

DRAFT 06/22/2020 *RLM*

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY OF SUNNYVALE APPROVING AND ADOPTING A DEVELOPMENT AGREEMENT BETWEEN MARTIN A. KASIK AND SHARON K. KASIK, TRUSTEES OF THE KASIK FAMILY 1900 LIVING TRUST, KELLY KASIK (A/K/A KELLY KASIK STAHL), AN INDIVIDUAL, AND KERRY CATHLEEN KASIK, AN INDIVIDUAL, AND THE CITY OF SUNNYVALE FOR THE DEVELOPMENT OF PROPERTY IDENTIFIED BY ASSESSOR'S PARCEL NUMBER 207-07-007 AND KNOWN AS 141 TAAFFE ST., 143 TAAFFE ST., 150 ARIES WAY, 160 ARIES WAY, AND 141, 310, 350, 360, 370, AND 380 ALTAIR WAY.

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, Marin A. Kasik and Sharon K. Kasik, Trustees of the Kasik Family 1900 Living Trust, Kelly Kasik (a/k/a Kelly Kasik Stahl), an individual, and Kerry Cathleen Kasik, an individual, (Applicant) proposes to develop a portion of the parcel identified by Assessor's Parcel Number 207-07-007 and commonly known as 141 Taaffe Street, 143 Taaffe Street, 150 Aries Way, 160 Aries Way, and 141, 310, 350, 360, 370, and 380 Altair Way ("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 , 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 [REDACTED], 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 [REDACTED], 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 [REDACTED], 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 [REDACTED], 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 Moffett Park 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 SEIR as to the environmental effects of the Development Agreement, together with the additional findings contained in this Resolution. The Director of Community Development shall file a Notice of Determination with the County Clerk under Title 14, California Code of Regulations Section 15075.

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

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

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

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

Introduced at a regular meeting of the City Council held on _____, and adopted as an ordinance of the City of Sunnyvale at a regular meeting of the City Council held on _____, by the following vote:

AYES:

NOES:

ABSTAIN:

ABSENT:

RECUSAL:

ATTEST:

APPROVED:

City Clerk
Date of Attestation: _____

Mayor

(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 section 6103 [Space above this line for Recorder's use only]

DEVELOPMENT AGREEMENT
by and between
KASIK and CITY OF SUNNYVALE

Project name: 100 Altair Way

THIS DEVELOPMENT AGREEMENT, dated for convenience _____, 2020, at Sunnyvale, California ("Agreement") is entered into by and between Martin A. Kasik and Sharon K. Kasik, Trustees of the Kasik Family 1990 Living Trust (the "Kasik Trust"), Kelly Kasik (a/k/a Kelly Kasik Stahl), an individual ("KKS"), and Kerry Cathleen Kasik, an individual ("KCK") (collectively referred to herein as "Kasik" or "Landowner") and the CITY OF SUNNYVALE, a charter city, created and existing under the laws of the State of California ("the City"), pursuant to the authority of Sections 65864-65869.5 of the Government Code of the State of California, and City of Sunnyvale Resolution No. 371-81. The Agreement creates legal obligations pertaining to the 100 Altair Way development as more particularly described below.

RECITALS

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

B. City Procedure and Requirements. The City has implemented the provisions of Government Code Section 65864 *et seq.* and adopted certain development agreement procedures

and requirements through the enactment of Resolution No. 371-81, adopted on December 15, 1981 (hereinafter referred to as the "Development Agreement Resolution").

C. Landowner. The Landowner is a living trust and individuals.

D. Property. The subject of this Agreement is the development of that certain property located at Altair Way in the city of Sunnyvale, California, County of Santa Clara, Accessor's Parcel Number 209-07-007, consisting of approximately 0.5-acres, as described in Exhibit A-1 and depicted in Exhibit A-2 (hereinafter referred to as "100 Altair Way" or "the Property"), attached hereto and incorporated herein by reference. The Landowner either owns, or is the sole member of each of the entities that own, the Property in fee. 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.

E. Downtown Specific Plan. The subject Property is located within the area subject to the Downtown Specific Plan (the "Specific Plan" or "DSP"). The DSP was originally adopted in 1993 and then comprehensively updated and adopted by the City Council on October 14, 2003. The DSP has been subsequently amended on July 13, 2004, May 1, 2007, March 19, 2013, October 22, 2013 and _____, 2020.

F. Project. Landowner proposes to demolish the existing residential and commercial building on-site and construct a seven-story, 141,333 square foot Class A all electric office building, with four (4) levels of underground parking and a rooftop terrace with amenities (the "Project").

G. Environmental Review. The City examined the environmental effects of this Agreement and the Development Approvals (as defined in Recital M below) in an Environmental Impact Report (the "EIR") prepared pursuant to the California Environmental Quality Act (CEQA). On _____, 2020, the City Council reviewed and certified as adequate and complete the EIR by Resolution No. _____, and adopted written findings and approved a Mitigation Monitoring and Reporting Program. The City Council adopted a Statement of Overriding Considerations in connection with its approval of the DSP pursuant to Section 15093 of Title 14 of the CEQA Guidelines.

H. Purposes. The Landowner and City desire to enter into an agreement for the purpose of implementing the plan for development of the Project as set forth herein, and in the Specific Plan and Development Approvals, and for mitigating the environmental impacts of such development as identified in the EIR. The City has an expressed interest in ensuring the adequacy of public facilities and infrastructure improvements to support well-planned growth, and entering into development agreements is a method whereby a level of assurance can be achieved to meet that interest. The City has determined that the development of the 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 Resolution No. 371-81, which

was adopted by the City on December 15, 1981. The 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, the Landowner desires to receive assurance that the City shall grant permits and approvals required for the development of the Property in accordance with existing city laws, subject to the terms and conditions contained in this Agreement. In order to effectuate these purposes, the Parties desire to enter into this Agreement.

I. Relationship of City and Landowner. It is understood that this Agreement is a contract that has been negotiated and voluntarily entered into by City and Landowner and that the Landowner is an independent 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. Planning Commission Recommendations of Approval. The application for approval of this Agreement and the appropriate California Environmental Quality Act (Public Resource Code Section 21000 *et seq.*; "CEQA") documentation required for approval of this Agreement, including the EIR, were considered by the Planning Commission, on _____, 2020. After conducting a duly noticed public hearing, the Commission recommended the adoption of this Agreement to the City Council.

K. Development Agreement Adoption. 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 the second reading of Ordinance No. ____-20 (the "Adoption Date"), and authorized its execution.

L. 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, General Plan of the City and with the Development Approvals. This Agreement satisfies the requirements of Government Code Section 65867.5

M. Project Entitlements. The following approvals, entitlements, and findings have been adopted by the City with respect to the Property, and constitute the Project Entitlements:

i. The City Council certified an Environmental Impact Report for the DSP (SCH#2018052020) (comprised of the Draft Environmental Impact Report and the Final Environmental Impact Reports, collectively the "FEIR"). As required by CEQA, the City adopted written findings and a Mitigation Monitoring and Reporting Program on _____, 2020.

ii. The Specific Plan adopted by Resolution No. ____-20, on _____, 2020.

iii. The City Council approved this Agreement as more fully set forth in Recital H above.

N. 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 Government Code Sections 65864-65869.5 and City of Sunnyvale Resolution No. 371-81, and in consideration of the mutual covenants and promises contained herein, the adequacy and sufficiency of which is hereby acknowledged, the Landowner and the City, each individually referred to as a Party and collectively referred to as the Parties ("Parties"), agree as follows.

ARTICLE 1

RECITALS, DEFINITIONS AND DATES

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

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

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

1.2.2 Assignee. Any person, business entity, association, organization or other similar entity succeeding to some or all of 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.

1.2.3 City Laws. The ordinances, resolutions, codes, rules, regulations and official policies of the City, governing the permitted uses of land, density, design, improvements and construction standards and specifications applicable to the development of the Property. Specifically, but without limiting the generality of the foregoing, City Laws shall include the City's General Plan, the Downtown Specific Plan, the City's Zoning Ordinance (Title 19 of the Sunnyvale Municipal Code) and the City's Subdivision Ordinance (Title 18 of the Sunnyvale Municipal Code).

1.2.4 Conditions. All conditions, exactions, fees or payments, dedication or reservation requirements, obligations for on or off-site improvements, services or other conditions of approval called for in connection with the development of or construction on the Property under the Existing City Laws, whether such conditions of approval constitute public

improvements, or mitigation measures in connection with environmental review of any aspect of the Project.

1.2.5 Director. The Director of the Community Development Department.

1.2.6 Enacting Ordinance. Ordinance No. _____-20, introduced by the City Council on _____, 2020, and adopted by the City Council on _____, 2020 approving this Agreement.

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

1.2.8 Property. That property described and shown on Exhibits A-1 and A-2.

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

1.2.10 Subsequent Approvals. Any and all Development Approvals applied for by Landowner and approved by City following the Effective Date of this Agreement, including but not limited to a Special Development Permit to allow construction of the Project.

1.3 Effective Date; Recordation. The Enacting Ordinance became effective on _____, 2020. The obligations of the Parties under this Agreement shall be effective as of the effective date of the Enacting Ordinance (the "Effective Date"), pursuant to Government Code Section 36937. Not later than ten (10) days after the Effective Date, the Parties shall cause this Agreement to be recorded in the Official Records of the County of Santa Clara, State of California, as provided for in Government Code Section 65868.5 and Resolution No. 371-81. However, failure to record this Agreement within ten (10) days shall not affect its validity or enforceability by and between the Parties.

1.4 Term. Except as provided herein, the term of this Agreement shall commence on the Effective Date and terminate six (6) years thereafter ("Term"); provided, however, that if the parties have not completed their obligations pursuant to Section 4 hereto by the expiration of such term, the term of this Agreement may be extended upon written modification executed by both Parties. The extended term may not exceed five (5) years and must be for good cause as determined by the City Manager, supported by substantial evidence. Following the expiration of the Term, this Agreement shall be deemed terminated and of no further force and effect; provided, however, said termination of the Agreement shall not affect any right or duty emanating from City entitlements on the Property approved concurrently with or subsequent to the approval of this Agreement.

1.5 Capitalized Terms. If any capitalized terms contained in this Agreement

are not defined above, then any such terms shall have the meaning otherwise ascribed to them in this Agreement.

ARTICLE 2

BENEFITS TO THE CITY

Landowner shall provide the following benefits to the City, which are more particularly described in Section 4.2 below:

- (a) Payment of Three Million Dollars (\$3,000,000) for additional square footage for the Project (the “Community Benefit Fund Payment”);
- (b) Design and construction of off-site street improvements, more particularly described in Exhibit B (“Off-Site Improvements”);
- (c) Design and construction of all electric building with no natural gas infrastructure in furtherance of the City’s Climate Action goals; and
- (d) Designation by Landowner that the City is the point of sale for California sales and use tax purposes during Project Construction.

ARTICLE 3

GENERAL DEVELOPMENT

3. Project; Vested Entitlements.

3.1 Project Development. Landowner shall have a vested right to develop the Project on the Property in accordance with the Vested Entitlements (defined in Section 3.2) in effect as of the Effective Date and pursuant to all the terms of this Agreement.

3.2 Vested Entitlements. The Landowner has certain vested entitlements, including the certified EIR, the Downtown Specific Plan Amendment, and the approval of this Agreement (collectively, “Vested Entitlements”). Any other conditions of development applicable to the Property are as set forth in the General Plan, the Specific Plan, the Zoning Ordinance, the Subdivision Ordinance and City Laws, applicable on the Effective Date of the Agreement (“Applicable Rules”). The Landowner shall have the vested right to develop the Project on the Property in accordance with the terms and conditions of this Agreement, the Applicable Rules, and any Subsequent Approvals (as defined in Section 5.1 below) for the Project, as the same may be amended from time to time upon application by the Landowner. Except as otherwise specified herein, this Agreement, the Applicable Rules, and 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, and the allowable floor area ratios.

3.2.2 Except as provided herein, development of the Property shall be governed by this Agreement, and Vested Entitlements, the Applicable Rules, and City Laws. To the extent the provisions of this Agreement conflict with the applicable zoning provisions of the DSP, the DSP shall take precedence.

323 This Agreement does not impose affirmative obligations on the Landowner to commence development of the Project, or any phase thereof, in advance of its decision to do so.

324 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 with limitation Article 4 hereof.

325 As set forth in Recitals G, J, and K above, the environmental effects of the Specific Plan Amendment (including, but not limited to, the land use and development standards, the design guidelines and the infrastructure requirements contained therein) and this Agreement (including, but not limited to, the development rights and obligations vested hereby) have been thoroughly and fully examined in the EIR.

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

3.4 Compliance with Requirements of Other Government Entities.

3.4.1 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.

3.4.2 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 ("State or Federal Law"). In the event changes in State or Federal Law prevent or preclude compliance with one or more provisions of this Agreement, this Agreement shall be modified or suspended as may be necessary to comply with such State or Federal Law. The Parties shall meet and confer in good faith in order to determine whether such provisions of this Agreement shall be modified or suspended as may be necessary to comply with

changes in 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 and to preserve to the extent possible the original intent of the Parties in entering into this Agreement. This Agreement shall remain in full force and effect to the extent it is not inconsistent with such State or Federal Law. Nothing in this Agreement shall preclude the City or Landowner from contesting by any available means (including administrative or judicial proceedings) the applicability to the Property of any such State or Federal Law.

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

3.5.1 Processing fees and, subject to the terms of Section 3.6 of this Agreement, charges of every kind and nature imposed by the City, including application, inspection, and monitoring fees, which are in force and effect within the jurisdiction of the City for the class of Subsequent Approvals being applied for on an area-wide basis, which shall be paid at the rate then in effect.

3.5.2 All taxes, assessments, impact fees of any type, inclusionary including housing in-lieu impact fees and transportation impact fees, other fees, or other monetary and non-monetary exactions imposed by the City, which are in force and effect within the jurisdiction of the City for other similarly situated projects in the City on a City wide or area wide basis, discretionary or ministerial approvals, or taxpayers, as applicable, on which they are imposed, existing as of the Effective Date. For a five (5) year period commencing on the Effective Date and ending on the fifth anniversary thereof, the City shall not impose any new taxes, assessments, impact fees or other fees, or other monetary and non-monetary exactions, which were not in effect within the jurisdiction and applicable to the Project and Subsequent Approvals on the Effective Date (this does not include increases or adjustments to existing fees, taxes, etc.). 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. After the five (5) year period has run, the City may impose all taxes, assessments, impact fees of any type, other fees, or other monetary and non-monetary exactions, which are in force and effect within the jurisdiction of the City for a broadly based class of land, projects, discretionary or ministerial approvals, or taxpayers, as applicable, on which they are imposed, regardless of when they were first adopted.

3.5.3 If the City forms an assessment district including the Property and the assessment district is City-wide or area-wide, as defined in Section 3.5.6, the Property may be legally assessed through such district based on the benefit to the Property, which assessment shall be consistent with the assessment of other property in the district similarly situated. Any subsequently created assessment district is subject to collection solely based on the special assessment statute and shall not affect the development rights for the Project.

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

class of Subsequent Approvals being applied for.

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

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

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

3.7 Moratorium, Quotas, Restrictions or Other Limitations. Without limiting the generality of any of the foregoing, no moratorium or other limitation (whether relating to the rate, timing, phasing, sequencing or permission of development or construction of all or any part of the Property, whether imposed by ordinance, resolution, policy, order or otherwise, and whether enacted by the City Council, an agency of City, or otherwise) affecting parcel or subdivision maps (tentative, vesting tentative or final), building permits or any other Approvals (including entitlements to use or service, such as water, sewer and/or storm drains) shall apply to the 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.

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

3.9 Mutual Obligations of the Parties. City has agreed to provide Landowner with the long term assurances, Vested Entitlements, and other City obligations described in this Agreement in consideration for the Landowner obligations contained in this Agreement.

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

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

ARTICLE 4

SPECIFIC CRITERIA OF THE PROJECT

4.1 Permitted Square Footage. Notwithstanding anything to the contrary herein or in the Development Approvals, the Landowner is hereby allowed a total development of no more than 141,333 gross square feet for the Project (excluding area exclusively used for parking), and increased height, up to seven stories and up to 125 feet to the top of the parapet as more particularly described in Exhibit A-2, conditioned upon Landowner meeting the requirements of the DSP and the provisions of this Agreement. Landowner shall have the right to further increase building heights to the full extent authorized by Section 19.32.030 of the Sunnyvale Municipal Code, as such section exists on the Effective Date; provided, however, that the City may authorize machinery penthouses to exceed twenty-five percent (25%) of the roof area on which the penthouse is located through approval of a Special Development Permit. The DSP and the City's Zoning Code (Title 19 of the Sunnyvale Municipal Code) allow development up to 141,333 gross square feet as an incentive for the benefits provided in Article 2 of this Agreement. In consideration of the obligations of the Landowner and the benefits to the City for the development of the Property, the City agrees that Landowner or successor thereto is allowed up to 141,133 gross square feet and additional increased height of the Project, so long as the public benefit features are part of the Project, as allowed under the DSP and the City's Zoning Code.

4.2 Landowner Obligations. As a material consideration for the long term assurances, Vested Entitlements, 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 Section 4.2, and has further agreed to comply with all of its obligations under this Agreement, including in particular the obligations set forth in this Section 4.2.

4.2.1 Community Benefit Fund Payment. Landowner shall pay to City a total of three million dollars (\$3,000,000). Landowner intends this Community Benefit Fund

Payment shall be in addition to any other fee that is in force and effect within the jurisdiction of the City for a broadly based class of land, projects, discretionary or ministerial approvals, or taxpayers as applicable, on which it is imposed. The Community Benefit Fund Payment shall be made in full at the time of issuance of the building permit.

4.2.2 Off-Site Improvements. In addition to the Community Benefit Fund Payment, Landowner shall design and construct improvements to a segment of the public right-of-way (the “Street Segment”), as more particularly described in Exhibit B. The estimated cost for the Street Segment is \$2,584,942 at the time of the Effective Date. Landowner acknowledges and agrees it is responsible for all costs of design and construction of the Street Segment, even if the cost exceeds the current estimated amount noted above. The Street Segment shall be constructed and approved by City prior to issuance of the final certificate of occupancy (i.e. Final Inspection) at the site.

4.2.3 All Electric Building. In furtherance of the City’s Climate Action goals, the Project shall be an all electric building with no natural gas infrastructure.

ARTICLE 5

SUBSEQUENT APPROVALS

5.1 Subsequent Approvals. The Project will be subject to site development review through a Special Development Permit for approval by the Planning Commission. The development of the Project will require additional future discretionary and ministerial approvals from the City, potentially including, but not limited to, easement vacations, encroachment permits, demolition permits, grading permits, building permits and certificates of occupancy, sign permits, and other permits necessary to facilitate the construction of the Project (“Subsequent Approvals”).

5.1.1 Applications for Subsequent Approvals are anticipated to be submitted to the City by the Landowner. Applications for Subsequent Approvals shall be processed diligently and expeditiously in good faith by the City and considered in a manner consistent with the rights granted by this Agreement and the Applicable Laws.

5.1.2 With the Vested Entitlements, the City has made a final policy decision that the development of the Property, consistent with the Specific Plan and the Applicable Laws, is in the best interests of the public health, safety, and general welfare. Accordingly, the City shall not use its authority in considering any application for a Subsequent Approval that is consistent with the Vested Entitlements, and Applicable Laws to change the policy decisions reflected by this Agreement. Nothing herein shall limit the ability of the City to require the necessary reports, analysis, or studies to assist in determining whether the requested Subsequent Approval is consistent with the Applicable Laws and this Agreement. City's review of the Subsequent Approvals shall be consistent with City Laws and this Agreement, including without limitation Section 3.5 of this Agreement. To the extent that it is consistent with CEQA, as determined by the City in its reasonable discretion, City shall utilize the EIR certified on _____, 2020, to review the environmental effects of any Subsequent Approvals. Landowner shall defend, indemnify and hold the City harmless from or in connection with any litigation seeking to compel the City to perform additional environmental review of any Subsequent Approvals.

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

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

ARTICLE 6

AMENDMENT OF AGREEMENT AND DEVELOPMENT APPROVALS

6.1 Amendment or Cancellation. 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 Resolution No. 371-81. No amendment to or cancellation of this Agreement or any provision hereof shall be effective for any purpose unless adopted pursuant to the procedures included in Resolution No. 371-81 and specifically set forth in a writing, which refers expressly to this Agreement and is signed by duly authorized representatives of the Parties.

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

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

6.4 Amendment of Development Approvals. To the extent permitted by local, state, and federal law, any Development Approval may, from time to time, be amended or modified by submittal of an application from the 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 Community Development Director and by the affirmative vote of the majority of the Planning Commission. This obligation for annual review shall expire upon Project occupancy.

Consistent with Development Agreement Resolution No. 371-81, or its successor provision, the Community Development Director or designee shall give notice to the 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.

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. 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 that, 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, 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 (as defined in Section 8.2) and exercise the remedies set forth in Section 8.1.

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 Section 1085, and/or 1094.5, and (4) termination or cancellation of this Agreement or, at the option of City in the event of breach by 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 Party claiming breach (the "Complaining Party") shall deliver to the other Party (the "Defaulting Party") a written notice of breach (the "Notice of Breach"). The Notice of Breach shall specify the reasons for the allegation of breach with reasonable particularity. The Defaulting Party shall have thirty (30) days to either: (a) use good faith efforts to cure the breach or, if such cure is of the nature to take longer than 30 days, to take reasonable actions to commence curing the breach during the thirty (30) day period and diligently complete such cure; or (b) if in the determination of the Defaulting Party, the event does not constitute a breach of this Agreement, the Defaulting Party, within thirty (30) days of receipt of the Notice of Breach, shall deliver to the Complaining Party a "Notice of Non-Breach," which sets forth with reasonable particularity the reasons that a breach has not occurred. Failure to respond within the thirty (30) days shall not be deemed an admission of the breach, but the Complaining Party may proceed to pursue its remedies under this Article 8.

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

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

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

8.5 Effect of Termination on 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 Vested Entitlements 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 Subsequent Approvals that would not otherwise have expired pursuant to Existing City Laws.

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

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

ARTICLE 9

ESTOPPEL CERTIFICATE

Either Party may, at any time, and from time to time, deliver written notice to the other Party requesting such Party to certify in writing that, to the knowledge of the certifying Party, (a) this Agreement is in full force and effect and is a binding obligation of the Parties, (b) this Agreement has not been amended or modified or, if so amended or modified, identifying the amendments or modifications, and (c) the requesting Party is not in default in the performance of its obligations

under this Agreement, or if in default, to describe the nature of any defaults, and (d) such other information as the other Party may reasonably request. The Party receiving a request under Article 9 shall execute and return the certificate within thirty (30) days following receipt of the request. The City Manager shall be authorized to execute any certificate requested by Landowner. Landowner and City acknowledge that a certificate hereunder may be relied upon by transferees, tenants, investors, partners, bond counsel, underwriters, and Mortgagees. The request shall clearly indicate that failure of the receiving Party to respond within the thirty (30) day period will lead to a second and final request. Failure to respond to the second and final request within fifteen (15) days following receipt of the second request shall be deemed approval of the estoppel certificate.

ARTICLE 10

TRANSEERS. 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 California Civil Code. 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. Landowner shall have the right to assign (by sale, transfer, or otherwise) its rights and obligations under this Agreement as to any portion of the Project to any person, business entity, association, organization, or other similar entity ("Assignee"). Landowner's right to assign shall not be subject to City's approval.

10.3 Release Upon Assignment. Upon the express written assumption by the Assignee of Landowner's rights and interests under this Agreement (the "Assignment 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 ("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 under Applicable Law.

11.3 Notice of Default to Mortgagee. If City receives a written notice from a Mortgagee, Landowner or any approved assignee requesting a copy of any notice of default 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 the Landowner is in default under this Agreement, and if City makes a determination of default, City shall if so requested by the Mortgagee likewise serve at Mortgagee's cost (or Landowner's cost) notice of noncompliance on the Mortgagee concurrently with service on Landowner. Each Mortgagee shall have the right 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.

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

ARTICLE 12

INDEMNIFICATION

12.1 No Duty of City; Hold Harmless. It is specifically understood and agreed by the Parties that the development contemplated by this Agreement is a private development, that City has no interest in or responsibility for or duty to third persons concerning any of said

improvements, and that 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 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, sole negligence, or willful misconduct of City, its elected and appointed representatives, officers, agents, employees, contractors or subcontractors, or of a third party ("Indemnified Party").

(b) This indemnification and hold harmless agreement 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, but does not apply to damages and claims for damages caused by City with respect to public improvements and facilities after City has accepted responsibility for them.

(c) The duty to defend is a separate and distinct obligation from 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 Indemnified Party immediately upon tender to Landowner, which shall be made to Landowner promptly upon it becoming known to the Indemnified Party. An allegation or determination of the sole negligence or willful misconduct by the Indemnified Party shall not relieve 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 of Landowner's sole choosing 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
Sunnyvale, CA 94088

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

Landowner: Kasiks
The Kelly Building
150 Aries Way
Sunnyvale, CA 94086
Attn: Andy Kasik

With a copy to: Sheppard Mullin Richter & Hampton LLP
Four Embarcadero Center
17th Floor
San Francisco, CA 94111
Attn: Jennifer Renk

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

ARTICLE 14

MISCELLANEOUS

14.1 Third-Party Legal Challenge. In the event of any legal action, claim, or proceeding instituted by a third party or other governmental entity or official challenging the validity of any provision of this Agreement, the EIR, or the Vested Entitlements ("Third Party Challenge"), the responsibilities of the Parties shall be as follows.

14.1.1 Indemnification

(a) The Landowner shall defend, indemnify, and hold harmless the City or its agents, officers, and employees from any Third Party Challenge against the City or its agents, officers, and employees to attack, set aside, void, or annul this Agreement, or the Vested Entitlements and shall indemnify and hold harmless City against any and all third-party attorneys'

fees, court costs and other liabilities determined by a court to be arising out of such Third Party Challenge.

(b) The City shall promptly notify the 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.

(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.

14.1.2 Invalidity. If any part of this Agreement is held by a court of competent jurisdiction to be invalid or unlawful as the result of a Third Party Challenge or otherwise, the Parties shall use their best efforts to cure any inadequacies or deficiencies identified by the court in a manner consistent with the express and implied intent of this Agreement, and then to adopt or re-enact such part of this Agreement as necessary or desirable to permit implementation of this Agreement.

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

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

14.4 Nondiscrimination Clause. 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 the other party the full and complete enjoyment of its rights and privileges hereunder.

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

14.8 Equal Authorship. This Agreement has been reviewed by legal counsel for both the 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 Time. Time is of the essence of this Agreement and of each and every term and condition hereof.

14.10 Subsequent Projects. After the Effective Date of this Agreement, the City may approve other projects that place a burden on the City's infrastructure; however, it is the intent and agreement of the Parties that the Landowner's 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.

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

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

Exhibit A-1 and A-2: Property Description and Site Map
Exhibit B: Off-Site Improvements

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

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

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

(SIGNATURES ARE ON THE FOLLOWING PAGE)

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

"City"

CITY OF SUNNYVALE,
A Charter City

By: _____
Kent Steffens
City Manager

Date: _____

Attest:

David Carnahan, City Clerk

Approved as to Form:

John A. Nagel, City Attorney

"Kasik/Landowner"

By: _____
Martin A. Kasik, as trustee of The
Kasik Family 1990 Living Trust

Date: _____

By: _____
Sharon K. Kasik, as trustee of The Kasik
Family 1990 Living Trust

Date: _____

By: _____
Kelly Kasik, an individual

Date: _____

By: _____
Kerry Cathleen Kasik, an individual

SMRH:4829-4562-9621.6
T-CDD-200033/47843
851\09\2823422.1

-24-

A-24

ACKNOWLEDGMENT

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

State of California

County of _____)

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

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

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

WITNESS my hand and official seal.

Signature _____ (Seal)

ACKNOWLEDGMENT

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

State of California

County of _____)

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

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

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

WITNESS my hand and official seal.

Signature _____ (Seal)

EXHIBIT "A-1"
Legal Description

For APN/Parcel ID(s): 209-07-007

THE LAND REFERRED TO HEREIN BELOW IS SITUATED IN THE CITY OF SUNNYVALE,
COUNTY OF SANTA CLARA, STATE OF CALIFORNIA AND IS DESCRIBED AS FOLLOWS:

Lot 5, in Block 7, as shown upon the Map of the Town of Encinal, which Map was filed in the Office of the Recorder of the County of Santa Clara, State of California, January 25, 1898, in Book "I" of Maps, at Pages 88 and 89.



A1.10

