ORDINANCE NO. 3182-21

AN ORDINANCE OF THE CITY OF SUNNYVALE APPROVING AND ADOPTING A DEVELOPMENT AGREEMENT BETWEEN INTUITIVE SURGICAL, INC. AND THE CITY OF SUNNYVALE FOR THE DEVELOPMENT OF PROPERTY IDENTIFIED BY ASSESSOR'S PARCEL NUMBERS 205-49-005, 205-49-012, 205-40-002, AND 205-40-001 AND RESPECTIVELY KNOWN AS 932 KIFER ROAD, 950 KIFER ROAD, 945 KIFER ROAD, AND 955 KIFER ROAD

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, Intuitive Surgical, Inc. (Applicant) proposes to develop a portion of the parcel identified by Assessor's Parcel Numbers 205-49-005, 205-49-012, 205-40-002, and 205-40-001 and commonly known as 932 Kifer Road, 950 Kifer Road, 945 Kifer Road, and 955 Kifer Road, respectively ("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, 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 Lawrence Station Area Plan (LSAP), the City prepared a Subsequent Environmental Impact Report (collectively, "SEIR") (State Clearinghouse #2019012022) 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 SEIR provides a program-level review of the environmental impacts of the LSAP amendments as well as a project-specific analysis of the proposed project; and

WHEREAS, the SEIR identified measures to mitigate, to the extent feasible, the significant adverse project and cumulative impacts associated with the buildout anticipated by the LSAP. In addition, the SEIR identified some impacts that would remain significant and unavoidable after mitigation; and

WHEREAS, on September 14, 2021, the City Council made Findings, adopted a Statement of Overriding Considerations and a Mitigation Monitoring and Reporting Program, and certified the SEIR for the LSAP amendments and the proposed project; and

WHEREAS, pursuant to the Development Agreement Statute and City regulations, the Planning Commission held a duly noticed public hearing on August 23, 2021, 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 September 14, 2021 concerning the proposed Project, and has considered the reports and documents presented by City staff, the Planning Commission's recommendation, and the written and oral comments presented at the public hearing.

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

SECTION 1. FINDINGS. The City Council hereby finds and declares that the above recitals are true and correct. The City Council finds that the provisions of the Development Agreement are consistent with the City's General Plan and the LSAP as they will exist on the effective date of this ordinance, and hereby incorporates the findings regarding General Plan and LSAP conformity contained in the Planning Commission findings dated August 23, 2021. 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 through ongoing sales tax guarantees, design and construction of off-site street improvements, construction of an all-electric building in furtherance of the City’s Climate Action goals, and designating the City as point of sale for sales tax purposes during construction, and other community benefits described in the Development Agreement. 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 Lawrence Station Area 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 Lawrence Station Area Plan Update/Intuitive Surgical Corporate Campus Project Subsequent Environmental Impact Report (the "SEIR"), SCH #2019012022. The City Council has reviewed the SEIR 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 SEIR as having been prepared in compliance with the requirements of the California Environmental Quality Act ("CEQA"), made necessary findings, adopted a statement of overriding considerations related to 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, Mitigation Monitoring and Reporting Program ("MMRP") and Statement of Overriding Considerations contained in Resolution No. 1083-21 as to the environmental effects of the Lawrence Station Area Plan Update and makes those same findings, and adopts the same MMRP and Statement of Overriding Considerations for the Project subject to the Development Agreement, together with the additional findings contained in this Ordinance. 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 Mayor
Date of Attestation: _____

(SEAL)

APPROVED AS TO FORM:

_____
City Attorney

EXHIBIT A

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
INTUITIVE SURGICAL, INC. and CITY OF SUNNYVALE

Project name: Intuitive Surgical Campus Expansion

THIS DEVELOPMENT AGREEMENT, dated for convenience _____, 2021, at Sunnyvale, California ("Agreement") is entered into by and between Intuitive Surgical, a Delaware corporation ("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 Intuitive Surgical Campus Expansion 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 "Resolution No. 371-81"). This Agreement has been processed in accordance with the Development Agreement Resolution.

C. Landowner. The Landowner is a Delaware corporation. Landowner, as used in this Agreement, shall include any permitted assignee or successor-in-interest as herein provided.

D. Property. The subject of this Agreement is the development of that certain property located at 932 Kifer Road (Assessor's Parcel Number ("APN") 205-49-017), 945 Kifer Road (APN 205-40-002), 950 Kifer Road (APN 205-49-018), and 955 Kifer Road (APN 205-40-001) in the city of Sunnyvale, California, County of Santa Clara, consisting of approximately 32.4-acres, as described in Exhibit A-1 and depicted in Exhibit A-2 (hereinafter referred to as the "Property"), attached hereto and incorporated herein by reference). 932 and 950 Kifer Road (collectively the "South Site") consist of approximately 16.8 acres, and 945 and 955 Kifer Road (collectively, the "North Site") consist of approximately 15.6 acres. The Landowner owns 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. Lawrence Station Area Plan. The subject Property is located within the area subject to the Lawrence Station Area Plan (as amended, the "Area Plan"). The City originally adopted the Area Plan and associated Environmental Impact Report in 2016 and subsequently amended the Area Plan on **[date]**, 2021 (the "Area Plan Amendment"). The Area Plan Amendment included, among other things, an extension of the Area Plan boundary to include the Property.

F. Project. Landowner proposes to demolish the existing improvements on the Property and construct two new three-story office/research and development/manufacturing buildings totaling 1,211,000 square feet (including 148,000 square feet of basement space); an 11,000 square foot amenity building; a central utility plant totaling 12,000 square feet; and a five-level, above-ground parking structure, for a total combined floor area ratio (excluding the parking structure) of 77 percent, a bridge over Kifer Road connecting two buildings, and, on-site landscaping and amenities including a Class I Shared-Use Path (the "Project").

G. Environmental Review. The City examined the environmental effects of the Development Approvals (as defined in Recital M below) (including this Agreement) in a Subsequent Environmental Impact Report (the "EIR") Report for the Area Plan Amendment, and the Project (SCH # _____) (comprised of the Draft Subsequent Environmental Impact Report and the Final Environmental Impact Report) prepared pursuant to the California Environmental Quality Act (Public Resource Code Section 21000 *et seq*.) ("CEQA"). On _____, 2021, 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 "MMRP"). The City Council adopted a Statement of Overriding Considerations in connection with its approval of the Area Plan Amendment and the Development Approvals 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 Area 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 Area 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. The Landowner has incurred and will incur substantial costs in order to comply with the conditions of approval of the Project 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 CEQA documentation required for approval of this Agreement, including the EIR, were considered by the Planning Commission, on _____, 2021. 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. ____ -21 on _____, 2021. On _____, 2021, the City Council adopted this Agreement by the second reading of Ordinance No.____-21 (the "Adoption Date"), and authorized its execution.

L. Consistency with Sunnyvale General Plan and Area 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 "General Plan"), the Area 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 Area Plan, the General Plan, and the Development Approvals. This Agreement satisfies the requirements of Government Code Section 65867.5.

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

i. The EIR and the applicable provisions of the MMRP that are incorporated into, and required by, the Project Entitlements.

ii. The General Plan amendments adopted by Resolution No. ___-21, on _____, 2021, which, among other things, redesignated the Property to Transit Mixed Use (the "General Plan Amendment").

iii. The Area Plan Amendments adopted by Resolution No. ___-21, on _____, 2021.

iv. The Lawrence Station Sense of Place Plan, adopted by Resolution No. ___-21, on _____, 2021 (the "Sense of Place Plan").

v. The Zoning Code and Map amendments adopted by Ordinance No. ___-21, on _____, 2021, including the rezoning of the North Site to M-S/LSAP 60 and the South Site to MS/LSAP 120 (the "Zoning Amendment").

vi. The Special Development Permit for the Property (permit number 2019-7557) approved on _____, 2021 (the "Special Development Permit").

vii. The vesting tentative parcel map for the Property (permit number 2019-7557) approved on _____, 2021.

viii. This Agreement, as more fully set forth in Recital H above.

N. Resolution No. 371-81. City and Landowner have taken all actions mandated by and fulfilled all requirements set forth in the Resolution No. 371-81.

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 as the "Parties", agree as follows.

ARTICLE 1.
RECITALS, DEFINITIONS AND DATES

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

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

1.2.1 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.

1.2.2 City Laws. The ordinances, resolutions, codes, rules, regulations and official policies of the City (whether adopted by means of ordinance, initiative, referenda, resolution, policy, order, moratorium, or other means, adopted by the City Council, Planning Commission, or any other board, commission, agency, committee, or department of City, or any officer or employee thereof, or by the electorate). Specifically, but without limiting the generality of the foregoing, City Laws shall include the City's General Plan, the Area 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).

1.2.3 Conditions of Approval. 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 Development Approvals.

1.2.4 Director. The Director of the Community Development Department.

1.2.5 Enacting Ordinance. Ordinance No. _____-21, introduced by the City Council on _____, 2021, and adopted by the City Council on _____, 2021 (the "Enactment Date") approving this Agreement.

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

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

1.2.8 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.

1.2.9 Subsequent Approvals. Any and all land use approvals, entitlements, development permits, use and/or construction approvals other than the Development Approvals obtained concurrently with the approval of the Development Agreement, applied for by Landowner and following the Enactment Date of this Agreement, including but not limited to development plans, conditional use permits, variances, subdivision approvals, street abandonments, design review approvals, demolition permits, improvement agreements, infrastructure agreements, grading permits, building permits, right-of-way permits, lot line adjustments, site plans, sewer and water connection permits, certificates of occupancy, parcel maps, lot splits, landscaping plans, master sign programs, transportation demand management programs, encroachment permits, and amendments thereto and to the Development Approvals. At such time as any Subsequent Approval applicable to the Property is approved by the City, then such Subsequent Approval shall become subject to all the terms and conditions of this Agreement applicable to Development Approvals and shall be treated as a "Development Approval" under this Agreement.

1.2.10 Effective Date; Recordation. The Enacting Ordinance became effective on _____, 2021. 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 City Clerk 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.

1.2.11 Term. Except as provided herein (including without limitation Section 14.15), the term of this Agreement shall commence on the Effective Date and terminate fifteen (15) years thereafter ("Term"), unless earlier terminated as provided in this Agreement; provided, however, that upon issuance of any building permit related to construction of the Project ("Building Permit") by the City, the Term of this Agreement shall be reduced to ten (10) years following the date of the issuance of the first Building Permit, unless earlier terminated as provided in this Agreement, but in no event shall exceed fifteen (15) years from the Effective Date. Following the expiration of the Term or earlier termination of this Agreement, this Agreement shall be deemed terminated and of no further force and effect, except with respect to any obligations specifically identified herein as surviving the termination of this Agreement; provided, however, said termination of the Agreement shall not affect any right or duty emanating from Development Approvals (other than this Agreement) approved concurrently with or subsequent to the approval of this Agreement.

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

ARTICLE 2.
BENEFITS TO THE CITY

2.1 Community Benefits. In consideration of, and in reliance on, the City agreeing to the provisions of this Agreement, Landowner shall provide the following community benefits to the City (the "Community Benefits"), as are more particularly described in Section 4.2 below, which community benefits are over and above those dedications, conditions, and exactions required by laws or regulations:

2.1.1 Sales Tax Revenue. Landowner shall pay the "Sales Tax Revenue Guarantee Amount," as provided in Section 4.2.1.

2.1.2 Point of Sale. Landowner shall designate the City as the point of sale for California sales and use tax purposes for Landowner's direct expenditures on the construction of Project buildings and improvements, as provided in Section 4.2.2.

2.1.3 Recycled Water Line Extension. Landowner will design, permit, fund and construct a minimum 8-inch recycled water line from Wolfe Road to the western property line of

932 Kifer Road for the purpose of connecting the recycled water line to the Project (estimated value of $1 million), as provided in Section 4.2.3.

2.1.4 Reach Codes. Although the project would otherwise be exempt from the Reach Codes, Landowner shall meet or exceed the following minimum Reach Code standards in effect on the Enactment Date in furtherance of the goals of the City's Climate Action Playbook (2019) (the "CAP"); all electric buildings; installation of a solar PV system of approximately 13.5 megawatts; and provision of EV infrastructure for 100% of the vehicle parking spaces with EV charging stations or EV capable for the future, as provided in Section 4.2.4.

2.1.5 VTA Bus Stop. If requested by the Santa Clara Valley Transportation Authority ("VTA"), Landowner shall install a bus pad and bus shelter on the south side of Kifer Road east of Commercial Street per VTA's latest design standards and VTA *Bus Stop Placement Closures and Relocation Policy (*https://www.vta.org/sites/default/files/documents/busstoppolicy.pdf) or as directed by the Department of Public Works, as provided in Section 4.2.5.

ARTICLE 3.
GENERAL DEVELOPMENT

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).

3.2 Vested Entitlements. The Landowner has certain vested entitlements, including the following:

3.2.1 The General Plan of the City on the Enactment Date, including the General Plan Amendment ("Applicable General Plan");

3.2.2 The Area Plan on the Enactment Date, including the Area Plan Amendment ("Applicable Area Plan");

3.2.3 The Zoning Code of the City on the Enactment Date, including the Zoning Amendment (the "Applicable Zoning Code");

3.2.4 The Subdivision Code of the City on the Enactment Date (the "Applicable Subdivision Code");

3.2.5 Special Development Permit 2019-7557 including the Conditions of Approval;

3.2.6 Any other rules, regulations, ordinances, and policies of the City applicable to development of the Property on the Enactment Date (collectively, and together with the Applicable General Plan, the Applicable Area Plan, the Applicable Zoning Code, and the Applicable Subdivision Code, the "Applicable Rules"); and

3.2.7 The Development Approvals, as they may be amended from time to time upon Landowner's consent in its sole discretion and City's approval of the amendment in accordance with Section 6.4 of this Agreement (collectively, the "Vested Entitlements").

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, the Development Approvals, and any Subsequent Approvals (as defined in Section 1.2.9) for the Project, as the same may be amended from time to time upon Landowner's consent in its sole discretion and City's approval of the amendment in accordance with Section 6.4 of this Agreement. Except as otherwise specified herein, the Development Approvals (including this Agreement) and the Applicable Rules 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 ratios, provisions for reservation or dedication of land for public purposes, the conditions, terms, restrictions, and requirements for subsequent discretionary actions, the provisions for public improvements and financing of public improvements, and the other terms and conditions of development applicable to the Property. In the event of any conflict between the provisions of the Development Approvals and the Applicable Rules, the provisions of the Development Approvals shall control.

3.2.8 Except as provided herein, development of the Property shall be governed by the Development Approvals (including this Agreement), the Vested Entitlements, and the Applicable Rules.

3.2.9 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.

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

3.2.11 As set forth in Recitals G, J, and K above, the environmental effects of the Applicable Area Plan (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 and there is no liability in Landowner under this Agreement if development of the Project does not occur except with respect to Section 4.2.1 (Sales Tax Revenue). 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.

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 the Project. Landowner shall pay all required fees applicable to the Project 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.

3.4.2 As provided in California Government Code Section 65869.5, in the event that changes in State or Federal laws or regulations after the Enactment Date ("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 State or Federal 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, as modified or suspended upon mutual consent of the Parties, shall remain in full force and effect to the extent it is not inconsistent with such State or Federal Law. In the event that the State or Federal Law operates to frustrate irremediably and materially the vesting of development rights to the Project as set forth in this Agreement, Landowner may terminate this Agreement. 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. In the event that any such challenge is successful, this Agreement shall remain unmodified and in full force and effect, unless the Parties mutually agree otherwise, except that if the Term of this Development Agreement would otherwise terminate during the period of any such challenge and Landowner has not commenced with the development of the Project in accordance with this Agreement as a result of such challenge, the Term shall be extended for the period of any such challenge.

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, to cover the cost of City review of applications for any permit or other review by City department ("Processing Fees"), which are in force and effect within the jurisdiction of

the City for the class of Subsequent Approvals being applied for on a City-wide, which shall be paid at the rate then in effect.

3.5.2 All impact fees of any type, housing impact fees, sense of place fees (unless in-lieu projects are provided), transportation impact fees, fair share traffic impact fees not covered by transportation impact fees, other fees, or other monetary and non-monetary exactions imposed by the City ("Impact Fees"), 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, as applicable, on which they are imposed, existing as of the Enactment Date; provided that the Project shall not be subject to the Area Plan Sense of Place fee to the extent that Landowner funds improvements and/or dedicates land in lieu of payment of such fees in accordance with Exhibit D. Any City fee, exaction, or imposition imposed on the Project which is not a Processing Fee is an Impact Fee. The Impact Fees applicable to the Project as of the Enactment Date are listed in Exhibit B-1 (Applicable Impact Fees) and Exhibit B-2 (Intuitive Surgical Campus Project Fair Share Contribution Memo from Lillian Tsang dated August 2, 2021), attached hereto and incorporated herein by this reference. The City shall not impose on any portion of the Project for which Landowner obtains a building permit within six (6) years after the Effective Date (a) any change to an Impact Fee listed in Exhibit B-1 (other than by the inflator, if any, permitted in Exhibit B-1 using the specific index identified therein) and Exhibit B-2, or (b) any new Impact Fees that were not in effect within the jurisdiction and applicable to the Project and Subsequent Approvals on the Enactment Date, provided that Landowner obtains a certificate of occupancy for such portion of the Project within nine (9) years after the Effective Date. For any portion of the Project for which Landowner has not obtained a building permit within six (6) years after the Effective Date or for which Landowner obtained a building permit within such six (6) year period but did not obtain a certificate of occupancy within nine (9) years after the Effective Date, the City may impose Impact Fees that 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. Any Impact Fees levied against or applied to the Project must be consistent with the provisions of applicable California law, including the provisions of Government Code Section 66000 *et seq.* ("AB 1600"). Landowner retains all rights set forth in California Government Code Section 66020.

3.5.3 All taxes and assessments that are in force and effect within the jurisdiction of the City for other similarly situated taxpayers on which they are imposed, existing as of the Enactment Date. The Parties understand and agree that as of the Enactment Date the assessments listed on Exhibit E, attached hereto and incorporated herein by this reference, are the only assessments applicable to the Property, and the City is unaware of any pending efforts to initiate or consider applications for new or increased assessments covering any portion of the Property. If the City forms a new assessment district including the Property and the assessment district is City-wide or within the area of the Area Plan ("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 adopted in accordance with then-applicable law. 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. Commencing on the sixth (6th) anniversary of the Enactment

Date, the City may impose any increase in taxes or assessments or new taxes and assessments on the Property. Nothing herein shall prevent the City from imposing on the Project new Citywide or Area Wide general and special taxes adopted in accordance with California Const. Art. XIII C and D *et seq.*, otherwise known as Proposition 218. Nothing herein shall be construed so as to limit Landowner from exercising whatever rights it may otherwise have in connection with protesting or otherwise objecting to the imposition of taxes or assessments on the Property. In the event an assessment district is lawfully formed to provide funding for services, improvements, maintenance or facilities which are substantially the same as those services, improvements, maintenance or facilities being funded by the fees or assessments to be paid by Landowner under the Development Approvals (including this Agreement) (including without limitation any Area Wide assessment for traffic impacts), such fees or assessments to be paid by Landowner shall be subject to reduction/credit in an amount equal to Landowner's new or increased assessment under the assessment district. Alternatively, the new assessment district shall reduce/credit Landowner's new assessment in an amount equal to such fees or assessments to be paid by Landowner under the Development Approvals (including this Agreement).

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 consisting of the Uniform Building Code as modified by the California Building Code and the City Building Code and any ordinances which interpret these codes where such ordinances establish construction standards that are intended to be applied ministerially to the construction of improvements on private property and public infrastructure (including, without limitation, the City's building code, plumbing code, mechanical code, electrical code, fire code and grading code, and all other uniform construction codes) ("Building Regulations"), 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 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 enacted after the Enactment Date ("New City Laws") and 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 New City Law is in conflict with the terms of this Agreement, the terms of this Agreement shall prevail. Landowner reserves the right to challenge in court any New City Law that would be inconsistent or conflict with this Agreement, including the Vested Entitlements, or reduce the development rights provided by this Agreement. For purposes of this Section 3.6, the word "conflict" includes, without limitation, New City Laws that would (i) alter the Vested

Entitlements, or (ii) preclude compliance with, any provision of the Vested Entitlements, or (iii) limit or restrict the availability of public utilities, services, infrastructure or facilities (for example, but not by way of limitation, water rights, water connection or sewage capacity rights, sewer connections, etc.) to the Project, or (iv) impose limits or controls in the rate, timing, phasing or sequencing of the approval, construction, or development of all or any part of the Project, or (v) increase the permitted Impact Fees or add new Impact Fees, except as permitted by Section 3.5.2; or (vi) limit or control the location of buildings, structures, grading, or other improvements of the Project in a manner that is inconsistent with or more restrictive than the limitations included in the Development Approvals; or (vii) apply to the Project any New City Law otherwise allowed by this Agreement that not uniformly applied on a City-wide basis to all substantially similar types of development projects and project sites; or (viii) require the issuance of additional permits or approvals by the City other than those required by Applicable Rules; (ix) impose against the Project any condition, dedication or other exaction not specifically authorized by Applicable Rules; or (x) limit the processing or procuring of applications and approvals of Subsequent Approvals.

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, the electorate, or otherwise) affecting parcel or subdivision maps (tentative, vesting tentative or final), building permits, occupancy certificates, 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 New 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 New City Laws would conflict with this Agreement, such New City Laws shall not apply to the Property. The Parties, however, acknowledge that the City's approval of this Agreement and the Area 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 after following the provisions of Article 8. Notwithstanding the foregoing, Landowner reserves the right to challenge State or Federal Law (as provided in Section 3.4.2, Impact Fees (as provided in Section 3.5.2), taxes or assessments (as provided in Section 3.5.3), New City Laws (as provided in Section 3.6), new laws or regulations preventing compliance with the Agreement (as provided in Section 6.3) or any other provision of this Agreement

reserving to Landowner a right to challenge, and such challenge shall not give rise to a City right to terminate pursuant to this Section 3.9.

3.10 Landowner's Right to Rebuild. Landowner may rebuild the Project or element of the Project during the Term of this Agreement should it become necessary due to damage from any event, natural disaster or changes in seismic requirements, or should the buildings located within the Project become functionally outdated such that they do not adequately meet the needs of contemporary office, research and development and manufacturing facilities, within Landowner's sole discretion, due to changes in technology, 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, the Applicable Rules, or the Applicable Area Plan. Any such rebuilding or renovation shall be subject to the Vested Entitlements and 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.

3.11 Infrastructure Capacity. Subject to Landowner's installation of infrastructure in accordance with the requirements of the Development Approvals, City hereby acknowledges that it has sufficient capacity in its infrastructure services and utility systems necessary to serve the Project.

ARTICLE 4.
SPECIFIC CRITERIA OF THE PROJECT

4.1 Permitted Square Footage. Pursuant to the Development Approvals, the Conditions of Approval, and this Agreement, Landowner is allowed to construct on the Property two new three-story office/research and development/manufacturing buildings totaling 1,211,000 square feet (including 113,000 square feet of basement space); an 11,000 square foot amenity building; a central utility plant totaling 12,000 square feet; and a five-level, above-ground parking structure, a bridge over Kifer Road connecting two buildings, and, on-site landscaping and amenities including a Class I Shared-Use Path, all as more particularly described in Special Development Permit 2019-7557 and Exhibit C, conditioned upon Landowner meeting the requirements of the Applicable Area Plan, the Conditions of Approval, and the provisions 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 1,211,000 square feet, so long as the Community Benefits are part of the Project, as allowed under the Area Plan 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, if Landowner proceeds with construction of the Project during the Term of this Agreement (meaning that Landowner secures a building permit for the first office/research and development/manufacturing building in the Project ("First Building Permit") and commences work pursuant to that permit), Landowner has offered and agreed to provide, during the Term of this Agreement, the Community Benefits to the City in accordance with this Section 4.2.

4.2.1 Sales Tax Revenue. The Parties acknowledge that, during the Term of this Agreement, Landowner shall continue to pay sales tax in the City, to the extent required by law, as calculated and collected by the California Department of Tax and Fee Administration (CDFTA) and distributed to the City ("Sales Tax Revenue"). For each City fiscal year during the Term of this Agreement, Landowner shall guarantee that the City receives revenue that is at least the "Sales Tax Revenue Guarantee Amount". The "Sales Tax Revenue Guarantee Amount" is the average annual Landowner Sale Tax Revenue calculated by taking the average of the Sales Tax Revenue generated by the Landowner for City's Fiscal years 2018, 2019, and 2020. By October 31, of each year during the Term of this Agreement, Landowner and City shall confirm the Landowner's Sales Tax Revenue for the City's fiscal year that ended on June 30th of the year. If in any year during the Term of this Agreement the Sales Tax Revenue is less than the Sales Tax Revenue Guarantee Amount, by December 31st, the Landowner shall pay to the City the difference between the Sales Tax Revenue Guarantee Amount and the actual Sales Tax Revenue received by the City (the "Supplemental Payment"). Landowner intends that this Supplemental Payment shall be in addition to any other Impact Fee that is in force and effect within the jurisdiction of the City.

Notwithstanding the foregoing, in the event that the Sales Tax Revenue in any year is reduced below the amount of the Sales Tax Revenue Guarantee Amount due to a tax rule change that is beyond Landowner's control (including without limitation as a result of any interpretation of, or change to, the rules for imposition of sales tax or the calculation, collection, allocation, location, or distribution of sales tax revenue attributable to Landowner's sales by any taxing entity) ("Tax Rule Change"), then the Sales Tax Revenue Guarantee Amount shall be recalculated based on the Tax Rule Change. In no event shall this Agreement require Landowner in any year to pay both (i) the amount of any Tax Rule Change in the form of taxes to a jurisdiction other than City, and (ii) the amount of any Tax Rule Change in the form of the Supplemental Payment to the City.

4.2.2 Point of Sale. To the extent permitted by applicable law, Landowner shall designate the City as the point of sale for California sales and use tax purposes for Landowner's direct expenditures on the construction of Project buildings and improvements, provided in no event shall this Agreement require Landowner to pay sales and use tax to multiple jurisdictions on the same Project construction expenditures.

4.2.3 Recycled Water Line Extension. In furtherance of the goals of the City's CAP, Landowner will design, permit, fund and construct a minimum 8-inch recycled water line from the Wolfe Road/Kifer Road intersection to the western property line of 932 Kifer Road, which would serve the Property and potentially other properties in the City (the "Recycled Water Line"). No later than six months from the Effective Date, Landowner shall complete and submit to the City a feasibility analysis and design of the Recycled Water Line.

Landowner shall design and, subject to receipt of all required permits from the City and other agencies with jurisdiction (including compliance with CEQA), construct the Recycled Water Line prior to issuance of the First Final Certificate of Occupancy. Prior to issuance of permits for the construction of the Recycled Water Line, the City and Landowner shall enter into an agreement for the Recycled Water Line containing provisions regarding the private construction of public infrastructure in the public right-of-way, including standard

provisions for entry to investigate and construct, removal of mechanic's liens, City acceptance and ownership of the completed Recycled Water Line and City maintenance. Landowner shall provide performance security to the City assuring completion of the Recycled Water Line in accordance with the City standard requirements for security pursuant to the City's Subdivision Code.

4.2.4 Reach Codes. Although the Project would otherwise be exempt from the Reach Codes, Landowner shall meet or exceed the following minimum Reach Code standards in effect on the Enactment Date in furtherance of the City's CAP: all electric buildings; installation of a solar PV system of approximately 13.5 megawatts; and provision of EV infrastructure for 100% of the vehicle parking spaces with EV charging stations or EV capable for the future.

4.2.5 VTA Bus Stop. If prior to issuance of a building permit for the building on the south side of Kifer Road east of Commercial Street, VTA requests a bus pad in the street and a bus shelter behind the curb, Landowner shall install a bus pad and bus shelter per VTA's latest design standards and VTA's *Bus Stop Placement Closures and Relocation Policy (*https://www.vta.org/sites/default/files/documents/busstoppolicy.pdf) or as directed by the Department of Public Works. If VTA does not request either of these bus stop features within the time frame indicated above, then the Landowner is released from this requirement.

ARTICLE 5.
SUBSEQUENT APPROVALS

5.1 Subsequent Approvals. The City has approved the Development Approvals for the Project (Special Development Permit 2019-7557). The development of the Project may require Subsequent Approvals from the City.

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

5.1.2 With the Vested Entitlements, the City has made a final policy decision that the development of the Project, consistent with the Applicable Area Plan and the Applicable Rules, 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 Rules to change the policy decisions reflected by this Agreement. Nothing herein shall limit the ability of the City to require the necessary reports, analysis, or studies to assist in determining whether the requested Subsequent Approval is consistent with the Applicable Rules and this Agreement. City's review of the Subsequent Approvals shall be consistent with Applicable Rules 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 _____, 2021, to review the environmental effects of, and mitigation measures applicable to, any Subsequent Approvals. In the event that any additional CEQA documentation is legally

required for any discretionary Subsequent Approval for the Project, then the scope of such documentation shall be focused, to the extent possible consistent with CEQA, on the specific subject matter of the Subsequent Approval, and the City shall conduct such CEQA review as expeditiously as possible. 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 be inconsistent with the Development Approvals (including this Agreement) or the Applicable Rules and 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. In connection with approval of any Subsequent Approvals that implement and are consistent with the Development Approvals in effect on the Effective Date (including without limitation any minor modifications thereto), the City shall not impose conditions of approval that require dedications or reservations for, or construction or funding of, public infrastructure or public improvements beyond those already included in the Development Approvals, except to the extent required by CEQA review conducted in accordance with Section 5.1.2 of this Agreement. Developer may protest any conditions, dedications or fees imposed on Subsequent Approvals while continuing to develop the Project on the Property, such protest by Developer shall not delay or stop the issuance of building permits or certificates of occupancy.

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

ARTICLE 6.
AMENDMENT OF AGREEMENT AND DEVELOPMENT APPROVALS

6.1 Amendment or Cancellation. This Agreement may be amended from time to time or canceled in whole or in part by mutual consent of both Parties in writing, 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. All amendments to this Agreement shall automatically become part of the Development Approvals.

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 Enactment Date. No amendment or addition to those provisions which would materially affect the interpretation or enforceability of this Agreement or would prevent or preclude compliance with one or more provisions of this Agreement shall be applicable to this Agreement unless such amendment or addition is specifically required by a change in law by the California State Legislature, or is mandated by a court of competent jurisdiction. In the event of the application of such a change in law, the Parties shall meet in good faith to determine the feasibility of any modification or suspension of this Agreement that may be necessary to comply with such new law or regulation and to determine the effect such modification or suspension would have on the purposes and intent of this Agreement and the Vested Entitlements. Following the meeting between the Parties, the provisions of this Agreement may, to the extent feasible, and upon mutual agreement of the Parties, be modified or suspended but only to the minimum extent necessary to comply with such new law or regulation. 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. Landowner and/or City shall have the right to challenge any new law or regulation preventing compliance with the terms of this Agreement, and in the event such challenge is successful, this Agreement shall remain unmodified and in full force and effect. The Term of this Agreement may be extended for the duration of the period during which such new law or regulation precludes compliance with the provisions of this Agreement.

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 (in its sole discretion) and following the procedures for such amendment or modification contained in the Sunnyvale Municipal Code in accordance with the Applicable Rules (except as otherwise provided by Sections 3.4.2, 3.5.5, and 3.6). 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. Amendments to the Development Approvals shall be governed by the Development Approvals and the Applicable Rules, subject to Sections 3.4.2, 3.5.5, and 3.6. The City shall not request, process or consent to any amendment to the Development Approvals that would affect the Property or the Project without Landowner's prior written consent.

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 Resolution No. 371-81, the Planning Commission shall review Landowner's good faith compliance with this Agreement approximately every twelve (12) months from the Effective Date, commencing on the first anniversary of the Effective Date, provided that the date for calculation of the Sales Tax Revenue Guarantee Amount shall be as provided in Section 4.2.1. This 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.

Consistent with Resolution No. 371-81, or its successor provision, the 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 noticed public hearing. If the Planning Commission determines, in good faith based upon substantial evidence in the record, that 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, that 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.

The City Council shall conduct a noticed public hearing. If the City Council determines, in good faith based upon substantial evidence in the record, that 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 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 the Parties shall be entitled to their respective rights and 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. 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 Rules. 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 subsequent 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 shall not affect any requirement to comply with the Vested Entitlements or 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 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).

8.6 Termination by City. Notwithstanding any other provision of this Agreement, City shall not have the right to terminate this Agreement with respect to all or any portion of the Property before the expiration of the Term unless City complies with all termination procedures set forth in the Development Agreement Statute.

ARTICLE 9.
ESTOPPEL CERTIFICATE

Either Party may, at any time during the Term of this Agreement, 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.
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 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, provided, however, Landowner shall not have the right to assign the requirements of Section 4.2.1 without the prior consent of the City. If the Landowner requests the City's consent to assign the requirements of Section 4.2.1, Landowner shall provide the City with evidence of the assignee's sales tax generation, net worth and financial ability to meet the obligations of Section 4.2.1. City shall consent to the assignment of the obligations of Section 4.2.1 if in the City's reasonable determination the assignee with either generate sales tax greater than the Sales Tax Revenue Guarantee Amount and/or the assignee has sufficient financial ability to make the Supplemental Payment.

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, other than the obligations set forth in Section 4.2.1 from which Landowner shall not be released without the City's express consent.

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 the Development Approvals and Applicable Rules.

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 and Landowner are independent entities with respect to the terms and conditions of this Agreement, and 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 (including delivery by private courier) or by sending the notice by registered or certified mail return receipt requested, with postage prepaid, or delivered by nationally recognized overnight courier service 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:	Intuitive Surgical _____ Sunnyvale, CA 940__ Attn: _____
With a copy to:	Cox, Castle & Nicholson LLP 50 California Street, Suite 3200 San Francisco, CA 94111 Attn: Margo Bradish, Esq.

Either Party may change its mailing address at any time by giving ten (10) days' prior 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 in accordance with this Article 13.

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, the EIR, 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 as well as the City's attorney's fees incurred in defending nay 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 to the extent necessary or desirable to permit implementation of this Agreement.

14.1.3 Continued Processing. The filing of any Third Party Challenge against City or Landowner relating to this Agreement, the Development Approvals or other development issues affecting the Property shall not delay or stop the development, processing or construction of the Project or approval of any Subsequent Approvals, unless the third party obtains a court order preventing the activity. City shall not stipulate to or cooperate in the issuance of any such order

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 Landowner shall not discriminate against or segregate 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 Project on 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 Attorneys' Fees. Should the City prevail in a legal action to enforce the terms of Section 4.2.1 of this Agreement, the City shall be entitled to recover from the Landowner, in addition to any other amounts recovered, its reasonable attorneys' fees (including the City Attorney's in house fees) and costs incurred in such action. For purposes of this provision, the fees for the City Attorney's office shall be based on the fees then regularly charged by public attorneys with the equivalent number of years of experience in the subject matter area of the law for which such services were rendered who practice in San Francisco Bay Area law firms. The provisions of this Section 14.7 shall survive termination of this Agreement.

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 (3) duplicate originals, each of which is deemed to be an original. This Agreement, including its Exhibits, together with the Development Approvals, constitutes the entire understanding and agreement of the Parties. Said exhibits are identified as follows:

Exhibit A-1 and A-2:	Property Description and Depiction
Exhibit B-1:	Applicable Impact Fees
Exhibit B-2	Intuitive Surgical Campus Project Fair Share Contribution mem from Lillian Tsang dated August 2, 2021
Exhibit C:	Project Site Plan
Exhibit D:	Sense of Please Improvements In Lieu of Fees
Exhibit E	Existing Assessment

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 Limitation on Liability. Notwithstanding anything to the contrary contained in this Agreement, in no event shall: (a) any partner, officer, director, member, shareholder, employee, affiliate, manager, representative, or agent of Landowner or any general partner of Landowner or its general partners be personally liable for any breach of this Agreement by Landowner, or for any amount which may become due to City under the terms of this Agreement; or (b) any member, officer, agent or employee of City be personally liable for any breach of this Agreement by City or for any amount which may become due to Landowner under the terms of this Agreement.

14.15 Force Majeure. 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.

14.16 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 I 720 *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 I 720 *et seq.* If any provision of this Agreement shall be determined by any court of competent jurisdiction to result in a requirement to pay prevailing wages, such determination shall not invalidate or render unenforceable any provision hereof, provided, however, that the Parties agree that, in such event, the Parties shall meet and confer in good faith to determine whether any such provision of this Agreement that results in the requirement to pay prevailing wages can be modified while preserving the parties original intent in entering into this Agreement, and upon the mutual agreement of the Parties, such provisions may be modified.

14.17 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 and that all necessary board of directors', shareholders', partners', city council's, or other approvals have been obtained.

14.18 Counterpart Signatures. This Agreement may be executed in counterparts, each of which shall be an original, but all of which, when the executed signature pages are combined, 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

"Landowner"

INTUITIVE SURGICAL INC., a
Delaware corporation

By:_____
_____
_____

Date: _____

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

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.

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

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.

EXHIBIT "A-1"
Legal Description of the Property

For APN/Parcel ID{s): _____

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:

TO BE INSERTED PRIOR TO RECORDATION

EXHIBIT “A-2”

Depiction of the Property

TO BE INSERTED PRIOR TO RECORDATION

EXHIBIT "B-1"

Applicable Impact Fees

1. **Housing Impact Fee for Nonresidential Developments** (SMC § 19.75.030) (parking structures & amenity buildings exempt) (As of Effective Date increased annually by the increase in Engineering News-Record (ENR) Construction Cost Index for San Francisco Urban area, published by McGraw Hill on July 1 of each year)
   a. Office / Industrial / R&D (1 – 25,000 square foot) = $9.30 per applicable square foot
   b. Office / Industrial / R&D (25,001 square foot +) = $18.50 per applicable square foot
   c. **$18,886,494** = Estimated Housing Impact fee

2. **Transportation Impact Fee** (SMC § 3.50.050)
   Impact Fee--Area South of Route 237 (As of Effective Date increased annually by the increase in the Engineering News-Record (ENR) Construction Cost Index for San Francisco Urban area, published by McGraw Hill on July 1 of each year)
   a. Office, per 1,000 square feet = $5,120.00
   b. Industrial, per 1,000 square feet = $3,333.00
   c. Research and Development, per 1,000 square feet = $3,676.00
   d. Uses not enumerated, per trip = $3,436.00
   e. **$4,864,188** = Estimated Transportation Impact fee

3. **Art in Private Development Requirement** (SMC § 19.52 as it existed on December 11, 2020 per Ord. 2977-12 § 2)
   Provision of Art. Project shall provide publicly visible art on-site that is equal in value to one percent of the project construction valuation.
   Alternative to Provision of Art. Developers may choose to make a contribution to the public arts fund in-lieu of placing art on their project site. Developers shall allocate an in-lieu amount equal to 1.1 percent of the building valuation. The additional 0.1 percent is to be used for maintenance of art provided through the public arts fund. The in-lieu fee shall be paid prior to issuance of the building permit.

4. **Lawrence Station Sense of Place (SOP) Fee**
   Resolution 21-XXXX establishes the fee (As of Effective Date increased annually by the increase in the Engineering News-Record (ENR) Construction Cost Index for San Francisco Urban area, published by McGraw Hill on July 1 of each year)
   a. Office/Industrial/Research and Development, per net new square feet = $2.11
   b. The SOP fee for non-residential would apply to all square footage above 35% FAR (the former MS zoning allowable development)
   c. For the subject sites 35% FAR = 493,831 sf
   d. Square feet above 35% FAR = 717,169 sf
   e. **$1,513,227** = Estimated Sense of Place Fee

EXHIBIT B-2

Fair Share Traffic Improvements Memo

EXHIBIT “C”

Site Plan

TO BE INSERTED PRIOR TO RECORDATION

EXHIBIT “D”

Sense of Place Improvements in Lieu of Fees

Kifer Median Improvements	Construct approximately 12-foot wide planted median on Intuitive Surgical Inc.’s property frontage as described starting on page 22 of the Lawrence Station Sense of Place Plan and as depicted in Figure 3-8.
LSAP Signage	Install up to three LSAP gateway pylon signs consistent with signs described starting on page 34 and depicted in Figure 3-20 of the LSAP Sense of Place Plan.

EXHIBIT E

Existing Assessments

Sunnyvale School Dist	Measure BB 2018
Santa Clara Valley Water Dist	Safe, Clean Water
Santa Clara County-Vector Ctrl	SCCO Vector Control
Santa Clara County-Vector Ctrl	Mosquito Asmt #2
Santa Clara Valley Water District	Flood Ctl Debt-N Central
Fremont Union High School Dist	Measure J 2014
SF Bay Restoration Authority	Measure AA