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DEVELOPMENT AGREEMENT BY AND BETWEEN THE CITY OF SAN JOSE AND CISCO TECHNOLOGIES, INC. RELATIVE TO THE DEVELOPMENT OF PROPERTY IN NORTH SAN JOSE (ALVISO)

THIS DEVELOPMENT AGREEMENT ("hereinafter "Agreement") is entered into this 13th day of November, 2000 by and between CISCO TECHNOLOGIES, INC., a California corporation (hereinafter "DEVELOPER") and the CITY OF SAN JOSE, a municipal corporation (hereinafter "CITY"), pursuant to the authority of Section 65864 through 65869.5 of the California Government Code and pursuant to its powers as a charter city.

RECITALS

A. 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 which authorizes the City of San Jose and an applicant for a development project to enter into a development agreement, establishing certain development rights in the property which is the subject of the development project application.

B. DEVELOPER has a leasehold interest in the property described in Exhibit A (herein the "Subject Property"), attached hereto and incorporated herein by this reference.

C. DEVELOPER seeks to develop the Subject Property consistent with the San Jose General Plan (herein the "General Plan"). The General Plan provides for industrial park and combined industrial/commercial development in an area of North San Jose which includes the Subject Property.

D. DEVELOPER desires to substantially expand its corporate campus to the Subject Property to provide for future planned expansion. DEVELOPER desires to

127229.1

construct a multi-phase project consisting of up to ten (10) buildings with a total of approximately two million three hundred twenty-five thousand (2,325,000) square feet for office, research and development and light manufacturing uses ("Project"). Development of the Subject Property would be in accordance with that certain Planned Development Zoning PDCSH 99-05-054 attached as Exhibit B.

E. The Project and this Development Agreement were the subject of an Environmental Impact Report (EIR) prepared in conformance with the California Environmental Quality Act (CEQA) as amended and found complete by the Planning Commission on March 10, 2000 and the City Council, on appeal, upheld that certification and considered and approved the information and conclusions contained in the EIR prior to approving this Agreement.

The EIR prepared for the Project was intended to analyze the entire project and to provide environmental review to the fullest extent permitted by law for full build out of the entire two million three hundred twenty-five thousand (2,325,000) square feet of development.

F. By Ordinance No. 24297, the City Council adopted amended procedures to enable the CITY to enter into development agreements, pursuant to the authority of Sections 65864 through 65869.5 of the Government Code (herein both referred to as the "Development Agreement Ordinance" and "Development Agreement Statute", respectively).

G. On May 10, 2000, the Planning Commission, designated by Ordinance No. 24297 as the advisory agency for purposes of development agreement review pursuant to Government Code Section 65867, considered this Agreement in a duly noticed public hearing. On June 6, 2000, at a duly noticed public hearing and pursuant to the requirements of the California Environmental Quality Act, the City Council passed for publication Ordinance No. 26136 ("Adopting Ordinance") approving the Agreement, made appropriate findings that the provisions of this Agreement are consistent with the General Plan and the Development Agreement Ordinance, and authorized the execution of this Agreement.

H. Development of the Subject Property in accordance with the conditions of this Agreement will provide orderly growth and development of the Subject Property in accordance with the policies set forth in the General Plan.

I. The substantial investment by DEVELOPER in the Subject Property and the associated public improvements is and will be a substantial generator of fees, revenues, and taxes to CITY.

J. Development of the Subject Property in accordance with the parameters set forth in Planned Development Zoning PDCSH 99-05-054 will make a substantial contribution to the economic development of CITY in that it proposes a use consistent with the General Plan, is located on a legal parcel greater than five (5) acres, will create at least 500 jobs in the CITY, is a corporate headquarters and qualifies as a Special Handling project as defined by Council Policy 6-17.

K. The following prior approvals of CITY have been given with respect to DEVELOPER's development of the Subject Property:

(1) General Plan land use designation of Industrial Park and Combined Industrial/Commercial; and
(2) Planned Development Zoning. PDCSH 99-05-054; and
(3) Planned Development Permit PDSH 00-03-027;and
(4) Vesting Tentative Map No. PTSH 00-03-035; and

L. For the reasons recited herein, DEVELOPER and CITY have determined that the Project is a development for which this Agreement is appropriate. This Agreement will eliminate uncertainty in planning and provide for the orderly development of the Subject Property, provide for public services appropriate to the development of the Subject Property, ensure attainment of the maximum effective utilization of resources within CITY at the least economic cost to its citizens, and otherwise achieve the goals and purposes for which the Development Agreement Statute was enacted. In exchange for these benefits to CITY, together with the public benefits served by the development of the Project, the DEVELOPER desires to receive the assurance it may proceed with the Project in accordance with existing ordinances, resolutions, policies and regulations of CITY pursuant to the terms and conditions contained in this Agreement.

M. CITY's current Commercial-Residential-Mobilehome Park Building Tax as set forth in Chapter 4.47 of the San Jose Municipal Code is not applicable to the research and development, manufacture/assembly and warehousing uses which are currently proposed by DEVELOPER for the development. A point of sale operation which is purely incidental to the currently proposed uses will not result in the imposition of the current Commercial-Residential- Mobilehome Park Building Tax.

AGREEMENT:

Section 1. GENERAL PROVISIONS.

A. Property Description and Binding Covenants. The Subject Property is that property described in Exhibit A. It is intended and determined that the provisions of this Agreement shall constitute covenants which shall run with said property and the benefits and burdens hereof shall bind and inure to all successors in interest to the parties hereto.

B. Condition Precedent.

This Agreement shall have no force and effect unless executed by CITY, DEVELOPER by the effective date of Ordinance No. 26136 approving this Agreement.

C. Subsequent Conditions.

(1) DEVELOPER agrees that part of the Subject Property shall be occupied as part of the San Jose corporate campus of DEVELOPER within eight (8) years of the effective date of Ordinance No. 26136 approving this Agreement. This Agreement shall be null and void if DEVELOPER fails to fulfill this condition provided that CITY is not in default under the terms of this Agreement.

(2) Notwithstanding the provisions of Section 1.D, this Agreement shall become null and void if at least one half of square footage allocated to Phase One of the project, as defined in Planned Development Zoning PDCSH 99-05-054,

has not been constructed on the Subject Property, or on another site within the City of San Jose, within twelve (12) years from the effective date of Ordinance No. 26136.

D. Term.

(1) Subject to the subsequent conditions of Section 1.C, the term of this Agreement shall commence upon the effective date of Ordinance No. 26136 approving this Agreement and shall extend for a period of twenty (20) years from the effective date of the Adopting Ordinance. Howerver, in no instance shall the the term of this Agreement extend beyond the term of DEVELOPER's leasehold interest in the Subject Property unless DEVELOPER acquires fee title to the Subject Property.

Following the expiration of said term, this Agreement shall be deemed terminated and of no further force and effect.

(2) CITY agrees that the term of Vesting Tentative Map No. PTSH 00-03-035 shall be extended for the life of this Agreement pursuant to Government Code Section 66452.6.

E. Assignment.

(1) DEVELOPER shall have the right to sell, assign or transfer in whole or in part its rights, duties and obligations under this Agreement, to any person or entity at any time during the term of this Agreement without the consent of CITY; provided, however, in no event shall the rights, duties and obligations conferred upon DEVELOPER pursuant to this Agreement be at any time so transferred or assigned except through a transfer of the Subject Property. In the event of a transfer of a portion of the Subject Property, DEVELOPER shall have the right to transfer its rights, duties and obligations under this Agreement which are applicable to the transferred portion, and to retain all rights, duties and obligations applicable to the retained portions of the Subject Property. All subdivision, sales, and assignments shall be consistent with the requirements of Planned

Development Zoning PDCSH 99-05-054 attached as Exhibit B and any subsequent Planned Development Permits which are approved by CITY. Failure to comply with the terms of Planned Development Zoning PDCSH 99-05-054 and any subsequent Planned Development Permits by the assignee shall be a default under the terms of this Agreement.

(2) Upon the sale, transfer or assignment of DEVELOPER's rights and interests under this Agreement pursuant to Section 1. E(1), DEVELOPER shall be released from its obligations under this Agreement with respect to that portion of the Subject Property sold, transferred or assigned and any subsequent default or breach with respect to the transferred or assigned rights and/or obligations shall not constitute a default or breach with respect to the remaining rights and/or obligations under the Agreement, provided that (a) DEVELOPER has provided CITY with notice of such transfer pursuant to Section 1.F below, and (b) the transferee executes and delivers to CITY a written agreement in which (i) the name and address of the transferee is set forth; and (ii) the transferee assumes the obligations of the DEVELOPER under Section 3 below with respect to that portion of the Subject Property sold, transferred or assigned. Failure to deliver a written assumption agreement hereunder shall not affect the running of any covenants herein with the land, nor shall such failure negate, modify or otherwise affect the liability of any transferee pursuant to the provisions of this Agreement.

F. Notices. Formal written notices, demands, correspondence and communications between CITY and DEVELOPER shall be sufficiently given if dispatched by postage prepaid first class mail to the principal offices of CITY and DEVELOPER, as set forth in Section 9. Such written notices, demands, correspondence and communications may be directed in the same manner to such other persons and addresses as either party may from time to time designate. DEVELOPER shall give written notice to CITY, within ten (10) days after close of escrow, of any sale or transfer of any portion of the Subject Property and any assignment of this Agreement, specifying the name or names of the transferee, the transferee's mailing address, the amount and location of the land sold or transferred, and the name and address of a single person or entity to whom any notice relating to this Agreement shall be given.

G. Amendment or Cancellation of Agreement. This Agreement may be amended or canceled, in whole or in part, from time to time by mutual consent of CITY and any DEVELOPER whose property is affected, with CITY costs of processing amendments payable by amendment applicants, in accordance with the provisions of Government Code Sections 65867 and 65868 and the schedule of processing fees adopted by resolution of the City Council, subject to the following:

(1) The procedure for an amendment or cancellation shall be as specified in the Development Agreement Ordinance in effect on the effective date of this Agreement. An amendment may be granted upon a finding by the City Council that an amendment is consistent either with the General Plan and zoning codes in effect at the time the Adopting Ordinance was adopted or at the time of any amendment. Review of an amendment to this Agreement shall be limited to consideration of those provisions proposed to be added or changed.

(2) The issuance of any land use approval or permit which approves an increase in density, intensity of use, maximum height or maximum size of buildings, or a change in the permitted uses, provisions for reservation and dedication of land, conditions, terms, restrictions and requirements relating to subsequent discretionary actions, monetary contributions by the DEVELOPER, or changes in any other Vested Element (as defined in Section 2.A below) set forth in this Agreement, shall require an amendment to this Agreement for such change to be vested, but DEVELOPER shall have the right to develop in accordance with any such amendment changing a Vested Element at its election without adversely affecting vesting with respect to other Vested Elements not changed by such amendment.

(3) Any change in the design or other elements not specified in this Agreement to be a Vested Element shall not require an amendment of this Agreement. The Director of Planning shall make the determination as to whether an amendment is necessary.

(4) This Agreement shall also be subject to termination or modification pursuant to the provisions of Section 15 of the Development Agreement Ordinance.

Section 2. DEVELOPMENT OF THE SUBJECT PROPERTY.

A. Vested Elements. The permitted use of the Subject Property, the maximum density and intensity of use, the maximum height and maximum size of the proposed buildings, provisions for reservation or dedication of land for public purposes, and provisions for public improvements, and other terms and conditions of development applicable to said property are as set forth in:

(1) The General Plan for Industrial Park and Combined Industrial/Commercial designation as of the date of this Agreement;

(2) Planned Development Zoning PDCSH 99-05-054, the General Development Plan sets forth the maximum parameters for the total number of buildings, the maximum total square footage, the maximum building height and the number of parking spaces, but is illustrative only as to the precise number of buildings, height and square footage of each building, parking and pedestrian circulation configuration;

(3) Planned Development Permit PDSH 00-03-027;

(4) Vesting Tentative Map No. PTSH 00-03-035;

(5) The Alviso Masterplan in effect as of the date of this Agreement.

A "Summary of Vested Elements" is set forth in Exhibit C hereto.

B. Development Timing. Subject to the conditions of Section 1.C, there is no requirement under this Agreement that the DEVELOPER must initiate or complete development of any phase of the development nor that development be initiated or completed within any period of time set by CITY or in any particular order. However, nothing herein shall modify or amend any condition in Planned Development Permit PDSH 00-03-027 which states that said permit shall lapse unless construction of the first building is initiated within the specified time for commencement of construction. If Planned Development Permit PDCSH 00-03-027 lapses it shall no longer remain a vested element of this Agreement. It is the

intention of this provision that DEVELOPER be able to develop at DEVELOPER's sole discretion and in accordance with DEVELOPER's own time schedule. No future modification of the San Jose Municipal Code, or any ordinance or regulation which limits the rate of development over time shall be applicable, whether such modification, ordinance or regulation is adopted by initiative or otherwise. However, nothing herein shall be construed to relieve the DEVELOPER from any time conditions in any permit or to excuse the timely completion of any act which is required to be completed within a time period set by any applicable code or permit provisions as defined in Section 2.D.

Since the California Supreme Court held in Pardee Construction Co. v. City of Camarillo, 37 Cal.3d 465 (1984), that the failure of the parties to provide for the timing of development resulted in a later-adopted initiative restricting the timing of development and controlling the parties' agreement, it is the intent of CITY and DEVELOPER to avoid such a result by hereby acknowledging and providing for the right of DEVELOPER to develop in such order and at such rate and times as DEVELOPER deems appropriate within the exercise of its sole and subjective business judgment except as specifically stated otherwise in this Agreement. CITY acknowledges that such a right is consistent with the intent, purpose and understanding of the parties to this Agreement, and that without such a right, DEVELOPER's development would be subject to the uncertainties sought to be avoided by this Agreement.

C. Reserved Discretionary Approvals. Prior to issuance of building permits for development beyond that described in the Planned Development Permit PDSH 00-03-027, subsequent Planned Development Permits must be approved. Applications for such permit(s) will be processed under the Special Handling Procedure of the CITY's Planning Department.

D. Rules, Regulations and Official Policies.

(1) Development of the Subject Property shall be subject to all standards in the General Plan, the zoning codes, and other rules, regulations, ordinances and official policies applicable to such development on the effective date of this Agreement except as otherwise provided herein. Except as otherwise provided in this Section 2.D., to the extent any changes in the General Plan,

the zoning codes or other rules, ordinances, regulations or policies (whether adopted by means of an ordinance, City Charter amendment, initiative, resolution, policy, order or moratorium, initiated or instituted for any reason whatsoever and adopted by the Mayor, City Council, Planning Commission or any other Board, Commission or Department of CITY or any office or employee thereof, or by the electorate) are in conflict with the Vested Elements, the Vested Elements shall prevail. To the extent any provisions of future general plans, zoning codes or other rules, ordinances, regulations or policies, adopted on a city-wide basis, are applicable to the Subject Property and are not in conflict with the Vested Elements, such general plan, zoning codes or other rules, ordinances, regulations or policies shall be applicable.

(2) This Section shall not preclude the application to development of the Subject Property of changes in CITY laws, regulations, plans or policies, the terms of which are specifically mandated and required by changes in State or Federal laws or regulations. In the event State or Federal laws or regulations enacted after the effective date of this Agreement or action by any governmental jurisdiction other than CITY prevent or preclude compliance with one or more provisions of this Agreement or require changes in plans, maps or permits approved by CITY, the Agreement shall be modified, extended or suspended as may be necessary to comply with such State or Federal laws or regulations or the regulations of such other governmental jurisdictions. Immediately after enactment of any such new law or regulation, the parties shall meet and confer in good faith to determine any modification or suspension based on the effect such modification or suspension would have in light of the purposes and intent of this Agreement. In addition, DEVELOPER shall have the right to challenge the new law or regulation preventing compliance with the terms of this Agreement, and, to the extent such challenge is successful, this Agreement shall remain unmodified and in full force and effect.

(3) This Section shall not be construed to limit the authority or obligation of CITY to hold necessary public hearings or to limit the discretion of CITY or any of its officers or officials with regard to rules, regulations, ordinances, laws and entitlements of use which require the exercise of discretion by CITY or any of

its officers or officials, provided that subsequent discretionary actions shall not be in conflict with the Vested Elements.

(4) All applications for approvals, permits and entitlements shall be subject to the development and processing fees and taxes which are in force and effect at the time the application therefor is filed except as specifically provided herein:

(a) Applications for development approvals, permits and entitlements shall be subject to the Processing Fees in effect at the time the application is submitted. Such fees shall reflect the estimated and reasonable cost necessary to allow CITY to recover its actual costs of processing DEVELOPER's applications.

(b) CITY will apply the requirements set forth in Government Code §66000 et seq., or any successor statute, to any fees or exactions imposed on DEVELOPER in the same manner that such requirements are applied to other development in San Jose.

(c) CITY agrees to consider, in good faith, crediting DEVELOPER the cost of regional transportation improvements (the Montague Expressway improvements) funded or constructed by DEVELOPER against any future Congestion Management fee imposed in connection with the North San Jose Deficiency Plan or any future countywide Deficiency Plan.

(d) CITY shall not impose any new or additional fees upon the Project or any portion thereof for or related to housing so long as the Subject Property is developed in conformance with the requirements of Planned Development Zoning PDCSH 99-05-054.

(e) Various conditions, including a monetary exaction, have been imposed on the Project to satisfy North San Jose Deficiency Plan. Any new or additional conditions which are contained in any amended deficiency plan affecting the North San Jose area shall not be retroactively imposed on the Project. No additional mitigation

measures shall be placed on the Project when the North San Jose Deficiency Plan is amended except to the extent that the Congestion Management Agency or any Federal or State agency imposes such measures and specifically requires that such measures be imposed on the Project or on all similar industrial projects in North San Jose, in which case DEVELOPER may be entitled to a credit pursuant to Section 2.D.4(c).

(5) Nothing herein shall be construed to limit the authority of the CITY to adopt and apply codes, ordinances and regulations which have the legal effect of protecting persons or property from dangerous or hazardous conditions which create a substantial physical risk. This subsection is not intended to be used for purposes of general welfare or to limit intensity of development or use, but to protect and recognize the authority of CITY to deal with endangerments not adequately addressed at the time of the adoption of this Agreement.

(6) Codes, ordinances and regulations relating to construction standards or permits, for example, building and fire codes, shall apply as of the time of grant of each applicable construction permit except to the extent that such are in conflict with a Vested Element. In the case of conflict, the new codes, ordinances and regulations shall apply to new construction to the same extent as would be applicable in the case of substantial reconstruction of an existing structure.

Section 3. OBLIGATIONS OF THE PARTIES.

A. DEVELOPER's Obligations.

(1) If DEVELOPER elects to develop the Subject Property, said development shall be in accordance with the Planned Development Zoning PDCSH 99-05-054 and Planned Development Permit(s) issued for the Subject Property and DEVELOPER shall comply with the conditions of said permit(s), for each applicable phase of development, including landscaping improvements and congestion management actions in the time and manner specified therein;

provided however, that CITY's remedies under this Section 3.A. shall be limited to the remedies set forth in Section 4.B. of this Agreement.

(2) DEVELOPER agrees to make good faith efforts to participate in the voluntary San Jose First Employment program, in which CITY will provide employment screening and referral services for qualified job applicants to San Jose firms; and to continue to work collaboratively with CITY staff to maximize local allocation of revenue sources, provided that DEVELOPER's participation in these voluntary programs does not require additional administrative burdens or costs on DEVELOPER in its good faith estimation.

B. CITY's Obligations.

(1) City's Good Faith in Processing. CITY agrees that it will accept, process and review, in good faith and in a timely manner in accordance with the terms of this Agreement and Section 2.C. and 2.D. hereof, all complete applications for development permits (including subsequent Planned Development Permit(s)), lot line adjustments, certificates of compliance or other entitlements for use of the Subject Property in accordance with the General Plan and in full compliance with all applicable laws including, but not limited to the Subdivision Map Act, in order to fulfill the intent of this Agreement, and that all development permits will be subject to the CITY Planning Department's Special Handling Process.

(2) Cooperation with Developer. Subject to the reserved discretionary approvals set forth in Section 2.C. and the provisions of Section 2.D. hereof, CITY agrees to cooperate with DEVELOPER in securing all permits which may be required by CITY and in implementing the conditions of approval. CITY shall also cooperate with DEVELOPER in its endeavors to obtain any permits or approvals required from other governmental or quasi-governmental agencies having jurisdiction affecting the development of, or provision of services to, the Project. CITY agrees to consider use of its eminent domain powers in connection with public right-of-ways and improvements; provided that use of its eminent domain powers shall be in the sole discretion of CITY and subject to applicable laws.

Section 4. DEFAULT, REMEDIES, TERMINATION.

A. General Provisions. The provisions relating to defaults, remedies, termination and annual review of this Agreement shall be those provisions set forth in Sections 13 and 15 of the Development Agreement Ordinance, which are incorporated herein by reference.

B. Legal Actions. In addition to any other rights or remedies, a party may institute legal proceedings for mandamus, specific performance or other injunctive or declaratory relief to enforce this Agreement. In no event shall the CITY be liable to DEVELOPER or shall DEVELOPER be liable to CITY in damages for any breach or violation of this Agreement.

C. Applicable Law and Attorney's Fees. This Agreement shall be construed and enforced in accordance with the laws of the State of California. Should any legal action be brought by a party for breach of this Agreement or to enforce any provision herein, the prevailing party of such action shall be entitled to reasonable attorney's fees, court costs and such other costs as may be fixed by the Court. Reasonable attorney's fees of the City Attorney's Office shall be based on comparable fees of private attorneys practicing in Santa Clara County.

Section 5. HOLD HARMLESS AGREEMENT.

A. DEVELOPER hereby agrees to and shall hold CITY, its elective and appointive boards, commissions, 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 DEVELOPER or DEVELOPER's contractors', subcontractors', agents' or employees' operations under this Agreement, whether such operations be by DEVELOPER, or by any of DEVELOPER's contractors, subcontractors, or by any one or more persons employed by, or acting as agent for, DEVELOPER or any of DEVELOPER's contractors or subcontractors, excepting suits and actions brought by DEVELOPER for default of this Agreement or arising from the active negligence or willful misconduct of the CITY or its elected and appointed representatives, officers, agents and employees. DEVELOPER agrees to and shall pay CITY's costs of defense (or, at the sole option of CITY, DEVELOPER shall defend with

counsel reasonably approved by the City Attorney) and indemnify CITY and its elective and appointive boards, commissions, officers, agents and employees from any suits or actions at law or in equity arising out of the execution, adoption or implementation of this Agreement (exclusive of any such actions brought by DEVELOPER), such indemnification to include all costs of defense, judgments and any awards of attorneys' fees.

Section 6. PROJECT AS A PRIVATE UNDERTAKING.

It is specifically understood and agreed by and between the parties hereto that the development of the Subject Property is a separately undertaken private development. No partnership, joint venture or other association of any kind between DEVELOPER and CITY is formed by this Agreement.

Section 7. GENERAL.

A. The CITY agrees that unless this Agreement is amended or canceled pursuant to the provisions of this Agreement and the Development Agreement Ordinance, this Agreement shall be enforceable according to its terms, subject to the reserved discretionary approvals and other matters set forth in Section 2 hereof, by DEVELOPER notwithstanding any change hereafter in any applicable general plan, zoning ordinance, subdivision ordinance or building regulation adopted by CITY which changes, alters or amends the rules, regulations and policies applicable to the development of said property at the time of approval of this Agreement, as provided by Government Code Section 65866. Nothing herein shall be construed to limit the authority of CITY to fix the amount of fees which may otherwise lawfully imposed by CITY, as set forth in Section 2.D. of this Agreement.

B. CITY hereby finds and determines that execution of this Agreement is in the best interest of the public health, safety and general welfare and is consistent with the General Plan.

C. Nothing in this Agreement is intended to create duties or obligations to or rights in third parties not parties (or Permitted Assignees) to this Agreement.

Section 8. CONSTRUCTION.

This Agreement shall be subject to and construed in accordance and harmony with the Municipal Code of the City of San Jose as it may be amended, provided that such amendments do not affect the rights granted to the parties by this Agreement.

Section 9. NOTICES.

All notices required by this Agreement, the Development Agreement Ordinance, or the procedure adopted pursuant to Government Code Section 65865, shall be in writing and delivered in person or sent by first class, postage prepaid.

Notice required to be given to the CITY shall be addressed as follows:

Director of Planning
City of San Jose
801 North First Street
San Jose, CA 95110

with copies to:

City Attorney
City of San Jose
151 West Mission Street
San Jose, CA 95110

Notice required to be given to the DEVELOPER shall be addressed as follows:

CISCO TECHNOLOGIES, INC.
ATTN: Ellen Jamason
Director of Real Estate
170 W. Tasman
San Jose, CA 95134

with copies to:

Brobeck, Phleger & Harrison
ATTN: Susan R. Diamond, Esq.
One Market
Spear Street Tower
San Francisco, CA 94105

Any party may change the address stated herein by giving notice in writing to the other party, and thereafter notices shall be addressed and transmitted to the new address.

Section 10. MORTGAGE PROTECTION.

A. Mortgage Protection. This Agreement shall be superior and senior to any lien placed upon the Subject Property or any portion thereof after the date of recording the Agreement, including the lien of any deed of trust or mortgage ("Mortgage"). Notwithstanding the foregoing, no breach hereof 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 shall be binding upon and effective against and shall run to the benefit of any person or entity, including any deed of trust beneficiary or mortgagee ("Mortgagee"), who acquires title or possession to the Subject Property, or any portion thereof, by foreclosure, trustee's sale, deed in lieu of foreclosure, lease termination, eviction or otherwise. The term "Mortgagee" shall include any holder of fee title to the Subject Property subject to a lease with option to purchase.

B. Mortgagee Not Obligated. Notwithstanding the provisions of Section 10. A. above, no Mortgagee shall have any obligation or duty under this Agreement to construct or complete the construction of improvements, or to guarantee such construction or completion; provided, however, that a Mortgagee shall not be entitled to devote the Subject Property to any use except in full compliance with the Master Permit nor to construct any improvements thereon or institute any uses other than those uses or improvements provided for or authorized by the Agreement, or otherwise under the existing approvals.

C. Notice of Default to Mortgagee. If CITY receives a notice from a Mortgagee requesting a copy of any notice of default given DEVELOPER hereunder and specifying the address for service thereof, then CITY agrees to use its best efforts to deliver to such Mortgagee, concurrently with service thereon to DEVELOPER,

any notice given to DEVELOPER with respect to any claim by CITY that DEVELOPER has committed an event of default, and if CITY makes a determination of noncompliance hereunder, CITY shall likewise use its best efforts to serve notice of such noncompliance on such Mortgagee concurrently with service thereon on DEVELOPER. Each Mortgagee shall have the right during the same period available to DEVELOPER 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. If a Mortgagee shall be required to obtain possession in order to cure any default, the time to cure shall be tolled so long as the Mortgagee is attempting to obtain possession, including by appointment of a receiver or foreclosure.

Section 11. DUPLICATE ORIGINALS

This Agreement is executed in 5 duplicate originals, each of which is deemed to be an original. This Agreement consists of 20 pages and 3 exhibits which constitutes the entire understanding and agreement of the parties. Said exhibits are identified as follows:

Exhibit A: Description of the Subject Property
Exhibit B: General Development Plan for Planned Development Zoning PDCSH 99-05-054
Exhibit C: Summary of Vested Elements

Section 12. ESTOPPEL CERTIFICATE.

DEVELOPER may, at any time, and from time to time, deliver written notice to the other party requesting such party to certify in writing that, to the knowledge of the certifying party, (a) this Agreement is in full force and effect and a binding obligation of the parties, (b) the Agreement has not been amended or modified either orally or in writing, and if so amended, identifying the amendments, and (c) the requesting party is not in default in the performance of its obligations under the Agreement, or if in default, to describe therein the nature and amount of any such defaults. CITY agrees to cooperate with DEVELOPER and process such request in good faith. Either the City

Manager or the Planning Director of CITY shall have the right to execute any certificate requested by DEVELOPER hereunder.

SECTION 13. RECORDATION.

Within ten (10) days after the effective date of this Agreement, the City Clerk shall have the Agreement recorded with the County Recorder. If the parties to the Agreement or their successors in interest amend or cancel the Agreement as hereinabove provided, or if the CITY terminates or modifies the Agreement as hereinabove provided, the City Clerk shall have notice of such action recorded with the County Recorder.

SECTION 14. ENFORCED DELAY.

In addition to specific provisions of this Agreement, neither party shall be deemed to be in default under this Agreement where delays in performance or failures to perform are due to war, insurrection, strikes, or other labor disturbances, walkouts, riots, floods, earthquakes, fires, inclement weather, casualties, acts of God, governmental restrictions imposed or mandated by other governmental entities, enactment of conflicting state or federal laws or regulations, new or supplemental environmental regulations, judicial decisions, administrative appeals, litigation or similar basis for excused performance which is not within the reasonable control of the party to be excused. Upon the request of either party hereto, extension of time for such cause will be granted in writing for the period of the enforced delay, or longer as may be mutually agreed upon.

WITNESS THE EXECUTION THEREOF on the day and year first hereinabove written.

"CITY"

APPROVED AS TO FORM:

Renée N. Gurra
THOMAS B. RUBY
Senior Deputy City Attorney

CITY OF SAN JOSE, a municipal corporation

By: Patricia L. O'Hearn

PATRICIA L. O'HEARN
City Clerk