

**DEVELOPMENT AGREEMENT
BY AND BETWEEN
THE CITY OF SAN JOSE
AND
THE IRVINE COMPANY
RELATIVE TO THE DEVELOPMENT OF
THE RIVER OAKS MULTIFAMILY RESIDENTIAL PROJECT
IN NORTH SAN JOSE**

This Development AGREEMENT (“AGREEMENT”) is made and entered into this _____ day of _____, 2012 (the “EFFECTIVE DATE”) by and between the City of San Jose, a municipal corporation (“CITY”), and The Irvine Company, a _____ (“IRVINE”), pursuant to the authority of Sections 65864 through 65869.5 of the California Government Code (the “DEVELOPMENT AGREEMENT STATUTE”) and pursuant to CITY’s powers as a charter city, including, without limitation, CITY Ordinance No. 28986 (the “DEVELOPMENT AGREEMENT ORDINANCE”).

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 the DEVELOPMENT AGREEMENT STATUTE that authorizes CITY and an applicant for a development project to enter into a development agreement establishing certain development rights in the real property that is the subject of the development project application.

B. IRVINE owns in fee title that certain real property approximately 8.1 gross acres in size, located at 401 and 405 River Oaks Parkway in the City of San Jose, County of Santa Clara, State of California, and more particularly described in EXHIBIT “A” attached hereto and incorporated herein by this reference, entitled “Subject Property Legal Description” (the “SUBJECT PROPERTY”), and IRVINE seeks to demolish existing structures and attendant infrastructure on the SUBJECT PROPERTY and develop, consistent with CITY’s Envision San José 2040 GENERAL PLAN (the “GENERAL PLAN”) and CITY’s North San José Area Development Policy (the “NORTH SAN JOSE POLICY”), as amended to the EFFECTIVE DATE, and in conformance with and as described in the DEVELOPMENT APPROVALS as defined in Recital ___ below, a high density, multifamily residential development project consisting of up to 450 Class A, multi-family residential units (the “PROJECT”).

C. The environmental impacts of the PROJECT and this AGREEMENT were disclosed, analyzed and evaluated as a part of that certain Final Environmental Impact Report prepared for the NORTH SAN JOSE POLICY in conformance with the California

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Environmental Quality Act of 1970, together with state and local implementation regulations and ordinances, all as amended to the EFFECTIVE DATE (collectively, "CEQA"), together with that certain addendum to the Final Environmental Impact Report prepared for the NORTH SAN JOSE POLICY prepared for the PROJECT and dated March 2, 2012, all pursuant to CEQA (collectively, the Final Environmental Impact Report and the addendum thereto are referred to as the "PROJECT ENVIRONMENTAL CLEARANCE"). On March 7, 2012, the Planning Commission for the City of San José reviewed and considered the PROJECT ENVIRONMENTAL CLEARANCE and determined that it is adequate, accurate and objective prior to recommending approval of this AGREEMENT to CITY Council.

D. On March 7, 2012, the Planning Commission of CITY, designated by the DEVELOPMENT AGREEMENT ORDINANCE as the advisory agency for purposes of development agreement review, considered this AGREEMENT at a duly noticed public hearing and made appropriate findings that the provisions of this AGREEMENT are consistent with the GENERAL PLAN, as amended, and the DEVELOPMENT AGREEMENT ORDINANCE.

E. The City Council, after conducting a duly noticed public hearing on March 20, 2012, considered, confirmed and approved that the PROJECT ENVIRONMENTAL CLEARANCE adequately addresses the environmental impacts of the PROJECT at the SUBJECT PROPERTY and this AGREEMENT, approved the form of this AGREEMENT, authorized the execution of this AGREEMENT, and found that the provisions of this AGREEMENT are consistent with the GENERAL PLAN, as amended, and the DEVELOPMENT AGREEMENT ORDINANCE.

F. The parties hereto believe and understand that development of the PROJECT on the SUBJECT PROPERTY in accordance with the GENERAL PLAN, as amended, the DEVELOPMENT APPROVALS, and the provisions and conditions of this AGREEMENT will provide for the orderly growth and development of the SUBJECT PROPERTY in accordance with the policies set forth in the GENERAL PLAN.

G. IRVINE will comply with all applicable laws and conditions of approval to develop the PROJECT on the SUBJECT PROPERTY and ensure that development of the PROJECT on the SUBJECT PROPERTY is in accordance with the GENERAL PLAN, the DEVELOPMENT APPROVALS and this AGREEMENT.

H. The CITY finds that the PROJECT meets the criteria set forth in Section 10 of the DEVELOPMENT AGREEMENT ORDINANCE in that:

(1) Development of the PROJECT on the SUBJECT PROPERTY as described in the PROJECT ENVIRONMENTAL CLEARANCE is consistent with the

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GENERAL PLAN and NORTH SAN JOSE POLICY, as amended as of the EFFECTIVE DATE; and

(2) Development of the PROJECT should be encouraged because it will help meet important economic, social, environmental and planning goals of the CITY, including but not limited to: locating housing near jobs to reduce commutes for San Jose residents, redeveloping underutilized property near transit investment with housing and jobs so as to encourage use of transit; and

(3) This AGREEMENT will facilitate the development of the PROJECT on the SUBJECT PROPERTY in the manner proposed in this DEVELOPMENT AGREEMENT in that it will allow the PROJECT as a market-rate residential project, while providing for an extraordinary contribution towards affordable housing; and

(4) IRVINE will incur unusually substantial costs in order to provide funding for affordable housing from which the general public will benefit; and

(5) IRVINE has made a commitment to a very high standard of quality for the PROJECT and has agreed to development standards beyond existing City requirements.

I. IRVINE's strong commitment to high-quality development and the provision of extraordinary public benefits in connection with the PROJECT are material considerations inducing CITY to enter into this AGREEMENT with IRVINE insofar as CITY expects to receive substantial benefits from the development of the PROJECT on the SUBJECT PROPERTY, including the creation of additional housing opportunities for existing and new residents and the creation of transit-oriented residential development, together with significant contributions to affordable housing in the City, all of which will contribute to the overall in-fill development and planning goals and policies of the CITY.

J. Pursuant to the DEVELOPMENT APPROVALS, the CITY has approved and entitled the SUBJECT PROPERTY for the development of the PROJECT.

K. This AGREEMENT will eliminate or significantly diminish uncertainty in development planning and provide for the orderly development of the SUBJECT PROPERTY with the PROJECT, facilitate the ability to provide affordable housing through extraordinary contributions from IRVINE, and otherwise achieve the goals and purposes for which CITY has enacted the DEVELOPMENT AGREEMENT ORDINANCE. In exchange for the benefits provided to the CITY, together with the public benefits served by development of the SUBJECT PROPERTY, IRVINE desires to receive assurance that it may proceed with the PROJECT on the SUBJECT PROPERTY in accordance with the DEVELOPMENT APPROVALS. IRVINE would not proceed to develop the PROJECT at this time were it not assured that the entire

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PROJECT could be developed on the SUBJECT PROPERTY in accordance with the DEVELOPMENT APPROVALS.

L. CITY and IRVINE have taken all actions mandated by and fulfilled all requirements set forth in the DEVELOPMENT AGREEMENT ORDINANCE of CITY.

M. The following prior approvals of CITY have been granted with respect to the SUBJECT PROPERTY and IRVINE's development of the PROJECT (collectively, the "DEVELOPMENT APPROVALS"):

- (1) GENERAL PLAN designation of Industrial Park with Transit Employment Residential Overlay; and
- (2) Planned Development Rezoning PDC11-018 to the IP(PD) Industrial Zoning District; and

N. For the reasons recited herein, the parties each have determined for themselves that the PROJECT is a development for which this AGREEMENT is appropriate.

AGREEMENTS

Section 1. General Provisions

A. SUBJECT PROPERTY Description

The SUBJECT PROPERTY is that certain real property located in the City of San Jose, County of Santa Clara, State of California and more particularly described in the Subject Property Legal Description, attached hereto as EXHIBIT "A."

B. Term

The term of this AGREEMENT shall commence upon the later of the EFFECTIVE DATE set forth hereinabove or the EFFECTIVE DATE of Ordinance No. _____ approving this AGREEMENT (hereinafter, the "ADOPTING ORDINANCE") and shall extend to and through December 31, 2015, unless said term is earlier terminated, modified or extended by circumstances set forth in this AGREEMENT or by mutual consent of the parties hereto, subject to the terms and conditions of this AGREEMENT. Following the expiration or termination of said term, this AGREEMENT shall be deemed terminated and of no further force and effect.

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C. Notices

Formal written notices, demands, correspondence and communications between CITY and IRVINE shall be deemed sufficiently given if dispatched by postage-prepaid, first class mail, or by personal service to the principal offices of CITY or IRVINE, as appropriate, and as set forth in SECTION ___ herein below. 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 by notice to the other that meets the noticing provisions hereof.

D. Amendment or Cancellation of AGREEMENT

This AGREEMENT may be amended or cancelled, in whole or in part, from time to time by mutual consent of the parties hereto, with CITY costs payable by amendment applicants, in accordance with the provisions of California Government Code Sections 65867 and 65868 and the schedule of fees adopted by resolution of CITY's City Council, subject to the following:

(1) The procedure for an amendment or cancellation of this AGREEMENT shall be as specified in the DEVELOPMENT AGREEMENT ORDINANCE, and this AGREEMENT is subject to termination or modification pursuant to the provisions of the DEVELOPMENT AGREEMENT ORDINANCE.

(2) The issuance of any land use approval or permit that 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 IRVINE, or any other VESTED ELEMENT set forth in this AGREEMENT, shall require an amendment to this AGREEMENT for such change to be vested, but IRVINE shall have the right to develop the SUBJECT PROPERTY 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 of the PROJECT that are not specified in this AGREEMENT to be a VESTED ELEMENT shall not require an amendment to this AGREEMENT. The Director of Planning, Building and Code Enforcement ("DIRECTOR") shall be authorized to make a determination as to whether an amendment to this AGREEMENT is necessary.

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E. IRVINE shall not sell, assign, or transfer any of its interests or obligations under this AGREEMENT with respect to the SUBJECT PROPERTY, or any portion thereof, without the prior written consent of CITY, which consent shall not be unreasonably withheld.

Section 2. Development of the SUBJECT PROPERTY

A. VESTED ELEMENTS

The permitted use(s) of the SUBJECT PROPERTY, the maximum density and intensity of use(s), the maximum height and maximum square footage of the proposed buildings and maximum residential units, as well as provisions for reservation or dedication of land for public purposes, and provisions for public improvements, and other terms and conditions of development applicable to the SUBJECT PROPERTY are referred to as vested elements of this AGREEMENT (“VESTED ELEMENTS”) and are set forth in the following documents and approvals:

- (1) The DEVELOPMENT AGREEMENT APPROVALS;
- (2) The PROJECT ENVIRONMENTAL CLEARANCE; and
- (3) This AGREEMENT.

For purposes of this AGREEMENT, VESTED ELEMENTS are vested in order to provide assurance to IRVINE that the PROJECT can be built on the SUBJECT PROPERTY in conformance with the DEVELOPMENT APPROVALS granted by the CITY as described in this AGREEMENT, subject to the limitations and provisions of this AGREEMENT.

B. Development Timing

IRVINE shall commence development of the PROJECT on the SUBJECT PROPERTY on or before December 31, 2013 and shall diligently pursue completion of the PROJECT by obtaining a Certificate of Occupancy for the PROJECT on or before December 31, 2015. In the event that IRVINE fails to obtain building permits to commence construction of the PROJECT on the SUBJECT PROPERTY prior to December 31, 2013, this AGREEMENT shall be deemed terminated as of midnight on January 1, 2014, all reservations or allocations of market-rate units made for the PROJECT shall revert to the affordable housing pool for Phase I under and pursuant to the NORTH SAN JOSE POLICY, and any portion of the AFFORDABLE HOUSING CONTRIBUTION made by IRVINE pursuant to SECTION 3 below shall be returned to IRVINE.

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C. Reserved Discretionary Approvals

Planned Development Rezoning PDC11-018 has been approved and adopted for the development of the PROJECT on the SUBJECT PROPERTY and is a VESTED ELEMENT under this AGREEMENT. IRVINE will first need to obtain a planned development permit(s) and other future discretionary approvals to complete construction and development of the PROJECT on the SUBJECT PROPERTY as described in the VESTED ELEMENTS, including without limitation the DEVELOPMENT APPROVALS (such necessary future approvals are collectively referred to herein as "RESERVED DISCRETIONARY APPROVALS"). CITY agrees to cooperate with IRVINE to facilitate the processing of and to expeditiously process all future applications for such RESERVED DISCRETIONARY APPROVALS, and CITY shall exercise its discretion in a manner consistent with and in recognition of this AGREEMENT and the other VESTED ELEMENTS. CITY and IRVINE shall meet to identify all necessary RESERVED DISCRETIONARY APPROVALS and to develop a schedule for timely processing of such RESERVED DISCRETIONARY APPROVALS. CITY and IRVINE agree to cooperatively work together to ensure timely review and processing of the RESERVED DISCRETIONARY APPROVALS.

D. Rules, Regulations and Official Policies

(1) Development of the SUBJECT PROPERTY shall be subject to all standards in the GENERAL PLAN, the NORTH SAN JOSE POLICY, the zoning code, and other rules, regulations, ordinances and official policies of CITY applicable to the ability to develop the PROJECT on the SUBJECT PROPERTY in effect at the time, except as otherwise provided in the VESTED ELEMENTS described herein.

(2) This SECTION shall not preclude the application to development of the PROJECT or 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 the CITY prevent or preclude compliance with one or more provisions of this AGREEMENT or require changes in plans, maps or permits approved by the CITY, this AGREEMENT shall be modified, extended or suspended as may be necessary to comply with such State or Federal law or regulation or the regulation of such other governmental jurisdiction.

(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

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or officials, provided that subsequent discretionary actions shall not be in conflict with the VESTED ELEMENTS.

(4) Notwithstanding anything herein to the contrary, 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.

(5) Nothing herein shall be construed to limit the authority of the CITY to adopt and apply codes, ordinances, regulations and policies 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 the CITY to deal with endangerment's 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. IRVINE's Obligations

(1) Development. If IRVINE elects to develop the PROJECT on the SUBJECT PROPERTY, IRVINE shall carry out its obligations to make those improvements and to develop the SUBJECT PROPERTY and PROJECT as required by the DEVELOPMENT APPROVALS, consistent with the VESTED ELEMENTS, and the development timing schedule set forth in SECTION 2.B above and shall fully and timely comply with all of the terms and conditions of this AGREEMENT.

(2) Residential Conversion - North San Jose Policy.

(a) The parties acknowledge and agree that development of the SUBJECT PROPERTY is subject to the NORTH SAN JOSE POLICY, including without limitation the phasing requirements and limitations for residential development in the NORTH SAN JOSE POLICY area, as amended as of the EFFECTIVE DATE.

(b) The parties further acknowledge their mutual understanding that as of March 20, 2012: (i) the SUBJECT PROPERTY does not

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contain an important, vital or driving industrial use, as the structures located on the SUBJECT PROPERTY are vacant; (ii) the SUBJECT PROPERTY is not adjacent to an industrial use that would be adversely affected by a residential development, and (iii) the SUBJECT PROPERTY is not located in close proximity to a use that would create a hazardous condition for proposed residential development.

(c) The parties further acknowledge that the NORTH SAN JOSE POLICY allows for the conversion of affordable housing units allocation to market rate units when a developer ensures through a development agreement the provision of a substantial benefit to the CITY toward the creation of new affordable housing in the City of San Jose and the proposed development is a shovel-ready project that would begin construction within eighteen months of the effective date of the development agreement, and, in addition, that development of the PROJECT on the SUBJECT PROPERTY in the manner described in this AGREEMENT and in accordance with all of the terms and conditions of this AGREEMENT, including without limitation the provisions pertaining to the AFFORDABLE HOUSING CONTRIBUTION described below, qualifies for such a conversion, not to exceed four hundred and fifty residential units.

(d) IRVINE agrees to pay to CITY, by wire transfer to an account selected by CITY and in the manner set forth in this AGREEMENT, a contribution in the total amount of Six Million Eight Hundred Eighty-Five Thousand Dollars (\$6,885,000), which contribution amount has been calculated based upon the manner in which an in-lieu fee for inclusionary housing would have been calculated under that certain Inclusionary Housing Policy adopted by CITY on November 2, 2010, plus an additional contribution amount of Two Million Dollars (\$2,000,000) (collectively, the "AFFORDABLE HOUSING CONTRIBUTION"). The AFFORDABLE HOUSING CONTRIBUTION assumes that IRVINE develops 450 residential units as a part of the PROJECT, with each residential unit comprising a net square footage of nine hundred (900) square feet. IRVINE and CITY agree that the ultimate amount of the AFFORDABLE HOUSING CONTRIBUTION to be paid to CITY by IRVINE pursuant to this AGREEMENT will be adjusted by CITY utilizing the same in-lieu fee calculation described above based upon the actual residential units to be constructed as a part of the PROJECT and the net square footage of those residential units.

(e) IRVINE shall pay the AFFORDABLE HOUSING CONTRIBUTION to CITY in accordance with the following installment timeline and schedule for such contribution payment:

(i) IRVINE shall pay to CITY in full the amount of Six Million Eight Hundred Eighty-Five Thousand Dollars, (\$6,885,000), which amount will be adjusted by CITY as described above, on or before the date that the first building permit is issued that authorizes any residential construction for the PROJECT; and

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(ii) IRVINE shall pay to CITY in full the amount of Two Million Dollars (\$2,000,000) on or before the date that any certificate of occupancy is issued by the PROJECT.

(3) Affordable Housing – CITY and IRVINE agree that IRVINE's payment of the AFFORDABLE HOUSING CONTRIBUTION to CITY in compliance with all of the terms and conditions set forth in this AGREEMENT satisfies any and all of IRVINE's inclusionary housing requirements for CITY in connection with the development of the PROJECT under CITY's Inclusionary Housing Policy.

B. CITY's Obligations.

(1) Unit Reservation. Upon the EFFECTIVE DATE of this AGREEMENT, CITY agrees to reserve for IRVINE's PROJECT in accordance with the terms and conditions of the NORTH SAN JOSE POLICY four hundred fifty (450) market-rate residential units within Phase I of the NORTH SAN JOSE POLICY.

(2) Unit Allocation. Upon completion of the plan check process for the issuance of building permits for construction of the first residential building of the PROJECT, CITY agrees to allocate to IRVINE under and pursuant to the NORTH SAN JOSE POLICY up to four hundred fifty (450) market-rate units within Phase I of the NORTH SAN JOSE POLICY for the PROJECT, based upon the actual number of units to be constructed as a part of the PROJECT.

(3) CITY's Processing of Applications. CITY agrees that it will accept, process and review all complete applications for development permits necessary to construct and develop the PROJECT on the SUBJECT PROPERTY in accordance with the terms and conditions of the VESTED ELEMENTS, including the terms of this AGREEMENT, and all other applicable laws, regulations and policies.

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 this reference.

B. Developer Default; Enforcement. No building permit shall be issued or building permit application accepted for the building shell of any structure on the SUBJECT PROPERTY if IRVINE is in default of the terms and conditions of this AGREEMENT.

C. Default by City. In the event CITY is in default under the terms of this AGREEMENT, CITY agrees that IRVINE shall not be obligated to proceed with or complete the improvements required under this AGREEMENT, or any phase thereof,

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nor shall resulting delays in IRVINE's performance caused by CITY's default constitute grounds for termination or cancellation of this AGREEMENT by CITY.

D. 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 in damages for any breach or violation of this AGREEMENT.

In the event this AGREEMENT shall be found void for any reason whatsoever, neither party shall be limited to any remedy in law or equity available at the time the AGREEMENT is found void.

E. 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.

IRVINE 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 the IRVINE's or IRVINE's contractors', subcontractors', agents' or employees' operations under this AGREEMENT, whether such operations be by IRVINE, or by any of IRVINE's contractors, subcontractors, or by any one or more persons directly or indirectly employed by, or acting as agent for IRVINE or any of IRVINE's contractors or subcontractors, excepting suits and actions brought by the IRVINE for default of this AGREEMENT or arising from the sole active negligence or willful misconduct of the CITY. IRVINE agrees to and shall pay CITY's costs of defense (or, at the sole option of CITY, IRVINE shall defend with counsel 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 IRVINE), such indemnification to include all costs of defense, judgments and any awards of attorneys' fees.

Section 6. PROJECT as a Private Undertaking.

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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 IRVINE and CITY is formed by this AGREEMENT.

Section 7. General/No Third Party Beneficiary.

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 herein, by IRVINE 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 the PROJECT on the SUBJECT 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 or charges which may otherwise lawfully be imposed by CITY, as set forth in Section 2 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 and DEVELOPMENT AGREEMENT ORDINANCE.

C. Nothing in this AGREEMENT is intended to create duties or obligations to or rights in third parties not parties to this AGREEMENT.

Section 8. Duplicate Originals.

This AGREEMENT is executed in _____ (____) duplicate originals, each of which is deemed to be an original. This AGREEMENT consists of ____ pages and ____ (____) exhibits which together constitute the entire understanding and agreement of the parties with respect to the matters covered hereunder. This AGREEMENT may be executed in counterparts which, in the aggregate, shall constitute a whole and complete document. Said exhibits are identified as follows:

Exhibit "A"	Legal Description of SUBJECT PROPERTY

Section 9. Enforced Delay

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In addition to specific provisions of this AGREEMENT, no party shall be deemed to be in default under this AGREEMENT where delays in performance or failure 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 in connection with Other Laws, enactment of conflicting Other Laws, judicial decisions, administrative appeals, litigation, the general unavailability of construction or permanent financing for projects similar to the PROJECT or similar basis for excused performance when such event or occurrence is not within the reasonable control of the party to be excused. Upon the request of any party hereto, extension of time for such cause will be granted for the period of the enforced delay, or longer, as may be and when mutually agreed upon.

Section 10. Recordation

Within ten (10) days after the EFFECTIVE DATE, the CITY's City Clerk shall have this AGREEMENT recorded with the County Recorder. If the parties to this AGREEMENT or their successors in interest amend, cancel, or if either party terminates this AGREEMENT as hereinabove provided, CITY's City Clerk shall have notice of such action recorded with the County Recorder. IRVINE shall be responsible for any recording charges incurred by CITY pursuant to this AGREEMENT.

Section 11. Number of Days

Provisions in this AGREEMENT relating to number of days shall be calendar days, unless otherwise specified, provided that if the last day of any period to give notice, reply to a notice or to undertake any other action occurs on a Saturday, Sunday or a bank or CITY holiday, then the last day for undertaking the action or giving or replying to the notice shall be the next succeeding CITY working day.

Section 12. No Party Drafter: Captions

The parties hereto each participated in the drafting of this AGREEMENT. Accordingly, the provisions of this AGREEMENT 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 purposes of the parties. Any caption preceding the text of any section, paragraph or subsection is included only for convenience of reference and shall be disregarded in the construction and interpretation of this AGREEMENT.

Section 13. Conduct

In all situations arising out of this AGREEMENT, the parties shall each attempt to avoid and minimize the damages resulting from the conduct of the other and shall take all reasonably necessary measures to achieve the provisions of this AGREEMENT.

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Section 14. Further Assurances

IRVINE and CITY each covenant, on behalf of itself and its successors, heirs and assigns, to take all actions and to do all things required by law, and to execute, with acknowledgement or affidavit if required, any and all documents and writings that may be necessary or proper to achieve the purposes and objectives of this AGREEMENT.

Section 15. Cooperation and Non-Interference

IRVINE and CITY, each, shall refrain from doing anything that would render its performance under this AGREEMENT impossible and each shall do everything which this AGREEMENT contemplated that the party shall do to accomplish the objectives and purposes of this AGREEMENT.

IN WITNESS WHEREOF, this AGREEMENT is entered into by the parties hereto and made effective as of the EFFECTIVE DATE set forth hereinabove.

“CITY”

CITY of San Jose, a municipal
corporation

Approved as to form:

Deputy CITY Attorney

By: _____
CITY Clerk

“IRVINE”

THE IRVINE COMPANY, a _____

By: _____

Title: _____