjusted for household size, as determined and published by the California Housing and Community Development Department (HCD).

(3) "Assumed household size" means, for the purposes of establishing affordable sales prices, a household with a total number of members equal to the number of bedrooms in the below market rate home, plus one. For example, the assumed household size for a three-bedroom home is a four-person household.

(4) "Assisted housing" means any project that receives development funding from any local, state, or federal governmental or non-profit source, which meets the criteria for below market rate housing.

(5) "Below market rate (BMR) ownership housing" means dwelling units developed to be sold and affordable to lower to moderate income households and regulated by this chapter. "BMR unit" means one BMR ownership housing dwelling unit.

(6) "Decision-making body" means the planning commission or city council, whichever is authorized to make a final decision on the project application for land use approvals.

(7) "Eligible buyer" means a household which meets the requirements of this chapter to buy, or in the case of acquisition of a BMR unit through devise or inheritance, to occupy, a BMR unit; or a public or non-profit housing agency able to acquire and manage dwelling units for rental to eligible persons.

(8) "Gross annual household income" means the gross, pre-tax income of all adult occupants of the applicant household, and as may be further defined in the BMR Ownership Housing Guidelines.

(9) "Housing cost" means the monthly mortgage payment (principal and interest), property taxes, homeowners' association dues, and homeowner's insurance.

(10) "Lower income household" means a household with a gross annual household income at or below eighty percent of AMI for Santa Clara County. This definition corresponds to the definition of lower income household used for state- and federally-assisted housing programs.

(11) "Market rate unit" means a dwelling unit that is not subject to the occupancy or sale regulations in this chapter or any other affordability restrictions or covenants.

(12) "Moderate income household" means a household with a gross annual household income between eighty to one hundred twenty percent of AMI for Santa Clara County. This definition corresponds to the definition of moderate income household for state-assisted housing programs.

(13) "Project" means one or more applications filed for City approval of a residential development. "Project" includes a development across adjacent lots or a multi-phased development, on the same or adjacent lots. "Project" also includes developments on adjacent lots for which applications are filed by the same owner or applicant within a period of ten years.

(14) "Very low income household" means a household with a gross annual household income that does not exceed fifty percent of AMI for Santa Clara County. This definition corresponds to the definition of very low income household used for state- and federally-assisted housing programs. Very low income households are a subset of lower income households. (Ord. 2976-12 § 1).

19.67.030. Applicability.

(a) Projects with Eight or More Units. This chapter applies to any project that would create eight or more ownership housing units or single-family lots. Projects not deemed complete before the enactment of this chapter are subject to the regulations in this chapter.

(b) Rental Housing Developments Exempt. This chapter does not apply to rental housing developments.

(c) BMR Ownership Housing Guidelines. The director of community development (director) shall develop detailed procedures and guidelines to ensure the orderly and efficient administration of the requirements of this chapter. These procedures and guidelines are incorporated into this chapter as the BMR Ownership Housing Guidelines. (Ord. 2976-12 § 1).

19.67.040. Below market rate ownership housing (BMR) requirement.

At least twelve and one-half percent of the total number of ownership housing units or single-family lots in a project shall be developed as BMR ownership housing, unless the decision-making body allows the BMR ownership housing requirement to be satisfied through the alternatives under Section 19.67.090 (Alternatives to satisfy below market rate housing requirement). In calculating the number of BMR units required, any fraction of a whole number shall be satisfied by either developing one additional BMR unit or by paying an in-lieu fee. For example, for a ten-unit project that is required to have one and one-quarter BMR units, the applicant may develop one BMR unit and pay a fee for the remaining one-quarter units required, or develop a total of two BMR units. (Ord. 2976-12 § 1).

19.67.050. Density bonus.

BMR units developed to satisfy the requirements of this chapter may be counted toward the number of affordable housing units required to earn a density bonus under California Government Code Sections 65915 through 65918. To earn the density bonus, BMR units shall meet the applicable affordability definitions in California Health and Safety Code Sections 50052.5(b) and 50053(b). (Ord. 2976-12 § 1).

19.67.060. Development standards.

BMR units are subject to the following development standards:

(a) Location. BMR units shall be distributed evenly throughout the project. The decision-making body may waive the location requirement if:

(1) Significant physical site constraints prevent even distribution; or

(2) Granting the waiver would result in improved site or building design, or a more favorable location of the BMR units than would otherwise be provided.

(b) Lot Size. Lot size shall be at least the same size as the smallest lot of a market rate unit within the project.

(c) Bedroom Count. Average bedroom count shall be the same as the average bedroom count in the market rate units in the project.

(d) Unit Size. Unit size shall be at least seventy-five percent of the average size of market rate units with the same number of bedrooms in the project.

(e) Exterior. The exterior shall be consistent with the market rate units in the project in terms of details, materials, and visual appeal. There shall be no significant identifiable differences visible from the exterior.

(f) Interior. Interiors finishes and amenities shall be consistent with those of the market rate units in the project.

(g) Timing of Construction. BMR units shall be constructed in proportion to the BMR ownership housing requirement applicable to the project. For example, for a project with a twelve and one-half percent BMR ownership housing requirement, at least one BMR unit shall be constructed before or concurrently with every seventh market rate unit constructed. The last market rate unit to be completed in the project may not receive a certificate of occupancy until the last BMR unit has received a certificate of occupancy. The director may approve a modified schedule if the timing requirement will create unreasonable delays in the issuance of certificates of occupancy for market rate units. (Ord. 2976-12 § 1).

19.67.070. Occupancy and sale restrictions.

(a) Recordation of Declaration of Restrictions. Before issuance of any building permit for a BMR unit, the property owner and the city shall execute and record a declaration containing the occupancy and sale restrictions in this chapter. The declaration is binding to the heirs, assigns and successors in interest of the property owner.

(b) Timing of Sale. At completion, BMR units shall be listed for sale and occupied before or concurrently with the market rate units in the project. The seller shall accept the first valid offer from a buyer deemed eligible by the director, and shall cooperate to close escrow within a customary time period.

(c) Term of Restrictions. BMR units shall be reserved for lower and moderate income households and shall be subject to the occupancy and sale restrictions in this chapter for thirty years. This term begins upon sale to an eligible buyer. If the BMR unit is sold to another eligible buyer during the term, a new term of thirty years shall begin upon resale and shall be secured by a new declaration of restrictions.

(d) Maximum Sales Price. The director shall establish and publish annually the maximum sale prices for each BMR unit size in the BMR Ownership Housing Guidelines. The maximum BMR unit sale prices shall not exceed a price affordable to median income households, based on a housing cost of up to thirty percent of monthly gross household income for the unit's assumed household size. The percentage of AMI used to establish maximum sale prices shall be one hundred percent, except that the director may adjust the percentage within a range of eighty to one hundred ten percent of AMI to address major shifts in the housing market or other related economic conditions affecting the demand for BMR housing.

(e) Sale Requirements. The following requirements shall be met in any sale and resale of a BMR unit during the term of restrictions:

(1) The seller shall notify the director of the intent to sell before offering the unit for sale;

(2) The seller shall notify the director of the proposed sale price before the close of the sale;

(3) The eligible buyer shall execute and record a new declaration of restrictions which incorporates all current occupancy and sale restrictions in this chapter and in the BMR Ownership Housing Guidelines; and

(4) Closing costs and title insurance fees shall be shared equally between buyer and seller. The buyer shall not be charged fees above those imposed on buyers of a market rate unit, except for administrative fees charged by the city.

(5) Certain transfers of title by marriage, divorce proceeding, devise or inheritance shall not be subject to these required sale procedures.

(f) Eligible Buyers. The director shall determine the eligibility of prospective buyers of BMR units. It is unlawful for any person to willfully make a false representation or fail to disclose information for the purpose of qualifying as eligible to purchase a BMR unit. Prospective buyers must meet the following requirements:

(1) Income Limits. The prospective buyer's combined household income and assets shall not exceed the limits for a moderate income household, as further defined in the BMR Ownership Housing Guidelines;

(2) Priority to Purchase. Applicants who reside or are employed in Sunnyvale at the time of application, including qualified public school employees, city employees, and childcare workers, shall have priority to purchase the BMR units;

(3) Conflict of Interest. The following individuals, by virtue of their position or relationship, are ineligible to purchase a BMR unit:

(A) Any city official or employee who administers or has policy-making authority over city housing programs,

(B) The developer of the unit, or

(C) The immediate relative or employee of, and anyone gaining significant economic benefit from a direct business association with, city employees, officials, developers, or owners who are not eligible to purchase a BMR unit; and

(4) Additional Criteria. The director may establish other reasonable eligibility criteria, ownership and occupancy requirements in the BMR Ownership Housing Guidelines to ensure the buyer's ability to close escrow, maintain ownership of the unit, and to ensure effective operation of the program and equitable access to the units among eligible buyers.

(g) Occupancy and Rental Restrictions. BMR units shall be occupied as the primary residence of the eligible buyer for the duration of their ownership of the unit and shall not be rented to other occupants at any time, except that:

(1) BMR units that are owned by a public or nonprofit housing agency may be rented to eligible households with prior written approval of the director; and

(2) The director may allow the temporary rental of a BMR unit, subject to the rental and occupancy requirements in Chapter 19.69 (Existing Below Market Rate Rental Housing), upon a finding of hardship beyond the control of the owner.

(h) Refinancing. BMR home owners shall not refinance a BMR unit without prior written approval of the director. BMR units shall not be used as collateral to secure liens or debts with a combined loan to value ratio in excess of ninety-five percent of the maximum BMR resale price applicable to the unit at the time of the proposed refinancing. (Ord. 2976-12 § 1).

19.67.080. Below market rate (BMR) housing agreement.

(a) Required Before Final Map or Building Permit. Before final recordation of a subdivision map or issuance of any building permits for the project, whichever occurs first, the property owner shall execute and record a BMR housing agreement (agreement) with the city.

(b) Agreement Provisions. The agreement shall include, at a minimum, the following provisions:

(1) Binding of Persons. A provision that binds the heirs, assigns, and successors in interest of the property owner to the agreement;

(2) Binding of Project Site. The obligation for the entire project site to fulfill the BMR ownership housing requirement for the project under this chapter;

(3) Liens. A lien on each unit identified to meet the BMR ownership housing requirement, or if the alternative to pay an in-lieu fee is approved, a lien on every unit;

(4) Alternatives. Any alternatives approved for the applicant to satisfy the BMR ownership housing requirement;

(5) Project Covenants, Conditions and Restrictions. Provision that prohibits any amendments to the development's covenants, conditions and restrictions that would increase the proportion of the homeowners' association dues or assessments payable by any BMR unit. This provision shall create a right of judicial enforcement by the city or the owner of any affected BMR unit;

(6) Enforcement. A provision that shall require the property owner to pay the city rent for a BMR unit from the date of any unauthorized use of the unit, and for the city's recovery of reasonable attorney fees and costs to pursue legal action in enforcing this agreement; and

(7) Amendments. Major amendments to the agreement, including any proposal to change any approved alternatives shall be reviewed by the decision-making body. Minor amendments to the agreement may be reviewed by the director. Upon approval, a new agreement containing the amendments shall be executed and recorded. (Ord. 2976-12 § 1).

19.67.090. Alternatives to satisfy below market rate (BMR) housing requirement.

(a) City Council Approval. The applicant may satisfy the BMR ownership housing requirement of a project using one or more of the alternatives in this section, subject to approval by the city council. The applicant shall identify the required BMR units in the project application materials regardless of a request to use an alternative to meet the BMR ownership housing requirement.

(b) Payment of In-Lieu Fee. The applicant may pay an in-lieu fee, as follows:

(1) Amount of In-Lieu Fee. The amount of the in-lieu fee shall be equal to seven percent of the contract sales price of all units in the project. If the applicant is paying an in-lieu fee for a fractional unit only, the minimum fee rate may be adjusted proportionally.

(2) Fee Payment. A lien shall be placed on each ownership housing unit in order to collect payment of the in-lieu fee before close of escrow, as required in the BMR housing agreement. The lien shall be released by the city upon receipt of the in-lieu fee at close of escrow.

(c) Transfer of Credits. The applicant may provide affordable housing in another residential development in Sunnyvale, preferably in proximity to the project required to provide BMR ownership housing, as follows:

(1) More Units or Greater Affordability. Affordable housing provided in another development shall result in more affordable units than the required number of BMR units, or result in the same number of BMR units but at a greater level of affordability. If the other development is a rental housing development, at least two rental units shall be provided in lieu of each BMR unit required, unless otherwise approved by the city council.

(2) Partnership. The applicant may satisfy the BMR ownership housing requirement through a partnership with another developer providing affordable housing units in another development, if the following requirements are met:

(A) Proof of Partnership. Legal agreements between the applicant and the partner show that the applicant is providing reasonable funding, land, development services, or other support to the affordable housing units;

(B) Financial Contributions. The applicant's financial contributions to the partnership shall be at least equal to the amount of the in-lieu fee that would otherwise be due from the project, and shall be held in trust by the city until needed by the partner to develop the affordable housing units;

(C) Site Acquired. The applicant or the partner has control of or the right to build on the site where the affordable housing units will be developed;

(D) Affordable Housing Development Application. The affordable housing development application has been approved or at least deemed complete at the time the project required to provide BMR housing is approved;

(E) Funding Acquired. The partner has obtained legal commitments for all necessary financing, or the city has approved the financing plan for the affordable housing development;

(F) Construction in Two Years. The affordable housing units can be constructed and occupied within two years of completion of the applicant's project, unless the director approves an extension not to exceed an additional two years. If the development is not completed within this time period, the city may transfer the applicant's financial contributions to the BMR Housing Trust Fund; and

(G) Average Number of Bedrooms Per Unit. The average number of bedrooms per unit of the affordable housing units in the other development is comparable to the average number of bedrooms per unit in the project required to provide BMR ownership housing. This requirement may be modified if the affordable housing units in the other development is designed to serve a special needs population which would not require an equivalent number of bedrooms per unit.

(d) Unit Conversion Program. The applicant may convert an existing residential development into affordable housing or rehabilitate an expiring affordable housing development through the city's unit conversion program, as follows:

(1) Affordability. Dwellings shall be made affordable to lower to moderate income households;

(2) Two for One Ratio. For every required BMR unit, at least two dwelling units shall be converted or rehabilitated, unless otherwise approved by the decision-making body. Approval shall be based on a finding that a ratio of less than two to one would satisfy the purpose of the BMR ownership housing requirement;

(3) Declaration of Restrictions. Dwellings converted into ownership housing shall be secured by recording a declaration of restrictions to bind the units to the requirements of Section 19.67.070 (Occupancy and sale restrictions); and

(4) Timing of Completion. Dwellings shall be converted or rehabilitated and available for occupancy before or at the same time the project required to provide BMR ownership housing is available for occupancy, unless a modified schedule is approved by the director. (Ord. 2976-12 § 1).

19.67.100. Default, foreclosure, and loss of unit.

(a) Option to Purchase. If a notice of default is recorded on a BMR unit and the homeowner fails to correct it, an eligible buyer, or the director on behalf of the city, may purchase the unit. The unit shall be purchased at a sale price equal to the amount the owner would have received on the date of the foreclosure sale under the BMR Ownership Housing Guidelines. The eligible buyer may purchase the unit by paying any amounts due to lien holders and paying to the owner any balance of funds remaining after payment of the costs of sale and any repairs chargeable to the homeowner. All other resale provisions of the Guidelines apply.

(b) Loss of Unit. If the BMR unit is not purchased before the trustee's sale or foreclosure, the unit is free from the restrictions of this chapter and the homeowner will be deemed in compliance with this chapter, with the exception of subsection (c) of this section. BMR units which have not been completed or sold to initial eligible buyers, and any affordable rental units developed as an alternative to BMR ownership units, shall not be released from the restrictions of this chapter through a trustee's sale or judicial foreclosure.

(c) Distribution of Proceeds. This subsection applies to any BMR unit lost by sale at a trustee's sale or foreclosure, destruction, condemnation, or by liquidation of the homeowners association. If a BMR unit is restored, the remaining term of occupancy and sale restrictions shall continue upon completion. Any proceeds remaining after payment of encumbrances on the unit shall be distributed as follows:

(1) Homeowner. To the homeowner, up to the net amount the homeowner would have received under the sale price in the BMR Ownership Housing Guidelines if the city had purchased the unit on the date of the loss; and

(2) BMR Housing Trust Fund. To the city, any surplus remaining after payment to the homeowner. The proceeds shall be deposited into the BMR housing trust fund. (Ord. 2976-12 § 1).

19.67.110. Below market rate (BMR) housing trust fund.

This section establishes the BMR housing trust fund for the deposit of all monies collected under this chapter. Trust funds shall be used for developing or preserving affordable housing in the city. (Ord. 2976-12 § 1).

19.67.120. Annual report.

The director shall provide an annual informational report to the city council on the status of BMR units developed under this chapter. The report shall include the number, size, type, tenure, and general location of each BMR unit completed during the year, as well as the number of BMR resales and BMR rental vacancy rate, if applicable. (Ord. 2976-12 § 1).

19.67.130. Enforcement.

In addition to the provisions in Chapter 19.98.140 (Violations), the following provisions also apply to the enforcement of this chapter:

(a) Agents, Successors and Assigns. The provisions of this chapter apply to all agents, successors and assigns of the applicant.

(b) Penalties and Fines. Any person, firm, or corporation, whether as principal or agent, violating or causing the violation of this chapter is guilty of a misdemeanor. Each offense shall be punishable by a fine in the amount established in the city fee schedule, or by imprisonment in the Santa Clara County jail for a term up to six months, or both. Such person, firm, or corporation shall be deemed to be guilty of a separate offense for each and every day during any portion of which any violation of this chapter is commenced, continued, or permitted by such person, firm, or corporation, and may be punishable as provided in this section.

(c) Civil Action. Any buyer of a BMR unit for a sale price in excess of that allowed by this chapter, or any tenant who rented a BMR unit for rents in excess of those allowed by Chapter 19.69 (Existing Below Market Rate Rental Housing Requirements), and who has given written notice to the director, may file a civil action to recover the excess costs, whether rental of such BMR unit was prohibited by this chapter or expressly permitted in writing by the director as an exception or alternative to the standard BMR requirement. The buyer or tenant shall have met the income eligibility requirements of this chapter or Chapter 19.69, as applicable, during the period of time for which the individual seeks reimbursement of the excess costs.

(d) Fines. If it is determined that sales prices in excess of those allowed by this chapter and the BMR Ownership Housing Guidelines have been charged to a buyer of a BMR unit, or if unauthorized or excess rents have been charged to a tenant or subtenant of a BMR unit of any kind subject to the restrictions of this chapter, the property owner shall be subject to a civil penalty. The civil penalty amount shall be as set forth in Chapter 1.04 or 1.05, as amended from time to time, and any excess sales proceeds not recovered by a buyer or tenant under subsection (c) of this section. If the city does not otherwise recover its reasonable attorney fees and other legal costs from the landlord, the city shall deduct these costs from the amounts collected under this section and deposit the balance into the BMR housing trust fund.

(e) Legal Action. The city may institute injunction, mandamus, or any appropriate legal actions or proceedings necessary for the enforcement of this chapter, including actions to suspend or revoke any permit, including a development approval, building permit or certificate of occupancy; and for injunctive relief or damages. (Ord. 2976-12 § 1).

19.67.140. Appeals.

Any person aggrieved by a decision on any permit may appeal the decision following the procedures in Section 19.98.070 (Appeals). (Ord. 2976-12 § 1).

19.67.150. Severability.

If any portion of this chapter is held to be invalid, unconstitutional, or unenforceable by a court of competent jurisdiction, that decision shall not affect the validity of the remaining portions of this zoning code. The city council declares that this chapter and each portion would have been adopted without regard to whether any portion of this chapter would be later declared invalid, unconstitutional, or unenforceable. (Ord. 2976-12 § 1).

View the mobile version.

Exhibit C

INTERIM SUB-BLOCK 6 PARKING

EXHIBIT C

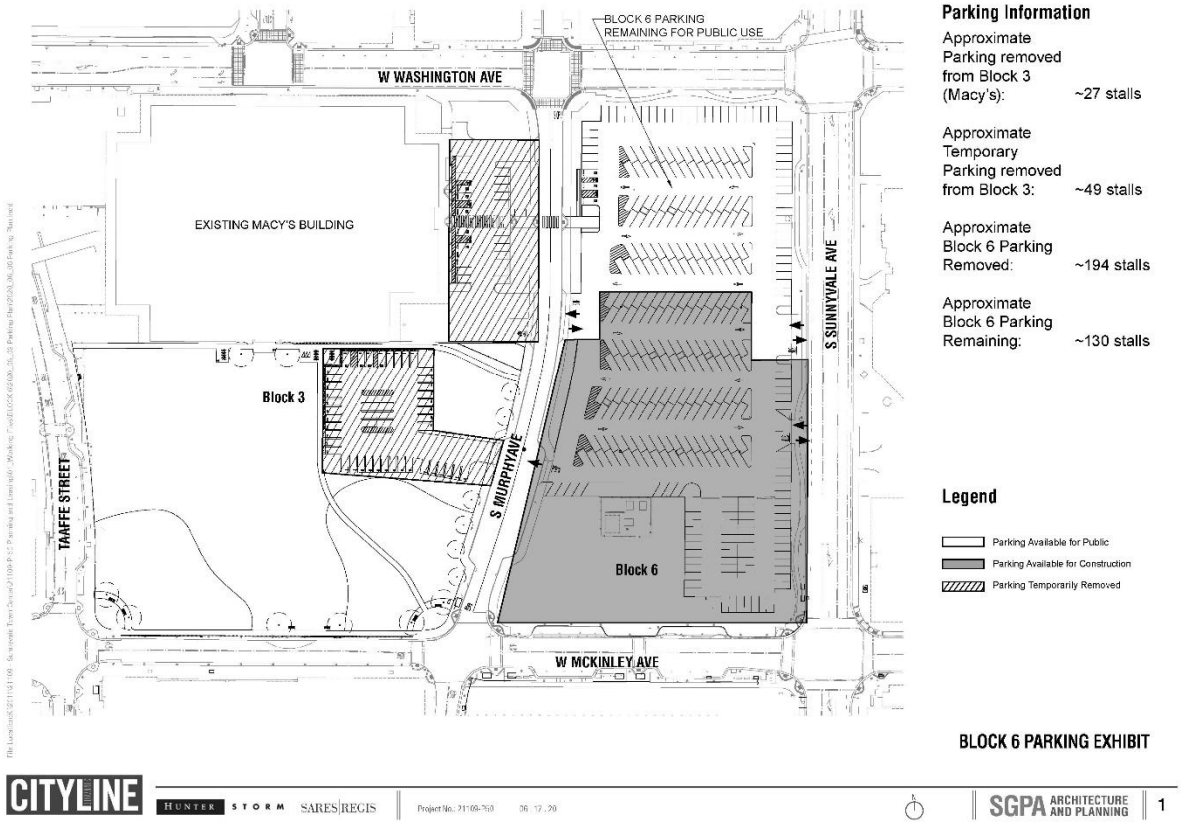


Exhibit D

APPLICABLE MONETARY EXACTIONS SUBJECT TO IMMEDIATE INCREASES

	Fee Type	Amount	
1.	Storm Drainage Fees (SMC Chapter 12.60)	Residential	$7,722 / gross acre
		Non-Residential	
		First 5 gross acres	$10,097 / gross acre
		6 - 10 gross acres	$44,851.00 + $8,041.00 / gross acre over 5
		11 - 20 gross acres	$85,057 + $6,733.00 / gross acre over 10
		20+ gross acres	$152,387 + $4,486 / gross acre over 20
2.	Water Connection Fees	Residential	
		Standard Occupancy Unit (with 3 or more bedrooms)	$6,365 / unit
		Low Occupancy Unit (with 1 or 2 bedrooms, or 2 bedrooms and den)	$3,607 / unit
		Commercial	$2,122 / unit (Unit is 100 gallons of expected water demand)
3.	Sewer Connection Charges (SMC Chapter 12.16)	Residential	
		Standard Occupancy Unit (with 3 or more bedrooms)	$8,408 / unit

		Low Occupancy Unit (with 1 or 2 bedrooms, or 2 bedrooms and den)	$5,466 / unit
		Commercial (Unit is 100 gallons of expected water discharge)	
		Standard Strength	$4,177 / unit
		Low Strength	$3,863 / unit
		High Strength	$6,082 / unit
4.	Construction Tax (SMC Chapter 3.36)	0.54% of total value of construction work	
5.	BMR In-Lieu Fee (SMC Chapter 19.67)	Seven (7%) percent of the contract sales price of all for sale (i.e., condominium) market-rate units in the project.	
6.	General Plan Maintenance Fee – applicable to all building permits issued	0.15% of the total construction valuation	
7.	Other City fees related to development or issuance of building permits in effect as of the Adoption Date that are otherwise applicable to the Project, except those set forth in Exhibit E.		

Exhibit E

APPLICABLE MONETARY EXACTIONS
SUBJECT TO INCREASES AFTER THIRTY MONTHS

1.	Art in Private Development In - Lieu Fee (SMC § 19.52.030)	1.1% of Construction Value of Non-Residential Development	
2.	Park Dedication In - Lieu Fee (SMC Chapter 18.10)	$130 / square foot (residential for-sale units)	
3.	Park Dedication In - Lieu Fee (SMC Chapter 19.74)	$130 / square foot (residential rental)	
4.	Transportation Impact Fee (SMC Chapter 3.50) (South of SR 237)	Multi-Family	$2,008 / unit
		Office	$4,826 / 1,000 square feet
		Retail	$6,007 / 1,000 square feet
		Uses Not Enumerated	$3,239 / trip
5.	Housing Impact Fee for Nonresidential Developments (SMC § 19.75.030)	Office / Industrial / R&D (1 – 25,000 square foot)	$8.60 / square foot
		Office / Industrial / R&D (25,001 square foot +)	$17.20 / square foot
		Retail / Lodging	$8.60 / square foot

Exhibit F

APPROVED HEIGHTS

EXHIBIT F - Page 1 of 6

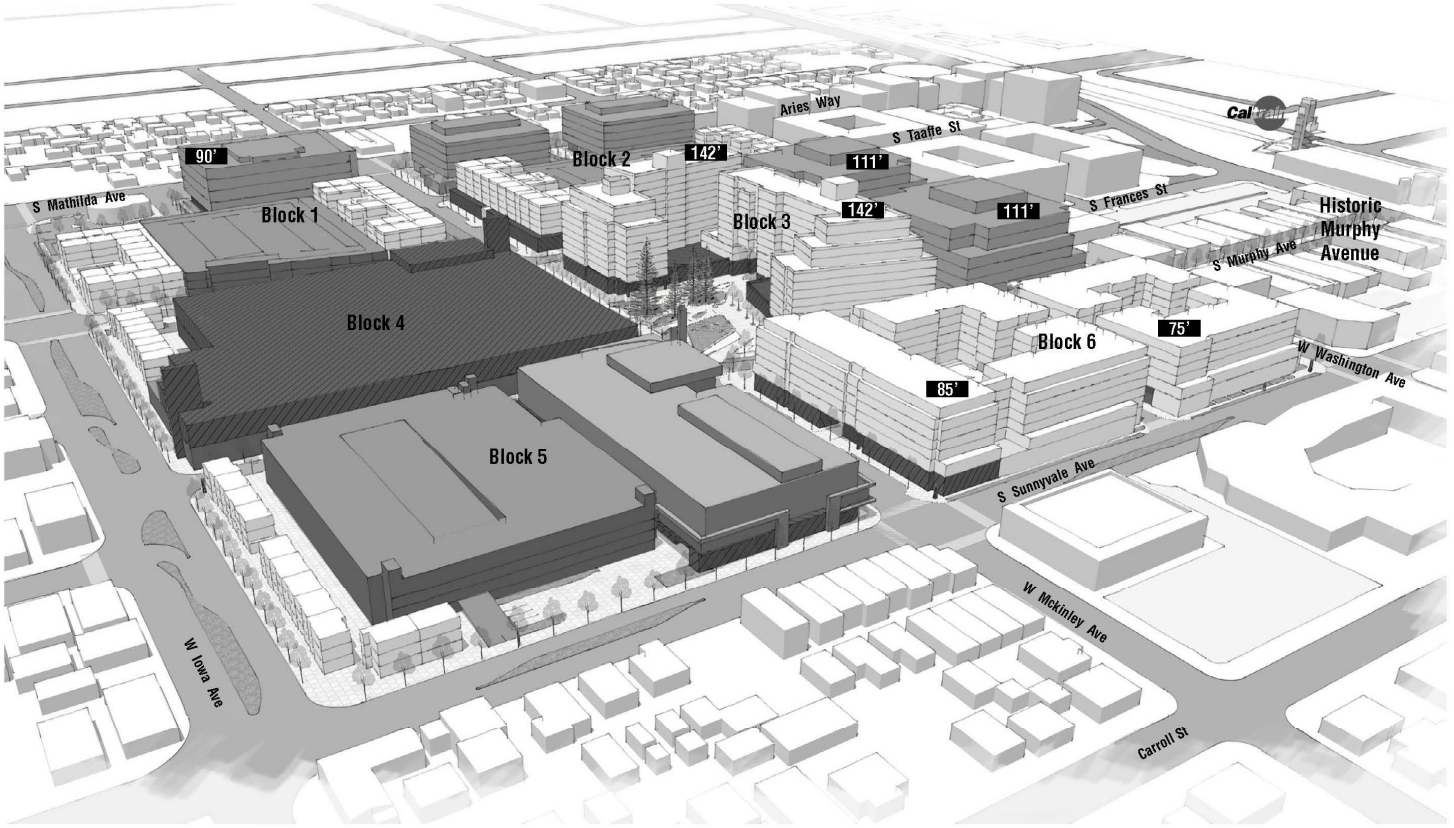


Illustration of approved maximum heights. Final architecture to be governed by Subsequent Approvals.

View 1
Overall Site Plan - Building Heights

CITYLINE HUNTER STORM SARES|REGIS

Page 1 of 6 | SGPA ARCHITECTURE AND PLANNING

EXHIBIT F - Page 2 of 6

View 2
Sunnyvale Ave Looking West

CITYLINE | HUNTER STORM | SARES|REGIS

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EXHIBIT F - Page 3 of 6

View 3
Washington Ave Looking South – Murphy Ave

CITYLINE | HUNTER STORM | SARES|REGIS

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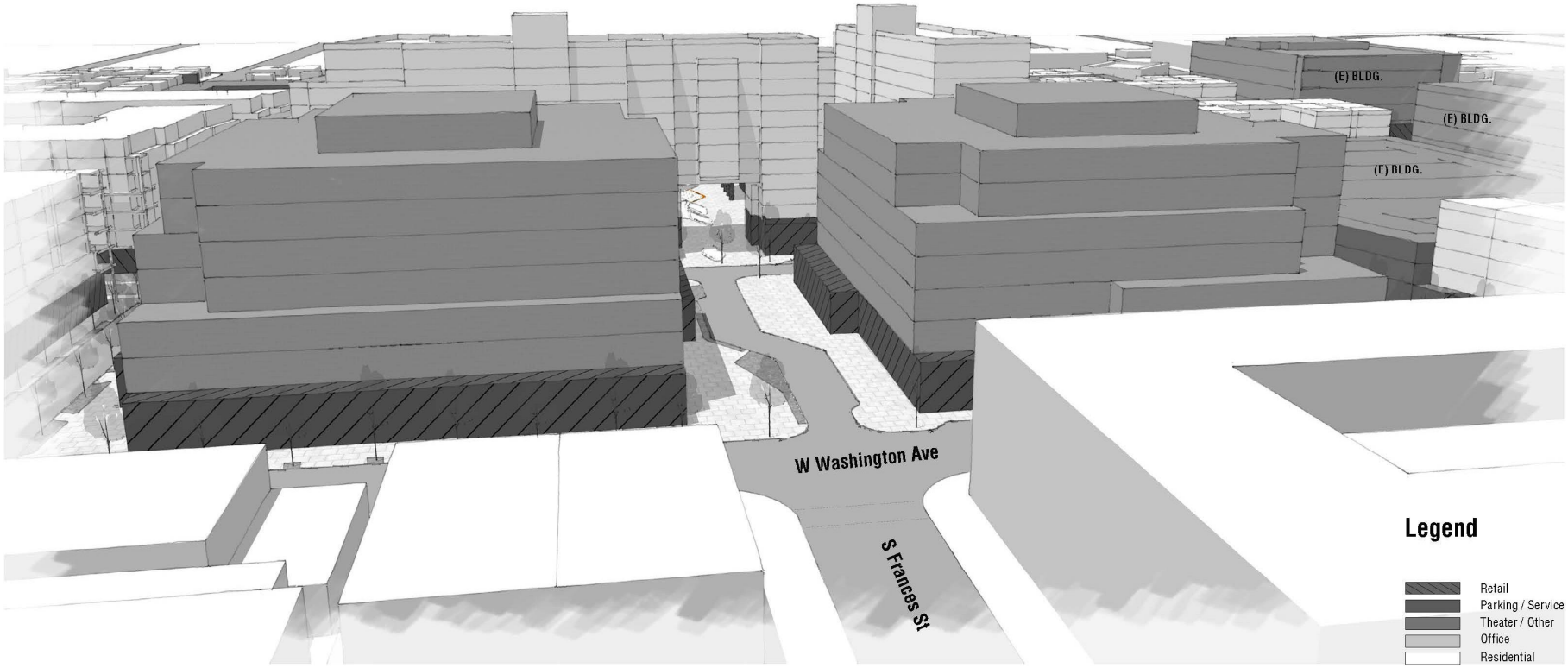

View 4
Washington Ave Looking South – Frances St

CITYLINE | HUNTER STORM | SARES|REGIS

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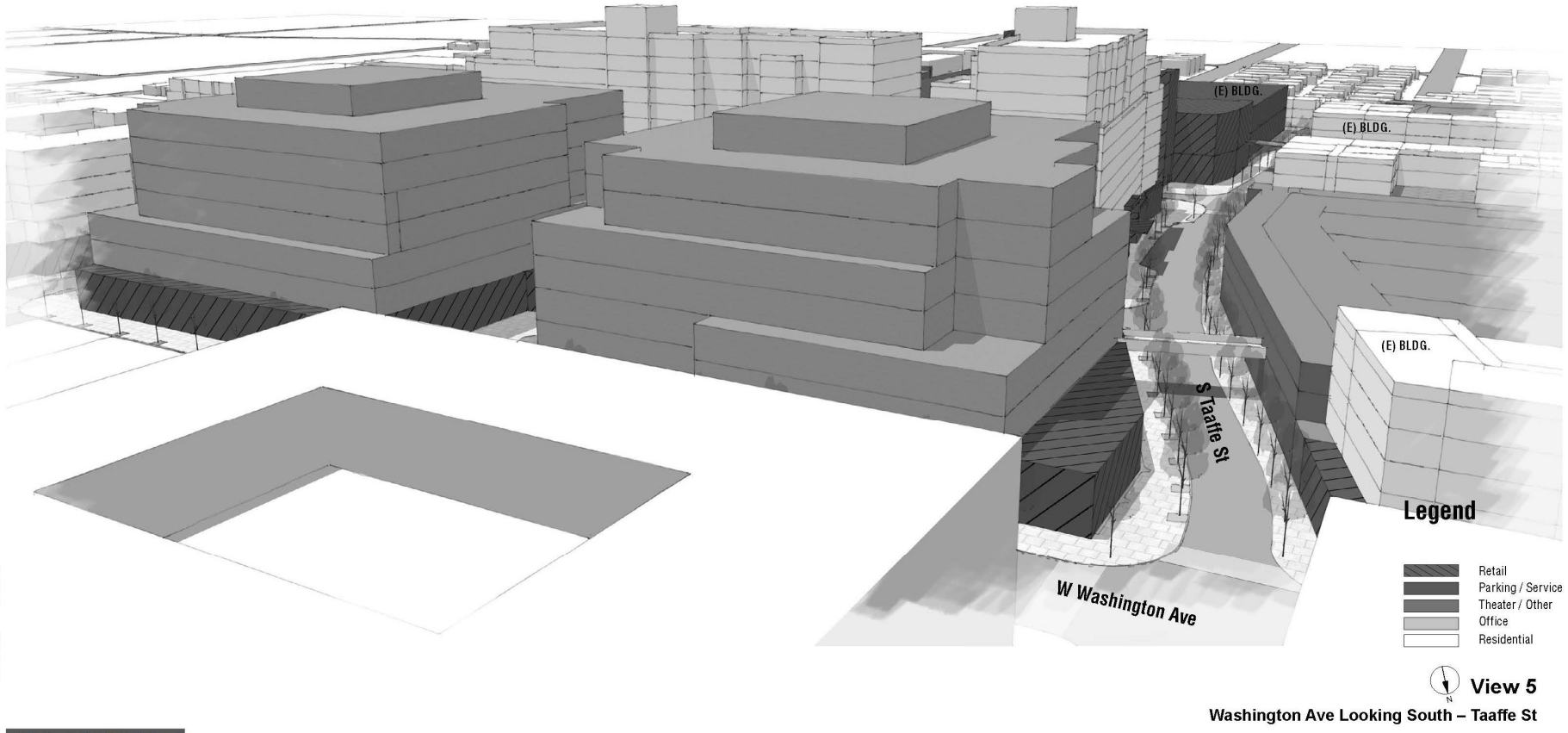
EXHIBIT F - Page 5 of 6



CITYLINE HUNTER STORM SARES|REGIS

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Exhibit G

FORM OF PARK SPACE EASEMENT AND MAINTENANCE AGREEMENT

[Attached.]

Exhibit G

RECORDING REQUESTED BY
AND 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]

FORM OF DECLARATION OF PUBLIC ACCESS EASEMENT, COVENANTS AND RESTRICTIONS FOR REDWOOD SQUARE

THIS DECLARATION OF PUBLIC ACCESS EASEMENT, COVENANTS AND RESTRICTIONS FOR REDWOOD SQUARE ("**Declaration**") is made this _____ day of _____, 202_, by [_____, a _____] [*Note: Insert owner of the Property at the time this Declaration is executed*] ("**Declarant**"), with reference to the following facts:

RECITALS:

A. Declarant is the owner of that certain real property located in the City of Sunnyvale ("**City**"), County of Santa Clara, State of California, more particularly described in Exhibit A attached hereto ("**Property**").

B. The Property is located within a portion of Block 18 of the City's Downtown Specific Plan ("**Block 18**").

C. Declarant plans to develop a mixed-use community of 793 residential units, 168,130 square feet of retail and other active commercial uses, 660,000 square feet of office, a new publicly accessible park and other amenities ("**Project**") within Block 18 in accordance with the provisions of the City's Downtown Specific Plan, that certain Development Agreement recorded in the Official Records of Santa Clara County, State of California (the "**Official Records**") on _____, 2020 as Instrument No. _____ (the "**Development Agreement**"), and in conformance with the provisions of that certain Tract Map No. _____ and Special Development Permit No. _____ pertaining to the Property (collectively, and together with any additional permits or authorizations issued by the City in connection with the development of Redwood Square, the "**Project Approvals**").

D. In connection with its approval of the Project, the City required Declarant to record covenants against title regarding the maintenance of, and public access to, an approximately 32,360 square foot privately owned but publicly accessible park referred to in this Declaration as "**Redwood Square**." Redwood Square is more particularly described on Exhibit B-1 and depicted on Exhibit B-2, each of which are attached hereto.

E. The City has required Declarant to record this Declaration as a condition precedent to any Final Inspection of the Park Space Improvements (as these terms are defined in the Development Agreement) imposing against Declarant, in its capacity as the owner of the Property and Redwood Square, the obligation to provide access to and maintain the Park Space Facilities (as defined below).

F. Declarant intends to hold, sell and convey the Property and Redwood Square and any portions thereof subject to the covenants, conditions and restrictions set forth in this Declaration. The City shall have the right and power to enforce the terms of this Declaration as and to the extent provided for hereinafter.

NOW, THEREFORE, in consideration of the above-referenced facts, Declarant does hereby irrevocably declare, covenant and agree for itself and its successors and assigns, and all persons claiming under or through Declarant, that the Property and Redwood Square shall be held, transferred, encumbered, used, sold, conveyed, leased and occupied subject to the following covenants, conditions and restrictions to run with the land as follows:

1. MAINTENANCE OBLIGATIONS.

1.1 Park Space Facilities. As further specified below, Declarant shall cause to be maintained the following facilities (collectively, the "**Park Space Facilities**") which are generally depicted on the map attached hereto as Exhibit B-2 and shall pay all costs and expenses incurred in doing so, except as otherwise provided for in connection with a City Event as set forth in this Declaration, including, by way of example but not limitation, Section 2.1.3 hereof:

(i) Lighting;

(ii) Common fences, walls and utility screening devices;

(iii) All landscape improvements, which includes without limitation planting and irrigation, within the boundaries of Redwood Square, including all trees and tree wells, shrubbery and any and all special landscaping, and including all landscape areas and all private drainage facilities (including, but not limited to, french drains, down drains, drainage swales, etc.);

(iv) All furniture, smart furniture, trash and recycling receptacles, recreational and playground equipment, and other recreational and playground amenities;

(v) Signage within Redwood Square;

(vi) All open spaces, promenades, and walkways;

(vii) All improvements delineated in Project Approvals approved by the City for Redwood Square, including all utilities (such as

gas, electricity, and water, but excluding any municipal or investor-owned utilities);

(viii) Public art within Redwood Square

(ix) Fountains and other water features; and

(x) Bicycle facilities and pedestrian paths within Redwood Square.

The obligations described above shall collectively be referred to as the "**Maintenance Obligations**."

1.2 Maintenance Standards. Declarant shall either staff or contract with and hire licensed and qualified personnel to perform the Maintenance Obligations, including the provision of labor, equipment, materials, support facilities, and any and all other items necessary to comply with the requirements of this Declaration. The Park Space Facilities shall be serviced and kept in good, clean and presentable appearance, condition and repair, free of debris, waste and graffiti, in compliance with all applicable provisions of the City Municipal Code, and to not less than the standard the City applies to City Parks. Without limiting the generality of the foregoing, Declarant and its maintenance staff, contractors and subcontractors shall comply with the following standards (collectively, "**Maintenance Standards**"):

(i) The Park Space Facilities shall be maintained in conformance with the approved final as-built plans prepared in connection with the Project Approvals, and in compliance with all conditions imposed thereon.

(ii) Landscape maintenance shall include, but not be limited to: (a) watering/irrigation; (b) fertilization; (c) mowing; (d) edging; (e) tree and shrub pruning, trimming and shaping to maintain a healthy, natural appearance and safe road/walkway conditions and visibility, and irrigation coverage; (f) control of weeds and pests in all planters, shrubs, lawns, ground covers, and other planted areas, as further provided in subparagraph (xi) below; (g) staking for support of trees; and (h) replacement of all plant materials, as needed. In all cases, landscape maintenance shall be performed with such frequency as is required to maintain the landscaped portions of the Park Space Facilities in the condition described in paragraph 1.2 above.

(iii) Clean-up maintenance shall include, but not be limited to: (a) maintenance of all sidewalks, paths and other paved areas in clean and weed-free condition; (b) maintenance of all such areas clear of dirt, mud, trash, debris or other matter which is unsafe or unsightly; (c) pressure washing of all sidewalks, paths and other paved areas as needed to keep in a clean condition; (d) removal of all trash, litter and other debris from improvements and landscaping prior to mowing; and (e) clearance and cleaning of all areas maintained prior to the end of the day on which

the maintenance operations are performed to ensure that all cuttings, weeds, leaves and other debris are properly disposed of by maintenance workers, and in all cases as needed to maintain the landscaped portions of the Park Space Facilities in the condition described in paragraph 1.2 above.

(iv) All paved pedestrian walkways shall be maintained in a smooth and level condition with no more than ¼" vertical offset, or as otherwise contemplated by final as-built plans.

(v) Maintenance of trash and recyclable collection facilities and removal of same no less frequently than the City removes trash and recyclables from its City-owned public parks and at least as frequently as necessary to ensure that trash and recycling containers are not overflowing.

(vi) Maintenance of all special surface improvements within Redwood Square in accordance with final as-built plans, as same may be amended from time to time by the request of Declarant with the approval of City as and to the extent required by the Municipal Code.

(vii) Timely planting of replacement landscaping and trees that were first planted by Declarant, in the event such landscaping and such trees are removed, damaged, diseased or dead. Initial plantings and replacement plantings are to be made in a manner authorized by the Project Approvals, as the Project Approvals may be amended from time to time.

(viii) All replacement materials for hardscape improvements shall be compatible with the materials used to construct the Park Space Facilities.

(ix) All site-lighting shall be maintained in good condition and repair, including replacing lamps, poles, and luminaries as necessary to maintain them in the condition described in paragraph 1.2 above.

(x) Except as otherwise recommended by a qualified arborist who is retained by Declarant and who is approved by City, evergreen trees shall be thinned out and shaped when necessary to prevent wind or storm damage and the primary pruning of deciduous trees shall be done during the dormant season. Damaged trees or those that constitute health or safety hazards may be pruned at any time of the year. Trees, vines and shrubs should be checked for possible pruning a minimum of once per month.

(xi) Apply insecticides and fertilizers as needed in accordance with manufacturer recommendations to protect all plant

materials from damage, including slug and snail control; in all cases, Declarant will use commercially reasonable efforts to minimize the use of pesticides and fertilizers and incorporate sustainable landscaping practices and programs similar to those used in City-owned parks, including those that emphasize the use of least-toxic chemicals and non-pesticide alternatives. To achieve the foregoing, Declarant shall implement the Integrated Pest Management Control Procedures and Minimum Specifications attached to this Declaration as Exhibit D.

(xii) Check and adjust sprinkler and bubbler valves and heads, and maintain the irrigation system in good working order and condition. Repairs shall be made within three (3) days, or if repairs cannot be completed within three (3) days, commenced within three (3) days and diligently pursued to completion after actual discovery of damage by Declarant. Watering schedules shall be arranged so as not to interfere with the public's daytime use of the Park Space Facilities.

(xiii) Graffiti removal shall be commenced within forty-eight (48) hours after actual discovery by Declarant or receipt of notification from the City to Declarant, and all vandalism shall be repaired as soon as practicable.

(xiv) Clean and wipe benches as often as necessary to keep clean and tidy. Maintain all site furnishing, including but not limited to drinking fountains, play equipment, seating, bollards, pergolas, and trash/recycle containers in a clean condition. Replace damaged furnishings as necessary, and replace all furnishings on a schedule no less frequent than the schedule applied to City Parks.

(xv) Park Space Facilities for which particular Maintenance Standards are not expressly provided for above shall be maintained in accordance with manufacturer's warranties, manuals, and product specifications.

Declarant shall maintain a designated point of contact for receiving and timely responding to public complaints about maintenance of the Park Space Facilities, including a telephone hotline, text number, and email address that is available to members of the public on a 24/7 basis and is posted on signs located at the major public entrances to Redwood Square.

1.3 City Regulatory Approvals. Declarant shall secure all permits required by the City in its regulatory capacity under applicable laws prior to (a) commencing the construction of the Park Space Facilities; (b) making modifications to the Park Space Facilities or the Redwood Square Access Easement Area (as defined below); and (c) holding events for which a Special Events Permit would be required pursuant to City Municipal Code Chapter 9.45 or a Miscellaneous Plan Permit would be required pursuant to City Municipal Code Chapter 19.61 (as such City Municipal Code provisions may be amended from time to time,).

2. GRANT OF PUBLIC ACCESS EASEMENT TO CITY. From and after the date that all Park Space Facilities have been fully constructed and inspected by the City such that there are no further City conditions or limitations on public use of all Park Space Facilities indicated on the final plans submitted by the Declarant and approved by the City, Declarant hereby grants to the City, for the use of the general public, a permanent non-exclusive easement to use Redwood Square for the purposes expressly set forth in this Section 2 of the Declaration and subject to all restrictions and limitations expressly or implicitly set forth in this Declaration, including without limitation the regulations regarding public access to Redwood Square set forth in Exhibit C to this Declaration. In addition, for the sole purpose of allowing pedestrian ingress to and pedestrian egress from Redwood Square during the periods that Redwood Square is open to the general public, and subject to all restrictions and limitations expressly or implicitly set forth in this Declaration, Declarant hereby grants to the City, for the use of the general public, a permanent non-exclusive easement across those portions of the Property which are (i) depicted on Exhibit B-2 and (ii) in fact improved by the owner of the Property for pedestrian access from Washington Avenue to Redwood Square (the "**Redwood Square Access Easement Area**"). Notwithstanding anything to the contrary contained herein, this Declaration shall not be construed as preventing the owner of the Property from maintaining, redesigning, relocating, and reconstructing the Redwood Square Access Easement Area and all other improvements on the Property from time to time ("**Construction Work**"); provided, however, that Declarant shall have the right to restrict the easement rights granted by this Section 2 only to the extent reasonably necessary or helpful to implement such Construction Work so long as pedestrian ingress and egress between Washington Avenue and Redwood Square are available after such Construction Work is completed, and during such Construction Work to the extent Declarant determines it is safe and feasible to do so.

2.1 Temporary Closure and Events.

2.1.1 Temporary Closures. Declarant shall have the right, without obtaining the consent of the City (with the exception of any City requirement to obtain a permit to perform any work), to temporarily close Redwood Square to the public from time to time for one of the following two reasons. Declarant shall post notice setting forth the reason for and the scheduled duration of the closure at the major entrances to Redwood Square, except in emergency situations.

(i) In the event of an emergency, or danger to the public health or safety created by causes including but not limited to flood, storm, fire, earthquake or other natural disaster, explosion, accident, criminal activity, riot, civil disturbances, declared disaster or emergency, Department of Public Safety response, civil unrest or unlawful assembly, Declarant may temporarily close all or a portion of Redwood Square and the Redwood Square Access Easement Area, in any manner, and for such time (but no longer) as Declarant reasonably deems necessary or desirable in order to promote public safety, security, and the protection of persons and property.

(ii) Declarant may temporarily close that portion of Redwood Square as is necessary to undertake repair and maintenance

activities of the Park Space Facilities in order to make any such necessary repairs and maintenance, but only for the time necessary to make such repairs or maintenance; provided such closure may not impede emergency vehicle access to those portions of Redwood Square (if any) that are open to the public.

2.1.2 Special Events. Subject to the limitations set forth in this Section 2.1.2, Declarant shall have the right, but not the obligation, to temporarily close all or portions of Redwood Square to the public for a period of up to seventy-two (72) consecutive hours, in connection with the use of Redwood Square by Declarant, or licensees or permittees of the Declarant for special events, including, without limitation, lectures, concerts, art displays, exhibits, filming, competitions, farmers markets and other assemblies (collectively, "**Special Events**"). Prior to closing Redwood Square for one or more Special Events, Declarant shall obtain any permits required by Section 1.3 of this Declaration, and shall post a notice of the impending closure at the major entrances to Redwood Square. Redwood Square shall not be used for any Special Events of a political nature. The Declarant may, from time to time, whether by separate instrument or through the CC&Rs, set procedures and rules and regulations which will be applicable to the use of Redwood Square for Special Events and Special Recreational Opportunities (as defined below). Such procedures may include, without limitation, the administrative approval of events by Declarant, insurance and indemnity requirements, and regulations involving the sale, serving and consumption of alcoholic beverages. Any revenues derived from said Special Events, including rents or other charges, shall inure to Declarant. In addition to the foregoing, Declarant shall have the right to close a portion (but not all) of Redwood Square to members of the general public in order to allow for seasonal events and other special recreational opportunities, including, without limitation, a winter-season ice rink ("**Special Recreational Opportunities**").

2.1.3 City Events. Subject to the limitations set forth in this Section 2.1.3, the City shall be entitled to use Redwood Square on the terms and conditions hereinafter set forth.

2.1.3.1 City shall be authorized to use Redwood Square for civic events ("**City Events**") that (i) are City sponsored, and not sponsored by a private, for-profit corporation unless approved in writing by Declarant which approval may be granted, conditioned or denied in Declarant's sole discretion; (ii) will not interfere with the operations of the occupants of the Project, including but not limited to the operations of Target and parking facilities located within Block 18; (iii) comply with all Legal Requirements (defined in Exhibit C); (iv) do not conflict with events previously approved pursuant to the procedures set forth in Section 1.3 of this Declaration or pursuant to the procedures set forth in any other applicable Legal Requirements; and (v) comply with the "**Permissible Movie Projection Requirements**" (as defined below). The conditions described in the prior sentence are called the "**Redwood Square Use Conditions**." City may hold City Events for a cumulative total of no more than sixteen (16) days each calendar year, not to exceed three (3) days per calendar month (inclusive both of events contemplated by this Declaration and events contemplated by other prior-existing

agreements recorded against Redwood Square). As a precondition to holding City Events, notice of the intent to schedule a City Event on Redwood Square (a "**Redwood Square Event Notice**") by the City shall be given to the Declarant or its successors not less than forty-five (45) days prior to the requested date of the City Event or such shorter period on which the City and the Declarant or its successors may agree. In order to be effective, the Redwood Square Event Notice shall be delivered to Declarant in accordance with Section 14, shall be given by a duly authorized representative of the City, and shall contain an event plan describing to the reasonable satisfaction of Declarant the event and the manner in which the event will comply with the Redwood Square Use Conditions. Permissible Movie Projection Requirements mean that any films shown in Redwood Square shall comply with each of the following standards: (1) are non-feature length films; (2) have not been released or re-released within the proceeding five (5) years; (3) are not new movies which are scheduled to be released within the succeeding twelve (12) months; (4) are not shown more often than six (6) days per calendar year (on a cumulative basis); and (5) are shown without admission fee or other charge. From time to time, the Permissible Movie Projection Requirements may be amended, replaced, or supplemented by Declarant in its sole and unfettered discretion in order to comply with new or modified lease requirements contained in a lease with the operator of a multiplex movie theater located in Sub-Block 5 of Block 18 of the Downtown Specific Plan. Such amended, replaced, or supplemented Movie Projection Requirements shall take effect immediately upon Declarant's delivery of a notice to City in accordance with Section 14 of this Declaration stating, in full, the amended, replaced, or supplemented Movie Projection Requirements.

2.1.3.2 No City Events or Special Events shall be permitted whose event plan and expected operation would reasonably be expected by Declarant to interfere with pedestrian circulation through Redwood Square and to stores, offices or residences facing or otherwise adjacent to Redwood Square. If Declarant determines that such interference would be expected, Declarant shall promptly notify City of its concerns, and the parties shall meet and confer in good faith in an effort to resolve Declarant's concerns. If any area outside Redwood Square is to be used in connection with any City Events or Special Events, permission from adjacent property owners for use of their property shall be required (which permission may be generally provided by CC&Rs or other separate instrument). If public streets will be used in connection with any Special Events or Special Recreational Opportunities, a Special Event Permit allowing the use of public streets shall be required. No portable toilets shall be permitted in Redwood Square in connection with a City Event or Special Event unless agreed to by the Declarant. As a precondition of using Redwood Square, the City shall agree to reimburse Declarant for the reasonable costs of all services associated with the City's use of Redwood Square (including but not limited to, security, cleanup, maintenance and repair, but not including utility costs unless the conditions of paragraph 2.1.3.3 below are satisfied) to the extent that the City does not provide such services.

2.1.3.3 If Declarant in its sole discretion elects to make arrangements with utility companies for permanent separate metering and billing of Redwood Square, City shall also reimburse Declarant for utility costs incurred in connection with City Events to the extent the utility costs for the City Event are identified and provided to City by Declarant not more than ninety (90) days after the conclusion of the City Event.

2.1.3.4 As a precondition to holding a City Event, prior to the occurrence of any City Event, City shall agree to, and shall, furnish to Declarant evidence of general liability insurance coverage written by a joint powers authority authorized to conduct business in the State of California, such evidence to be in the form of a memorandum of coverage. Except as otherwise modified pursuant to the procedures set forth in Section 4 of this Declaration, such coverage shall not be less than ten million ($10 million) dollars per occurrence with no limitation on the deductible or self-insured retention that the City may use during the contract period. Alternatively, the City may furnish evidence of a self-insurance program providing coverage as stated above. In order to meet the requirements of this section, Declarant and its agents and contractors shall be named as additional insureds on the liability insurance.

2.4 Regulations Regarding Public Access to Redwood Square. Additional regulations regarding public access to Redwood Square are set forth in Exhibit C to this Agreement, which regulations are hereby incorporated by reference as if fully set forth herein.

3. SATISFACTION OF DEVELOPMENT AGREEMENT OBLIGATIONS. This Declaration is intended to, and by its execution of the Consent and Acknowledgement attached to this Declaration City confirms that it does, satisfy the requirements of Section 4.2.3 and 4.2.4 of the Development Agreement.

4. INSURANCE. Declarant or its designee shall provide obtain and maintain a comprehensive general liability insurance policy in an amount not less than ten million ($10,000,000) dollars per occurrence combined single limit with the City and its Indemnities (as defined in Section 11 below) identified as additional insureds on the insurance policy covering personal injury, death, or property damage sustained or alleged to have been sustained by any person for any reason on Redwood Square; provided, however, that such insurance may exclude coverage for any claim for injury to person or property arising from the gross negligence or willful misconduct of the City or its respective officers, employees, agents or contractors; any claim that arises solely by reason of the actions or omissions of an Unrelated Third Party (as defined in Section 11); and any claim resulting from or relating to one or more City Events. Such limits may be met with a combination of primary and excess/umbrella liability insurance. If requested by the City, the limits set forth in this Section 4, and the insurance requirements for City Events set forth in Section 2.1.3.4, will be reviewed by the City and Declarant not more often than once every five (5) years during the term of this Declaration, and increased to conform with commercially reasonable terms for comparable projects in Santa Clara County, as determined at the time of the request.

5. NOT A PUBLIC DEDICATION. It is the Declarant's intention that this Declaration shall be strictly limited to the purposes expressed in the Declaration, and nothing in this Declaration shall be deemed to be a gift or dedication of any portion of Redwood Square nor the Property to the City, the general public or for the general welfare for any specific purpose. No use by the public nor any person of any portion of either or both of Redwood Square and the Property for any purpose or period of time shall be construed, interpreted or deemed to create any rights or interests to or in Redwood Square nor the Property other than the rights and interests expressly granted herein. The right of the public or any person to make any use whatsoever of Redwood Square and the Property or any portion thereof is not meant to be an implied dedication or to create any rights or interests in any third parties. Declarant expressly reserves the right to control the manner, extent and duration of any such use consistent with this Declaration and the Regulations set forth in Exhibit C. Declarant reserves the right to close-off all or any portion of Redwood Square and the Redwood Square Access Easement Area for such reasonable period of time as may be legally necessary, in the reasonable opinion of Declarant's counsel to prevent the acquisition of prescriptive rights by anyone; provided; however, that prior to doing so, Declarant shall give written notice to the City, specifically including written notice to the City Attorney, not less than ten (10) days in advance of its intention to do so and shall use good faith efforts to coordinate such closing-off with the City in order to avoid unreasonable interference with the City's rights under this Declaration.

6. SEVERABILITY. If any clause, sentence or other portion of this Declaration shall become illegal, null or void for any reason, or shall be held by any court of competent jurisdiction to be so, the remaining portion shall remain in full force and effect.

7. COVENANTS RUNNING WITH THE LAND. The covenants and restrictions set forth in this Declaration constitute a general scheme for the development, protection and maintenance of the Property. Said covenants and restrictions are for the benefit of the Property and shall bind all owners thereof. Such covenants and restrictions shall be a burden upon, and a benefit to, not only the Declarant but also its successors and assigns. All of such covenants and restrictions are intended to be and are hereby declared to be covenants running with the land or equitable servitudes upon the land, as the case may be. Each covenant contained in this Declaration is a covenant running with the land, binding upon and inuring to the benefit and burden of each heir, assignee and successor-in-interest of Declarant as the owner of all or any portion of the Property and Redwood Square, and the term "Declarant," as used herein, shall be deemed to include such heirs, assigns and successors-in-interest. Each deed, lease or conveyance of all or any portion of the Property and of Redwood Square (but expressly excluding residential apartment, residential condominium, live/work and/or office or retail space leases or commercial condominium units), or any interest therein, shall expressly reference and be subject to all the provisions of this Declaration. In the event of foreclosure or transfer by deed-in-lieu of all or any portion of the Redwood Square, title to all or any portion of the Redwood Square shall be taken subject to this Agreement. The Declarant acknowledges that compliance with this Agreement is a requirement of the Development Agreement, and that no event of foreclosure or trustee's sale may remove these requirements from Redwood Square.

8. DURATION. This Declaration shall be effective on the date it is recorded in the Official Records of Santa Clara County, shall continue in full force and effect in perpetuity until and unless terminated by written instrument executed, acknowledged and recorded by the then

owners of the Property and Redwood Square and the City. This Declaration may be amended or otherwise modified only in a writing signed and acknowledged by the Declarant (or its successors in interest) and the City.

9. RECITALS AND EXHIBITS. The preamble, the recitals, and all exhibits to this Declaration are incorporated by this reference. Notwithstanding Exhibit B-2, the as-built conditions, as approved by the City, shall control.

10. CONSTRUCTION. This Declaration shall be construed in accordance with the laws of the State of California excluding its conflict of law provisions. The headings used in this Declaration are for convenience only and are not to be used to interpret the meaning of any of the provisions of this Declaration. If any term, provision or condition contained in this Declaration (or the application of any such term, provision or condition) shall to any extent be invalid or unenforceable, the remainder of this Declaration shall be valid and enforceable to the fullest extent permitted by law. In this Declaration, whenever the context requires, the singular number includes the plural and vice versa, and the masculine and neuter gender shall be mutually inclusive.

11. CITY'S ENFORCEMENT RIGHTS. By execution of the Consent and Acknowledgement attached to this Declaration, City agrees to notify Declarant in writing, and in accordance with Section 14 of this Declaration, if the condition of the Park Space Facilities does not satisfy the Maintenance Standards or fails to enforce the use regulations set forth in Exhibit C. Such notice shall specify the deficiencies and the actions required to be taken by Declarant to cure the deficiencies. City shall not commence or pursue any administrative or legal action, under this Section 11 or otherwise, to enforce the provisions of this Declaration until the expiration of the cure periods provided below.

11.1 Upon notification of any maintenance or other deficiency, Declarant shall have fifteen (15) days within which to correct, remedy or cure the deficiency, or such longer period as is necessary to correct, cure or remedy the deficiency so long as Declarant is diligently pursuing the correction, cure or remedy to completion. If the written notification states the problem is urgent relating to the public health and safety or involves graffiti, then Declarant shall have forty-eight (48) hours to rectify the problem or such longer period as is reasonably necessary to correct, cure or remedy the deficiency as may be agreed to by City in its sole discretion.

11.2 The City is an express third party beneficiary of this Declaration, and has the right, but not the obligation, to enforce the provisions of this Declaration by any legal or equitable means (including injunctive relief) against such person or persons in actual possession of Redwood Square or any person who directly or through any agent violate(s) the terms hereof. In the event any legal action is instituted by the City to enforce the terms of this Declaration, the prevailing party shall be entitled to reasonable attorneys' fees and all fees, costs, and expenses incurred on any appeal or in collection or enforcement of any judgment. The rights of the City under this Declaration shall not be transferable in any manner to any person other than to a successor municipal corporation whose jurisdictional boundaries include Redwood Square.

11.3 Declarant acknowledges that its failure to properly maintain or operate the Park Space Facilities as required in this Declaration, past the notice and cure periods set forth above, will cause irreparable harm to the City and that the City will not have an adequate remedy at law

for such breach. Accordingly, in such event, City shall be entitled to pursue specific performance or injunctive or other equitable relief. City, but not the general public, shall have all rights and remedies available at law or in equity in order to enforce the covenants and restrictions set forth in this Declaration if Declarant fails to enforce same past all notice and cure periods set forth above. All rights and remedies available to City under this Declaration or at law or in equity shall be cumulative and not alternative, and invocation of any such right or remedy shall not constitute a waiver or election of remedies with respect to any other available right or remedy.

11.4 If Declarant fails to maintain Redwood Square in the manner required in this Declaration, and Declarant fails to timely cure such failure within the cure periods set forth above, following the expiration of such cure periods, City shall further have the right, at its sole option, to remedy such failure at Declarant's expense by delivering in accordance with Section 14 of this Declaration an additional fifteen (15) days' prior written notice of City's intention to cure such failure (a "**Self-Help Notice**") to the Declarant. The Self-Help Notice shall prescribe with reasonable detail the actions required of Declarant to cure the failure. If Declarant fails to commence the cure specified in the Self-Help Notice within fifteen (15) days following Declarant's receipt of same, Declarant shall reimburse City for its reasonable, actual costs and expenses, including without limitation, reasonable attorneys' fees, in remedying or attempting to remedy any actual failure of Declarant to comply with the requirements of this Declaration (collectively, "**City's Costs**") within thirty (30) days' of receiving City's invoice for City's Costs, together with documentation reasonably evidencing City's Costs. If the Declarant does not timely reimburse City for City's Costs, City shall have the right to record a notice of such unpaid costs and expenses against record title to the legal parcel on which Redwood Square is located and the legal parcels of each Building to which Redwood Square is associated, as described in Exhibit E. [*Note: Insert legal description of buildings on Sub-Block 3 South prior to execution and recording of this Declaration*] Such action by City shall not be construed as a waiver of such default or any rights or remedies of City, and nothing herein shall imply any duty of City to do any act that Declarant is obligated to perform.

12. INDEMNIFICATION. Except as provided below, Declarant shall defend, indemnify, assume all responsibility for, and save and hold the City and its elected and appointed officials, officers, employees, agents and representatives (collectively, "**Indemnitees**") harmless from any and all claims, causes of action, settlements, court damages, demands, defense costs, reasonable attorneys' fees, expert witness fees, and other legal expenses, costs of evidence of title, costs of evidence of value, and other expenses which they may suffer or incur and any liability of any kind or nature arising from or relating to the subject matter of this Declaration or the validity, applicability, interpretation or implementation hereof and for any damages to property or injuries to persons directly or indirectly related to or in connection with the operation, management, or ownership of the Park Space Facilities, including accidental death (including reasonable attorneys' fees and costs), with respect to such damage as may first accrue after the date of recordation and before termination of this Declaration. Declarant shall have the obligation to defend any such action; provided, however, that this obligation to defend shall not be effective if and to the extent that Declarant determines in its reasonable discretion that such action is meritorious or that the interests of the parties justify a compromise or a settlement of such action, in which case Declarant shall compromise or settle such action in a way that fully protects the Indemnitees from any liability or obligation. In this regard, Declarant's obligation

and right to defend shall include the right to hire (subject to reasonable written approval by City) attorneys and experts necessary to defend, the right to process and settle reasonable claims, the right to enter into reasonable settlement agreements and pay amounts as required by the terms of such settlement, and the right to pay any judgments assessed against Declarant or any other Indemnitees. If Declarant defends any such action, as set forth above, (i) to the extent of Declarant's indemnification obligations as set forth herein, Declarant shall indemnify and hold harmless Indemnitees from and against any claims, losses, liabilities, or damages assessed or awarded against any of them by way of judgment, settlement, or stipulation, and (ii) City shall be entitled to settle any such claim only with the written consent of Declarant and any settlement without Declarant's consent shall release Declarant's obligations under this Section 11 with respect to such settled claim. At the request of Declarant, City shall cooperate with and assist Declarant in its defense of any such claim, action, suit, proceeding, loss, cost, damage, liability, deficiency, fine, penalty, punitive damage, or expense; provided that City shall not be obligated to incur any expense in connection with such cooperation or assistance. Notwithstanding the foregoing, Declarant shall not be obligated to indemnify or defend the Indemnitees to the extent such claim is occasioned by the actions or omissions of any of the Indemnitees. Notwithstanding anything to the contrary contained herein, the indemnity provided by this Section 12 shall not apply to: (i) any claim for injury to person or property arising from the gross negligence or willful misconduct of the City or the Indemnitees; and/or (ii) any claim that arises from or relates to one or more City Events.

13. PROPERTY OWNER'S ASSOCIATION. Pursuant to the Development Agreement, Declarant (acting in its capacity as the Landowner in the Development Agreement) has the right to prepare Covenants, Conditions and Restrictions ("**CC&Rs**") and form a property owner's association to maintain Redwood Square (as well as other "Public Improvements" described in the Development Agreement). The CC&Rs may provide that any of the Maintenance Obligations provided for in this Declaration may be assumed by a duly formed property owner's association once (i) the property owner's association is formed, (ii) the CC&Rs have been approved by the City as provided for in Section 5.1.4 of the Development Agreement and recorded in the Official Records of Santa Clara County, and (iii) the City is notified in writing that maintenance responsibilities for the Park Space have been transferred to the property owner's association and Declarant (acting in its capacity as the Landowner in the Development Agreement) delivers to the City a conformed recorded copy of the Assignment Agreement between the property owner's association and Landowner (the "**Maintenance Transfer Date**"). Prior to the Maintenance Transfer Date, Declarant shall be responsible for the maintenance of the Park Space Facilities and performance of the Maintenance Obligations set forth in this Declaration. From and after the Maintenance Transfer Date (if any), the property owner's association shall be solely responsible for Declarant's rights and obligations under this Declaration and any failure of the property owners' association to perform its obligations shall not be considered an event of default or otherwise be held against Declarant under this Declaration.

14. NOTICES. Any notice provided for in this Declaration 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 mailing address provided for below.

14.1 Mailing Addresses. The respective mailing addresses of Declarant and City are, until changed as hereinafter provided, the following:

City:	Director of Community Development City of Sunnyvale 456 W. Olive Avenue Sunnyvale, CA 94088-3707 Email: comdev@sunnyvale.ca.gov
With a copy to:	City Attorney City of Sunnyvale 456 W. Olive Avenue Sunnyvale, CA 94088-3707 Email: cityatty@sunnyvale.ca.gov
Landowner:	STC Venture LLC c/o J.P. Morgan Investment Management Inc. 2029 Century Park East, Suite 4150 Los Angeles, California 9006 Attention: Lauren Graham Email: lauren.b.graham@jpmchase.com
With a copy to:	Hunter/Storm, LLC 10121 Miller Avenue, Suite 20 Cupertino, California 95014 Attention: Derek K. Hunter, Jr. Email: Deke@hunterproperties.com
	Sares Regis Group of Northern California, LLC 901 Mariners Island Boulevard, Suite 700 San Mateo, California 94404 Attention: Mark R. Kroll Email: MKroll@srgnc.com
	Gibson, Dunn & Crutcher LLP 333 South Grand Avenue, Suite 4900 Los Angeles, California 90071 Attention: Ben Saltsman, Esq. Email: bsaltsman@gibsondunn.com

Each of Declarant and City may change its respective notice 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 Declaration 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 email, so long as an original is sent by first class mail, commercial carrier or is hand-delivered.

15. ESTOPPEL CERTIFICATES. Declarant may, at any time, and from time to time, deliver written notice to the City requesting City to certify in writing that, to the knowledge of the City, this Declaration has not been amended or modified or, if so amended or modified, identifying the amendments or modifications, (b) Declarant is not in default in the performance of its obligations under this Declaration, or if in default, to describe the nature of any defaults, and (c) such other information as the Declarant may reasonably request. The City shall execute and return the certificate within thirty (30) days following receipt of the request. The City Manager or his designee shall be authorized to execute any certificate requested by Declarant. Declarant and City acknowledge that a certificate hereunder may be relied upon by owners, transferees, tenants, investors, partners, bond counsel, underwriters, and mortgagees. The request shall clearly indicate that failure of the City to respond within the thirty (30) day period will lead to a second and final request.

[*Remainder of page intentionally left bank; signatures follow on next page*]

IN WITNESS WHEREOF, this Declaration has been executed by the owner of the Property and of Redwood Square as of the date first above written at _____, California.

"**DECLARANT**"

CONSENT AND ACKNOWLEDGEMENT

The City of Sunnyvale is organized and existing under the laws of the State of California as a municipal corporation and charter city ("**City**"). The City expressly acknowledges and consents to the provisions, covenants, conditions and restrictions created by the foregoing DECLARATION OF REDWOOD SQUARE COVENANTS ("**Declaration**") and this consent is made on the understanding that the City does not assume any of the obligations of Declarant or any Owner of the Property, or of Redwood Square, or any portion thereof or any successors or assigns under the Declaration.

The undersigned individual hereby certifies that he or she is duly authorized to sign, acknowledge and deliver this Consent and Acknowledgement.

"**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

ACKNOWLEDGEMENT

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

STATE OF CALIFORNIA)
) ss.
COUNTY OF_____)

On _____, 202___ before me, _____, a Notary Public, personally appeared _____, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(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

LEGAL DESCRIPTION OF PROPERTY

[*To be Prepared at Time of Execution / Recordation*]

Exhibit B-1

LEGAL DESCRIPTION OF REDWOOD SQUARE

[*To be Prepared at Time of Execution / Recordation*]

Exhibit B-2

DEPICTION OF REDWOOD SQUARE AND PARK SPACE FACILITIES

[*To be Prepared at Time of Execution / Recordation*]

Exhibit C

REGULATIONS REGARDING PUBLIC ACCESS TO REDWOOD SQUARE

1. Permitted Uses. Redwood Square shall be used as open public space and recreational space in accordance with all Legal Requirements (as defined below), and for no other purpose, except as provided for by this Exhibit C. No person may be excluded from Redwood Square except to the extent that the City would be permitted by law to exclude a person from a City-owned park, and as otherwise expressly permitted in accordance with this Declaration. "**Legal Requirements**" shall mean all applicable: (a) laws, ordinances, orders, judgments, rules, regulations, mandatory guidelines and other requirements of the City; (b) requirements of public and private utilities providing service to Redwood Square, or any portion thereof; (c) Project Approvals and any conditions set forth in the Project Approvals; and (c) any other legal restriction recorded against either or both of the Property and Redwood Square from time to time, including, without limitation, CC&Rs (as that term is defined in the Declaration).

2. Hours of Operation. Redwood Square shall be open and accessible to the public from 7:00 a.m. to 10:00 p.m., seven (7) days per week, unless otherwise expressly provided for herein or approved in writing by Declarant. Without limiting the generality of the foregoing, Declarant may provide for a later closing time for Special Events and for City Events (as such terms are defined in this Declaration.

3. No Discrimination. 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, sexual orientation, age, disability, medical condition or national origin in the use or enjoyment of Redwood Square.

4. Arrest or Removal of Persons. Declarant and its agents shall have the right, but not the obligation, to use lawful means to effect the removal of any person who creates a public nuisance, who otherwise violates the regulations set forth in this Exhibit C, or who remains at Redwood Square during hours when public access is not allowed pursuant to this Declaration. Declarant shall have the right, but not the obligation, to make a private person arrest, as permitted by state law, of any person who commits any crime including, without limitation, infractions or misdemeanors in or around Redwood Square.

5. Removal of Obstructions. Declarant shall have the right to remove and dispose of, in any lawful manner it deems appropriate, any object or thing left or deposited at Redwood Square which Declarant deems to be an obstruction, interference or restriction of use of Redwood Square for the purposes set forth in this Declaration. The objects or things that may be removed includes, but are not limited to, personal belongings or equipment left at Redwood Square during hours when public access is not allowed pursuant to this Declaration.

6. Project Security. Declarant shall have the right, but not the obligation, to maintain security personnel to enforce the rules set forth in, or otherwise authorized by, this Declaration and/or prevent entry to Redwood Square during the time periods when public access

is not allowed pursuant to this Declaration. Declarant acknowledges nothing in this Declaration is intended to prevent the City from, nor replace the City's role in, engaging in any police or security activities it deems necessary to protect the health, safety or welfare of the City or any person.

7. Temporary Structures. Except with respect to authorized construction, maintenance, and/or an authorized Special Event, City Event or Special Recreational Opportunity, no structure of a temporary character, trailer, tent, shack or other outbuilding shall be used on any portion of Redwood Square at any time, either temporarily or permanently, unless such structure is authorized in writing by Declarant and Declarant has obtained any necessary City permits for such structure that would otherwise be required in the absence of this Declaration.

8. Signs. Declarant shall post signs at the major public entrances to Redwood Square, setting forth applicable regulations permitted by this Declaration, hours of operation and a telephone number to call regarding security, maintenance or other inquiries and state the following: "right to pass by permission, and subject to control by owner: Section 1008 of the California Civil Code." Except for (A) signs authorized by the master sign program applied for by Declarant and approved by the City, and (B) signs authorized by Declarant in conjunction with (i) the operation and maintenance of Redwood Square, (ii) Special Events, (iii) City Events, and/or (iv) Special Recreational Opportunities, no person may post any sign at Redwood Square, and any sign may be promptly removed by Declarant.

9. Prohibited and Restricted Activities; Rules and Regulations. The following rules and regulations shall govern the use of and activities within Redwood Square. Declarant shall have the right, but not the obligation, to take reasonable effort and action to enforce the following rules and regulations:

(i) No person shall assemble, collect or gather together on any walk, driveway, passageway or pathway on, or leading to Redwood Square in a manner that impedes the free passage or use thereof by pedestrians or vehicles passing along the same.

(ii) Except as authorized in connection with Special Events, City Events, and Special Recreational Opportunities, no person shall rent or offer for rent, or sell, or offer for sale, any commercial merchandise, or any article or thing of any kind or nature whatsoever, or practice, carry on, conduct or solicit any trade, occupation, business or profession in Redwood Square.

(iii) Except in connection with Special Events, City Events and Special Recreational Opportunities, no person shall play or utilize any sound-amplifying system at Redwood Square in a manner audible to any other person, unless otherwise authorized by Declarant. For the purposes of this subsection "sound amplifying system" shall mean and include any system of electrical hookup or connection, loud speaker system or equipment, sound-amplifying system and any apparatus, equipment, device, instrument or machine designed for or intended to be used for the purpose

of amplifying the sound or increasing the volume of the human voice, musical tone, vibration or sound wave. Nor shall any person conduct gatherings or activities of any kind at Redwood Square which make any noise or play live or recorded music at any level that could disturb the peace and enjoyment of any user of Redwood Square or permittee or invitee of any portion of the Project, nor use amplified sound in a confrontational manner likely to create a disturbance or harasses other persons in their permitted uses of Redwood Square. Without limiting the generality of the foregoing, except as otherwise expressly authorized by Declarant, noise and/or vibration shall be prohibited if it disturbs the peace, quiet and comfort of other users or any reasonable person residing, recreating, and/or working in the area.

(iv) Declarant shall have the right to prohibit and/or restrict the riding of bicycles, roller skates, scooters, (whether motorized or non-motorized) skateboards, which may be walked through Redwood Square and the use of mopeds, motorized and non-motorized vehicles, and any other type of conveyor of persons for recreational or personal use; provided, however, that maintenance or service vehicles may be used at Redwood Square by Declarant and, if City is exercising its self-help remedies or in connection with a City Event, as provided for in the Declaration, the City.

(v) No cooking of food and the consumption of alcoholic beverages, unless permitted by Declarant or as part of a City Event, Special Event, or Special Recreational Opportunity.

(vi) The affixing items to or the climbing of trees, other landscaping, future, infrastructure, public art, and other structures (except climbing specifically designated play equipment, if any) shall be prohibited.

(vii) Except persons authorized in conjunction with Special Events, City Events, Special Recreational Opportunities or other temporary closure as permitted by this Declaration; no person shall enter, remain, stay, camp or loiter in Redwood Square when it is closed to the public, except as permitted by this Declaration.

(viii) No materials, supplies or equipment shall be stored in any areas on Redwood Square except inside a closed building, or behind a visual barrier screening such areas from the view of adjoining buildings, common areas or external public streets.

(ix) No noxious, toxic or corrosive fumes, odors, gases, vapors, acids or other like substances shall be brought onto Redwood Square which may be detrimental to the health, safety or welfare of persons, or which may interfere with the comfort of persons within the vicinity, or which may be harmful to property or vegetation.

(x) No one may wade, bathe or swim in or drink from any water feature, except as expressly authorized by Declarant.

(xi) Declarant shall have the right, but not the obligation, to prohibit or restrict any person from causing, permitting or allowing any animal owned or possessed by him or any animal in his care, custody or control to be present at all or a portion of Redwood Square, except for service animals. In addition to the foregoing, within any area of Redwood Square specifically intended for use by dogs (if any), Declarant shall have the right to adopt any other rules and restrictions that it deems necessary or desirable to protect public health, safety, welfare and enjoyment of users and others residing or working in the vicinity of Redwood Square upon the consent of City through an amendment to this Declaration.

(xii) Except as authorized by Declarant, no person shall remove any wood, tree, shrub, plant, turf, grass, soil, rock, sand or gravel from Redwood Square.

(xiii) No person shall throw, discard or deposit any paper, rubbish, debris, ashes, dirt, bottles, can, trash or litter of any kind or nature whatsoever, except in receptacles specifically provided therefore.

(xiv) No person shall carry or discharge any firearms, firecrackers, fireworks, rockets, model rockets, air gun slingshot or any other projectile. Except as otherwise authorized by Declarant: (1) no person may operate a drone or other unmanned flying object from any location within Redwood Square, and (2) no drone or other unmanned flying object shall travel in the airspace above Redwood Square.

(xv) No person shall distribute, display, circulate, post, place or erect any bills, notice, paper or advertising device or matter, without the consent of Declarant.

(xvi) No person may vandalize, deface, damage or destroy Redwood Square.

(xvii) No person may sleep in Redwood Square.

(xviii) No active recreational activity, except as authorized by Declarant.

Exhibit D

INTEGRATED PEST MANAGEMENT
CONTROL PROCEDURES AND MINIMUM SPECIFICATIONS

[Attached.]

Integrated Pest Management
Control Procedures and Minimum Specifications

GENERAL

Description of Program: This specification implements a comprehensive Integrated Pest Management ("IPM") program for Redwood Square. IPM is a process for achieving long-term, environmentally sound pest suppression and prevention through the use of a wide variety of technological and management practices. Control strategies in an IPM program include:

- Structural and procedural modifications to reduce food, water, harborage, and access used by pests.
- Pesticide compounds, formulations, and application methods that present the lowest potential hazard to humans and the environment.
- Non-pesticide technologies such as trapping and monitoring devices.
- Coordination among all real estate management contractors and personnel that have a bearing on the pest control effort.

Contractor Service Requirements: Declarant shall undertake commercially reasonable efforts to ensure that pest control contractors (the "Contractors") furnish all supervision, labor, materials, and equipment necessary to accomplish the monitoring, trapping, pesticide application, and pest removal components of the IPM program set forth below, and to cause the Contractor to provide detailed, site-specific recommendations for structural and procedural modifications to aid in pest prevention.

PROPERTY INSPECTIONS

On a not less than annual basis, Contractors shall conduct inspections in order to evaluate the pest control needs of all locations and to identity problem areas and any equipment, structural features, or management practices that are contributing to (or could in the future contribute to) pest infestations. Access to Redwood Square shall be coordinated with Declarant or Declarant's designee (hereinafter collectively referred to as the "Declarant").

IPM PLAN

Each Contractor shall submit to Declarant an IPM Plan at least five (5) working days prior to the starting date of their contract.

The IPM Plan shall include the following five parts:

- Proposed Materials and Equipment for Service: The Contractor shall provide current labels and Material Safety Data Sheets for all pesticides to be used, and brand names of pesticide application equipment, rodent bait boxes, insect and rodent trapping devices, pest monitoring devices, pest detection equipment, and any other pest control devices or equipment that may be used to provide service.
- Proposed Methods for Monitoring and Detection: The Contractor shall describe methods and procedures to be used for identifying sites of pest harborage and access, and for making objective assessments of pest population levels throughout the term of the contract.

- Service Schedule: The Contractor shall provide complete service schedules that include weekly or monthly frequency of Contractor visits, specific day(s) of the week of Contractor visits, and approximate duration of each visit.
- Description of any Structural or Operational Changes That Would Facilitate the Pest Control Effort: The Contractor shall describe site-specific solutions for observed sources of pest food, water, harborage, and access.
- Commercial Pesticide Applicator Certificates or Licenses: The Contractor shall provide photocopies of State-issued Commercial Pesticide Applicator Certificates or Licenses for every Contractor employee who will be performing on-site service.

The Contractor shall be responsible for carrying out work according to the approved IPM Plan. The Contractor shall receive the concurrence of the Declarant prior to implementing any subsequent changes to the approved IPM Plan, including additional or replacement pesticides and on-site service personnel.

USE OF PESTICIDES

The Contractor shall be responsible for application of pesticides according to the label. All pesticides used by the Contractor must be registered with the U.S. Environmental Protection Agency or successor federal agency ("EPA"). Transport, handling, and use of all pesticides shall be in strict accordance with the manufacturer's label instructions and all applicable Federal, state, and City laws.

The Contractor shall adhere to the following rules for pesticide use:

- Approved Products: The Contractor shall not apply any pesticide product that has not been included in the IPM Plan or approved in writing by the Declarant.
- Pesticide Storage: The Contractor shall not store any pesticide product in Redwood Square.
- Application by Need: Pesticide application shall be according to need and not by schedule. As a general rule, application of pesticides in any inside or outside area shall not occur unless visual inspection or monitoring devices indicate the presence of pests in that specific area. Requests for preventive pesticide treatments in areas where surveillance indicates a potential insect or rodent infestation will be evaluated by Declarant on a case-by-case basis. Written approval must be granted by the Declarant prior to any preventive pesticide application.
- Minimization of Risk: When pesticide use is necessary, the Contractor shall employ the least hazardous material, most precise application technique, and minimum quantity of pesticide necessary to achieve control.

INSECT CONTROL

- Emphasis on Non-Pesticide Methods: The Contractor shall use non-pesticide methods of control wherever possible. For example: Portable vacuums rather than pesticide sprays shall be the standard method for initial cleanouts of cockroach infestations, for swarming (winged) ants and termites, and for control of spiders in webs.
- Trapping devices rather than pesticide sprays shall be the standard method for indoor fly control.
- Application of Insecticides to Cracks and Crevices: As a general rule, the Contractor shall apply all insecticides as "crack and crevice" treatments only, defined as treatments in which

the formulated insecticide is not visible to a bystander during or after the application process.

- Application of Insecticides to Exposed Surfaces or as Space Sprays: Application of insecticides to exposed surfaces or as space sprays ("fogging") shall be restricted to exceptional circumstances where no alternative measures are practical. The Contractor shall obtain approval of Declarant prior to any application of insecticide to an exposed surface or any space spray treatment. No surface application or space spray shall be made while members of the public are present. The Contractor shall take all necessary precautions to ensure public safety, and all necessary steps to ensure the containment of the pesticide to the site of application.
- Insecticide Bait Formulations: Bait formulations shall be the standard pesticide technology for cockroach and ant control, with alternate formulations restricted to unique situations where baits are not practical.
- Monitoring: Sticky traps shall be used to guide and evaluate indoor insect control efforts wherever necessary.

RODENT CONTROL

- Indoor Trapping: As a general rule, rodent control inside enclosed structures shall be accomplished with trapping devices only. All such devices shall be concealed out of the general view and in protected areas so as not to be affected by routine cleaning and other operations. Trapping devices shall be checked on a schedule approved by the Declarant. The Contractor shall be responsible for disposing of all trapped rodents and all rodent carcasses in an appropriate manner.
- Use of Rodenticides: In exceptional circumstances, when rodenticides are deemed essential for adequate rodent control, all rodenticides, regardless of packaging, shall be placed either in locations not accessible to children, pets, wildlife, and domestic animals, or in EPA-approved tamper-resistant bait boxes. As a general rule, rodenticide application shall emphasize the direct treatment of rodent burrows wherever feasible.
- Use of Bait Boxes: All bait boxes shall be maintained in accordance with EPA regulations, with an emphasis on the safety of non-target organisms. The Contractor shall adhere to the following five points:
    - All bait boxes shall be placed out of the general view, in locations where they will not be disturbed by routine operations.
    - The lids of all bait boxes shall be securely locked or fastened shut.
    - All bait boxes shall be securely attached or anchored to floor, ground, wall, or other immovable surface, so that the box cannot be picked up or moved.
    - Bait shall always be secured in the feeding chamber of the box and never placed in the runway or entryways of the box.
    - All bait boxes shall be labeled on the inside with the Contractor's business name and address, and dated by the Contractor's technician at the time of installation and each servicing

STRUCTURAL MODIFICATIONS AND RECOMMENDATIONS

On a regular basis, the Contractor shall be responsible for advising the Declarant about any structural, sanitary, or procedural modifications that would reduce pest food, water, harborage, or access.

PROGRAM EVALUATION

The Declarant will evaluate the progress of in terms of effectiveness and safety, and will require such changes as are necessary.

CONTRACTOR'S SUGGESTIONS FOR CHANGES

If Contractor has suggestions for additions, deletions, or changes to the services as specified herein that Contractor feels would benefit Redwood Square, Contractor shall submit the recommendations in letter form to Declarant.

MANNER AND TIME TO CONDUCT SERVICE

Safety and Health: The Contractor shall observe all safety precautions throughout the performance of its contract. All work shall be in strict accordance with all applicable Federal, state, and City of Sunnyvale ("City") statutes, laws and ordinances. Where there is a conflict between applicable laws, the most stringent will apply.

- Uniforms and Protective Clothing: All Contractor personnel working in or around Redwood Square shall wear distinctive uniform clothing. The Contractor shall determine the need for and provide any personal protective items required for the safe performance of work. Protective clothing, equipment, and devices shall, as a minimum, conform to U.S. Occupational Safety and Health Administration ("OSHA") standards for the products being used.

CONTRACTOR PERSONNEL

All Contractor personnel providing on-site pest control service must maintain certification as Commercial Pesticide Applicators in the category of Industrial, Institutional, Structural, and Health Related Pest Control (or such successor or replacement certifications as may exist from time to time).

Exhibit E

LEGAL DESCRIPTION OF SUB-BLOCK 3 SOUTH

[*To be Prepared at Time of Execution / Recordation*]

Exhibit H

EXISTING AGREEMENTS TO BE UPDATED, ELIMINATED OR CONSOLIDATED

1. Operation and Reciprocal Easement Agreement, dated October 28, 2008, executed by Macy's Department Stores, Inc., an Ohio corporation ("**Macy's**"); Target Corporation, a Minnesota corporation ("**Target**"); Downtown Sunnyvale Mixed Use, LLC, a Delaware limited liability company ("**DSMU**"), and the Sunnyvale Redevelopment Agency, a public body, corporate and politic ("**Redevelopment Agency**"), recorded October 30, 2008, as Instrument No 20033381 in the Official Records of Santa Clara County, California ("**Official Records**"); as amended by First Amendment to Operation and Reciprocal Easement Agreement dated June 15, 2010, by and among Macy's West Stores, Inc., an Ohio corporation f/k/a Macy's Department Stores, Inc., Target, the Sunnyvale Redevelopment Agency, DSMU and Downtown Sunnyvale Residential, LLC, a Delaware limited liability company by L. Gerald Hunt as court-appointed receiver in Wachovia Bank v. Downtown Sunnyvale Residential, et al, recorded July 6, 2010 as Instrument No. 20763325, as supplemented and assigned from time to time ("**OREA**").

2. Operation and Easement Agreement ("**OEA**") by and among Target, DSMU, and the Sunnyvale Redevelopment Agency dated as of October 28, 2008, and recorded in the Official Records on October 30, 2008 as Instrument No. 20033382, as supplemented and assigned from time to time.

3. Operation and Maintenance Agreement dated April 13, 2000, by and between the City of Sunnyvale, a chartered city and municipal corporation ("**City**") and Sunnyvale LLC, a California limited liability company ("**Original Operator**"), as amended on September 28, 2007 by that certain First Amendment to Operation and Maintenance Agreement recorded in the Official Records on October 1, 2007 as Instrument Number 19602169 ("**OMA**").

4. Development Agreement dated as of October 28, 2008 by and among Macy's, Target, DSMU and the Redevelopment Agency ("**Development Agreement**").

5. Integrated Project Agreement dated as of February 28, 2009 by and among DSMU, Downtown Sunnyvale Residential, LLC, a Delaware limited liability company, the Redevelopment Agency, and the City ("**Integrated Project Agreement**").

6. Public Street and Utility Maintenance Agreement, dated September 28, 2007, executed by the Sunnyvale Redevelopment Agency, and Downtown Sunnyvale Mixed Use, LLC, a Delaware limited liability company, and recorded October 1, 2007, as Instrument No. 19602168 ("**Public Street and Utility Maintenance Agreement**").

7. Infrastructure Improvements Agreement, dated July 9, 2009 by and between Downtown Sunnyvale Mixed Use LLC, Downtown Sunnyvale Residential LLC, Target, the Agency and the City ("**IIA**").

8. Subdivision Agreement for Sunnyvale Town Center Subdivision, dated as of September 28, 2007, by and between the City and DSMU Downtown Sunnyvale Mixed Use, a memorandum of which was recorded in the Official Records on October 1, 2007 as Instrument No. 19602159, as modified effective May 14, 2010, and as further amended by the unrecorded "Amended and Restated Subdivision Agreement Between STC Venture LLC and the City of Sunnyvale" dated August 7, 2017 and the unrecorded Memorandum of Understanding- Downtown Sunnyvale Infrastructure Existing Bond Release and Future Requirements, dated for reference September 24, 2019 ("**Subdivision Agreement**").

9. 2016 Modified and Restated Amended Disposition and Development and Owner Participation Agreement by and between the Successor Agency to the Sunnyvale Redevelopment Agency and STC Venture LLC, a Delaware limited liability company, recorded on September 28, 2016 in the Official Records as Instrument No. 23445289 ("**MRADDOPA**").

Exhibit I

FORM OF ASSIGNMENT AGREEMENT

[Attached.]

Exhibit I

THIS DOCUMENT WAS PREPARED BY,
AND AFTER RECORDING RETURN TO:

Gibson, Dunn & Crutcher LLP
333 South Grand Avenue, 49th Floor
Los Angeles, CA 90071
Attention: Ben Saltsman, Esq.

(Space Above For Recorder's Use)

FORM OF
ASSIGNMENT AND ASSUMPTION OF DEVELOPMENT AGREEMENT

THIS ASSIGNMENT AND ASSUMPTION OF DEVELOPMENT AGREEMENT ("**Assignment Agreement**") is made as of the [___] day of [_____], 20__, by and between [*Insert Landowner*] ("**Assignor**") and [_____] ("**Assignee**"), [***{to be inserted only in connection with an assignment prior to the Maintenance Transfer Date; provided that this provision is not to be inserted if the assignment is permitted without the approval of the City pursuant to Section 10.2 of the Development Agreement (a "Permitted Assignment"):***} *with the consent of the City of Sunnyvale, a charter city, created and existing under the laws of the State of California (the "**City**")*] with reference to the following facts:

A. Assignor owns certain real property [and certain improvements located thereon,] within the development commonly known as CityLine Sunnyvale, located at [225 South Taaffe Street,] in the City of Sunnyvale, California, and more particularly described on **Exhibit A** attached hereto and incorporated herein by this reference (the "**Property**").

B. The City of Sunnyvale, a charter city, created and existing under the laws of the State of California ("**City**"), and Assignor entered into that certain Development Agreement, dated [___], 2020 by and between the City and Assignor, recorded on [_____], 2020 as Instrument No. [_____] in the Official Records of Santa Clara County, California (the "**Development Agreement**").

C. Assignor and Assignee have agreed to transfer a portion of the Property to Assignee, which portion of the Property is identified and described in **Exhibit B**, attached hereto and incorporated by this reference (the "**Assigned Parcel(s)**").

D. In accordance with Section 10.3 of the Development Agreement, [*OPTION 1*: Assignor desires to assign to Assignee all of Assignor's rights, obligations, and interests under the Development Agreement specified on **Exhibit C,** attached hereto and incorporated by this reference (the "**Assigned Obligation(s)**"), and Assignee desires to accept the assignment of such, subject to the terms, conditions and restrictions set forth in this Assignment Agreement.] [*OPTION 2*: Assignor desires to assign to Assignee only site-specific rights, obligations, and interests under the Development Agreement that are related to the development of the Assigned

Parcels (i.e., site-specific mitigation measures or Special Development Plan conditions of approval) and specified on **Exhibit C,** attached hereto and incorporated by this reference (the "**Assigned Obligation(s)**").

E. Assignee desires to accept the Assigned Obligation(s), subject to the terms, conditions and restrictions set forth in the Assignment Agreement.

NOW THEREFORE, in consideration of the foregoing facts and the mutual covenants and conditions herein below set forth, it is agreed:

1. Assignor hereby assigns and transfers to Assignee, the Assigned Obligation(s) under the Development Agreement with respect to the Assigned Parcel(s). Assignor retains all obligations under the Development Agreement with respect to all other portions of the Property that do not include the Assigned Parcel(s) that Assignor continues to own.

2. Assignee hereby assumes all of the Assigned Obligation(s) under the Development Agreement with respect to the Assigned Parcels, and agrees to observe and fully perform all of the duties and obligations of Assignor under the Development Agreement, and to be subject to the terms and conditions thereof, with respect to the Assigned Parcel(s), it being the express intention of both Assignor and Assignee that, upon execution of this Assignment Agreement and conveyance of the Assigned Parcels to the Assignee, Assignee shall become substituted for Assignor as "**Landowner**" and "**Party**" under the Development Agreement with respect to the Assigned Parcel(s) and the Assignor shall be unconditionally and irrevocably released from all Assigned Obligations accruing on or after the date hereof.

3. Assignor warrants and represents to Assignee that Assignor has full right and authority to make this Assignment Agreement and vest in Assignee the rights, interests, powers and benefits hereby assigned.

4. This Assignment is an absolute conveyance of title in effect as well as in form and is intended to include and unconditionally convey any equitable or redemptive rights of Assignor and is not intended as a mortgage or security device of any kind.

5. Notwithstanding anything to the contrary contained herein, this Assignment Agreement is not intended to, and shall not, merge the equitable and legal titles in any of the rights and interests assigned herein, nor shall this Assignment release any liens or security interests securing any indebtedness encumbering any of the rights and interests assigned herein, it being the intention of the Assignor and Assignee to keep such liens separate and distinct and in full force and effect and to maintain the priority of such liens against any other liens or encumbrances affecting the rights and interests assigned herein.

6. This Assignment Agreement is expressly conditioned upon the actual conveyance of the Assigned Parcels to Assignee.

7. This Assignment Agreement may be executed in counterparts [***{to be inserted only in connection with an Assignment that is not a Permitted Assignment and is made before the Maintenance Transfer Date***:} (*together with an executed counterpart of the City's consent*

attached to this Assignment Agreement)] which taken together shall constitute one and the same instrument.

8. The provisions of this instrument shall be binding upon and inure to the benefit of Assignor and Assignee and their respective successors and assigns.

9. Assignor and Assignee each hereby covenants that it will, at any time and from time to time, execute any documents and take such additional actions as the other, or its respective successors or assigns, shall reasonably require in order to more completely or perfectly carry out the transfers intended to be accomplished by this Assignment Agreement.

10. This Assignment Agreement shall be construed and interpreted in accordance with the laws of the State of California.

[*Signature pages follow*.]

IN WITNESS WHEREOF, Assignor and Assignee have executed this Assignment Agreement as of the date first set forth above.

"**ASSIGNOR**"

By: _____
Name: _____
Title: _____

"**ASSIGNEE**"

[_____],
a [_____]

By: _____
Name: _____
Title: _____

[*THE FOLLOWING CONSENT IS TO BE INSERTED ONLY IN CONNECTION WITH AN ASSIGNMENT THAT IS NOT A PERMITTED ASSIGNMENT AND IS MADE BEFORE THE MAINTENANCE TRANSFER DATE*]

ACKNOWLEDGMENT AND CONSENT BY CITY OF SUNNYVALE

By executing in the space set forth below, the City of Sunnyvale hereby:

(a) Acknowledges receipt of the Assignment Agreement (the "**Assignment Agreement**") to which this Consent is attached;

(b) Consents to the making of the assignment between Assignor and Assignee, subject to the terms and conditions set forth in the Assignment Agreement;

(c) Agrees that ***[insert name of Assignee], a _____]*** (the assignee in the Assignment Agreement) shall be deemed by the City to be the "Landowner" and "Party" under the Development Agreement with respect to the Assigned Parcels, from and after the effective date of the Assignment Agreement; and

(d) This Consent by the City constitutes the consent required pursuant to Section 10.2 of the Development Agreement and constitutes the City's acknowledgment that the requirements of Section 10.2 have been satisfied with respect to the assignment described in the Assignment Agreement.

[signatures on following page]

"**City**"

CITY OF SUNNYVALE,
A Charter City

By: _____
Kent Steffens
City Manager

Date: _____

Attest:

_____
City Clerk

Approved as to Form:

_____
City Attorney

EXHIBIT A

TO

ASSIGNMENT AND ASSUMPTION OF DEVELOPMENT AGREEMENT

LEGAL DESCRIPTION CITYLINE SUNNYVALE

Real property in the County of Santa Clara, State of California, described as follows:

EXHIBIT B

TO

ASSIGNMENT AND ASSUMPTION OF DEVELOPMENT AGREEMENT

LEGAL DESCRIPTION OF ASSIGNED PARCELS

Real property in the County of Santa Clara, State of California, described as follows:

EXHIBIT C

TO

ASSIGNMENT AND ASSUMPTION OF DEVELOPMENT AGREEMENT

ASSIGNED OBLIGATION(S)

(e.g., Special Development Permit conditions, mitigation measures, etc.)