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**DEVELOPMENT AGREEMENT
BY AND BETWEEN THE CITY OF SAN JOSE AND
COYOTE VALLEY RESEARCH PARK LLC
RELATIVE TO THE DEVELOPMENT OF PROPERTY IN
NORTH COYOTE VALLEY)**

*TO BE RECORDED WITHOUT FEE PER
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**DEVELOPMENT AGREEMENT
BY AND BETWEEN THE CITY OF SAN JOSE AND
COYOTE VALLEY RESEARCH PARK LLC
RELATIVE TO THE DEVELOPMENT OF PROPERTY IN
NORTH COYOTE VALLEY**

THIS DEVELOPMENT AGREEMENT ("hereinafter "Agreement") is entered into this 24th day of October, 2000 by and between COYOTE VALLEY RESEARCH PARK, LLC, a Delaware limited liability company (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 owns, or has a right to purchase all 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 campus industrial development in an area of North Coyote Valley which includes the Subject Property.

- D. DEVELOPER desires to construct a multi-phase project consisting of approximately six million six hundred thousand (6,600,000) square feet for office, research and development, assembly and light manufacturing uses ("Project"). Development of the Subject Property would be in accordance with that certain Planned Development Zoning PDCSH 99-06-053 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 October 5, 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 six million six hundred thousand (6,600,000) 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 October 12, 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 October 24, 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. 26222 ("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 unusually substantial investment and costs by DEVELOPER in the Subject Property and the associated public improvements will provide public improvements and facilities and improvements from which the public will benefit and the Project will be a substantial generator of fees, revenues, and taxes to CITY. DEVELOPER has made commitments to a very high standard of quality.
- J. 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 Campus Industrial; and
 - (2) Planned Development Zoning. PDCSH 99-06-053; and
 - (3) Planned Development Permit PDSH 00-02-021 and PDSH 00-06-051 and PDSH 00-08-062; and
 - (4) Vesting Tentative Map No. PT 00-03-034; and
 - (5) Tree Removal Permit TR 00-04-053
 - (6) North Coyote Valley Master Development Plan as amended to date;
 - (7) Master Cooperation Agreement by and between the City of San Jose and Coyote Valley Research Park;
 - (8) Mitigation Monitoring and Reporting Plan;
 - (9) North Coyote Valley Fire and Flood Control Incentive Zone, Ordinance No. 26223
 - (10) Bailey Extension Agreement
 - (11) Water District Agreement
- K. 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.

- L. 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 and manufacture/assembly 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.
- M. Development of the Subject Property in accordance with the parameters set forth in Planned Development Zoning PDSCH 99-06-053 qualifies as a Special Handling project as defined by Council Policy 6-17.

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 and DEVELOPER.

- C. Subsequent Conditions.

- (1) Notwithstanding the provisions of Section 1.D, this Agreement shall become null and void five (5) years after the effective date of Ordinance No. 26222 approving this Agreement, which timeframe shall be extended by the

provisions of Section 14, ENFORCED DELAY, unless all of the following conditions are met:

- (a) DEVELOPER has constructed one million two-hundred thousand square feet of development as approved by Planned Development Permits PDSH 00-02-021 and PDSH 00-06-051, provided that:
 - (i) U.S. 101 has been widened to at least six lanes as provided in the Measure A/B program. Failure to commence construction by September 1, 2001 or to complete construction by November 1, 2003 shall be an ENFORCED DELAY pursuant to Section 14.
 - (ii) The Bailey Extension Project has been completed. Failure to commence construction of the Bailey Extension Project by April 1, 2001 or to complete construction by July 1, 2002 shall be an ENFORCED DELAY pursuant to Section 14.
 - (iii) The Water Pollution Control Plant has sufficient capacity within its discharge constraint to accommodate wastewater from the Project. Any decision by the City Manager to suspend or deny issuance of any building permits, for development as defined in Planned Development Zoning PDCSH 99-06-053, based on a discharge constraint shall be an ENFORCED DELAY pursuant to Section 14.
 - (b) DEVELOPER has completed or funded, in accordance with the terms of the Master Cooperation Agreement, the REQUIRED INFRASTRUCTURE as required by Planned Development Zoning PDSCH 99-06-053.
- (2) Notwithstanding the provisions of Section 1.D, this Agreement shall become null and void twelve (12) years from the effective date of Ordinance No. 26222, which timeframe shall be extended by the provisions of Section 14, ENFORCED DELAY, unless all of the following conditions are met:

- (a) DEVELOPER has constructed at least three million square feet of development, as defined in Planned Development Zoning PDCSH 99-06-053, provided that:
 - (i) U.S. 101 has been widened to at least six lanes as provided in the Measure A/B program. Failure to commence construction by September 1, 2001 or to complete construction by November 1, 2003 shall be an ENFORCED DELAY pursuant to Section 14.
 - (ii) The Bailey Extension Project has been completed. Failure to commence construction of the Bailey Extension Project by April 1, 2001 or to complete construction by July 1, 2002 shall be an ENFORCED DELAY pursuant to Section 14.
 - (iii) The Water Pollution Control Plant has sufficient capacity within its discharge constraint to accommodate wastewater from the Project. Any decision by the City Manager to suspend or deny issuance of any building permits, for development as defined in Planned Development Zoning PDCSH 99-06-053, based on a discharge constraint shall be an ENFORCED DELAY pursuant to Section 14.
- (3) For purposes of this Agreement, REQUIRED INFRASTRUCTURE shall mean the following improvements: the Flood Detention Facility, the Fire Station and the Bailey Extension Project as all are defined in the Master Cooperation Agreement.
- (4) The provisions of Sections 2.C(1) and (2) shall not apply if CITY is in default under the terms of this Agreement, the Master Cooperation Agreement, the Bailey Extension Agreement or the Water District Agreement.

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. 26222 approving this Agreement and shall extend for a period of twenty (20) years from the effective date of the Adopting Ordinance, which time frame shall be extended by the provisions of Section 14 of this Agreement, ENFORCED DELAY..

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. PT 00-03-034 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 99-06-053 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 99-06-053 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, and (c) CITY consents to DEVELOPER's release from its obligations under this Agreement with respect to that portion of the Subject Property sold. Notwithstanding the above, provision E.2(c) shall not be applicable if Developer has become contractually obligated to fund the REQUIRED INFRASTRUCTURE and has provided financial security, in a form acceptable to the City, to ensure full funding of the contractual obligations. 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:

(a) in effect at the time the Adopting Ordinance was adopted; or

(b) at the time of any amendment, IF Developer elects to proceed with the rules in effect at the time of the 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 Campus Industrial as of the date of this Agreement;
- (2) Planned Development Zoning PDCSH 99-06-053, the General Development Plan sets forth the maximum parameters the maximum total square footage, the maximum building height and the number of parking spaces;
- (3) Planned Development Permit PDSH 00-02-021 and PDSH 00-06-051 and PDSH 00-08-062;
- (4) Vesting Tentative Map No. PT 00-03-034;
- (5) Tree Removal Permit TR 00-04-053
- (6) The North Coyote Valley Master Development Plan as amended to date;
- (7) Master Cooperation Agreement by and between the City of San Jose and Coyote Valley Research Park;
- (8) Mitigation Monitoring and Reporting Plan;

- (9) North Coyote Valley Fire and Flood Control Incentive Zone, Ordinance No. 26223
- (10) Bailey Extension Agreement
- (11) Water District Agreement
- (12) This Development 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. 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. Subsequent Planned Development Permits and other discretionary approvals (together hereinafter referred to as "Reserved Discretionary Approvals") and final negotiation and execution of the Master Cooperation Agreement and Water District Agreement (together hereinafter referred to as "Executed Agreements") must be approved/executed . Applications for Reserved Discretionary Approvals will be processed under the Special Handling Procedure of the CITY's Planning Department. Upon final approval/execution, each Reserved Discretionary Approval and the Executed Agreements shall become Vested Elements of this Agreement. Approval of each Reserved Discretionary Approval shall be subject to the provisions of Section 2.D(4).
- 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 ("Applicable Law"). 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, except as provided in this Agreement.

- (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 understands that long term assurances by CITY concerning fees, taxes, mitigation measures, exactions and dedications were a material consideration for DEVELOPER agreeing to site the Project in its present location and to pay and provide all fees, taxes and mitigation measures described in this Agreement.
 - (i) City shall not impose on the Project any mitigation measures, exactions or dedications other than those specifically imposed by the PDCSH 99-05-053 and/or required by the Mitigation Monitoring Program or specifically required by Applicable Law. The development approved by PDCSH 99-05-053 shall not be responsible for any infrastructure costs or any other infrastructure costs, including, without limitation, those costs associated with development of any other development in the North Coyote Valley Industrial Area, the Central Coyote Urban Reserve or the South Almaden Urban Reserve.
 - (ii) CITY and DEVELOPER agree that the EIR is intended to be used in connection with each of the Project Approvals and all Reserved Discretionary Approvals required for full buildout of PDCSH 99-05-053. Consistent with the CEQA policies and requirements applicable to the EIR, CITY agrees to use the EIR in connection with the processing of any Reserved Discretionary Approval to the maximum extent allowed by law and not to impose on the Project any mitigation measures, exactions or dedications other than

those specifically imposed by the PDCSH 99-05-053 and/or required the Mitigation Monitoring Program or specifically required by Applicable Law.

To the extent any supplemental or subsequent CEQA review is required by law for any Reserved Discretionary Approval, CITY shall process any necessary supplemental or subsequent environmental review at DEVELOPER's expense. If the initial study identifies an impact requiring mitigation, that is not imposed by the PDCSH 99-05-053 and/or required the Mitigation Monitoring Program, and DEVELOPER declines to accept a mitigation measure sufficient to mitigate the impact and allow the preparation of a Negative Declaration, CITY shall prepare, at DEVELOPER's expense, an environmental impact report and to the extent allowed by law CITY shall adopt a statement of overriding considerations for any environmental impact that cannot be reduced to a less than significant level with mitigation measures included in the Mitigation Monitoring Program.

- (iii) City shall retain the ability to enact new Impact Fees subject to the following limitations. For a period of five (5) years from the effective date of Ordinance 26222 approving this Agreement CITY shall not subject any portion of the project site to any new impact fee unless such impact fee is applicable to industrial uses citywide. After the expiration of five (5) years from the effective date of Ordinance 26222 approving this Agreement CITY shall not subject any portion of the project site to any new Impact Fee which is applicable only to industrial projects in North Coyote Valley. Notwithstanding the foregoing, Developer retains all its rights

to oppose any new Impact Fee. In the event new Impact Fees are lawfully imposed to provide funding for services, improvements or facilities which are substantially the same as those services, improvements or facilities being funded by the fees, dedications, assessments or improvements to be paid or provided by DEVELOPER pursuant to PDCSH 99-06-053 or any subsequent Planned Development Permit, DEVELOPER shall be subject to reduction/credit of the Impact Fees in an amount equal to the value of such fees, dedications, assessments or improvements to be paid or provided by DEVELOPER.

- (iv) CITY may impose new taxes and assessments, other than Impact Fees, on the Property in accordance with the then-applicable laws, but only if such taxes or assessments are adopted by or after citywide voter or citywide landowner approval of such taxes or assessments and are equally imposed on other industrial land and projects within the jurisdiction of City, and, as to assessments, only if the impact thereof does not fall disproportionately on the Subject Property vis-a-vis the other land and projects within City's jurisdiction or the portion of City's jurisdiction subject to the assessment. Nothing herein shall be construed so as to limit DEVELOPER from exercising whatever rights it may otherwise have in connection with protesting or otherwise objecting to the imposition of taxes or assessments on the Subject Property.
- (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. For purposes of this Section 2.D(6) conflict with a Vested Element means the inability to realize the permitted use of the Subject Property, the maximum density and intensity of use and the maximum height and maximum size of the proposed buildings. An increase in cost of construction shall not be a conflict.

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 99-06-053 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 transportation demand 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, as well as encourage all future occupants of the site 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), Reserved Discretionary Approvals, 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. 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.
- (3) WPCP Discharge Constraint. CITY agrees that, to the extent allowed by law, CITY will not adopt any program which would result in any permit issued to DEVELOPER being suspended, conditioned or denied in order to comply with any discharge constraint applicable to the Water Pollution Control Plant without first notifying DEVELOPER and providing DEVELOPER an opportunity to review, comment and object to any such program. CITY will,

in good faith, consider DEVELOPER's comments and/or objections. If, at any time within:

- (i) three (3) years from the effective date of Ordinance 26222 approving this Agreement; or
- (ii) seven (7) years, if DEVELOPER has constructed at least one million two hundred thousand square feet of development, as defined in Planned Development Zoning PDCSH 99-06-053, within three (3) years from the effective date of Ordinance 26222 approving this Agreement; or
- (iii) ten (10) years if DEVELOPER has constructed at least two million five hundred thousand square feet of development, as defined in Planned Development Zoning PDCSH 99-06-053 within seven (7) years from the effective date of Ordinance 26222 approving this Agreement;

CITY gives any building permit applicant, for industrial/research and development uses, other than DEVELOPER preferential treatment of any kind with respect to any decision to suspend, condition or deny issuance of building permits, CITY shall give equivalent preferential treatment to DEVELOPER. In the event that any new permit issued by the Regional Water Quality Control Board materially changes any of the conditions or current restrictions set forth in the current permit issued by the Regional Water Quality Control Board with respect to discharge from industrial/research and development uses such that it is impracticable for CITY to treat all industrial/research and development uses similarly, CITY, acting in good faith, may rescind this obligation to provide an equivalent level of preferential treatment. CITY shall meet with DEVELOPER prior to rescinding this obligation.

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.

In the event of any legal action instituted by a third party challenging any provision of this Agreement, the procedures leading to its adoption, the issuance of the project approvals (including the Reserved Discretionary Approvals) for the Project, Developer and City each shall have the right, in its sole discretion, to elect whether or not to defend such action, to select its own Counsel and to control its participation and conduct in the litigation in all respects permitted by law. If both parties elect to defend, the Parties agree to affirmatively cooperate in defending

said action and to execute a joint defense and confidentiality agreement on order to share and protect information under the joint defense privilege recognized under applicable law. As part of the cooperation in defending an action, City and Developer shall coordinate their defense in order to make the most efficient use of legal counsel and to share and protect information. Developer and City shall each have sole discretion to terminate its defense at any time.

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. City retains the right to select and employ independent defense counsel provided that Developer shall jointly participate in the selection of such counsel.

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 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, Room 400
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:

RD:
12/06/2000

Developer:

Coyote Valley Research
Park, LLC
c/o Gibson Speno Companies
60 South Market Street, Suite
1120
San Jose, CA 95113
Attention: Steven G. Speno

Copy to:

Divco West
150 Almaden Boulevard,
Suite 700
San Jose, CA 95113
Attention: David A. Taran
and Vic Fracaro

And to:

Cisco Systems, Inc.
170 West Tasman Drive
San Jose, CA 95134
Attention: Ellen Jamason,
Senior Director of Real
Estate and Facilities
(Americas West)

And to:

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

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 Planned Development Zoning 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 1 duplicate originals, each of which is deemed to be an original. This Agreement consists of 27 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 99-06-053

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.

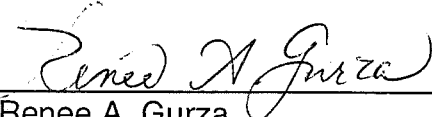
RD:
12/06/2000

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, riots, floods, earthquakes, fires, casualties, acts of God, moratoria, referenda, initiatives, processing delays by other governmental entities with regulatory powers, 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 on..

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

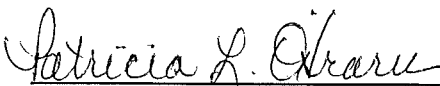
APPROVED AS TO FORM



Renee A. Gurza
Senior Deputy City Attorney

"City"

City OF SAN JOSE,
a municipal corporation



PATRICIA L. O'HEARN
City Clerk

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

State of California

County of Santa Clara

} ss.

On January 17, 01, before me, Consuelo Chaidez Avitia, Notary

Date

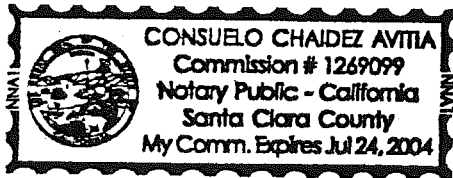
Name and Title of Officer (e.g., "Jane Doe, Notary Public")

personally appeared Patricia L. O'Hearn

Name(s) of Signer(s)

- ☒ personally known to me
☐ 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.



WITNESS my hand and official seal.

Consuelo Chaidez Avitia
Signature of Notary Public

Place Notary Seal Above

OPTIONAL

Though the information below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent removal and reattachment of this form to another document.

Description of Attached Document

Title or Type of Document: Development Agreement

Document Date: undated Number of Pages: _____

Signer(s) Other Than Named Above: _____

Capacity(ies) Claimed by Signer

Signer's Name: Patricia L. O'Hearn

☒ Individual

- ☐ Corporate Officer — Title(s): _____
☐ Partner — ☐ Limited ☐ General
☐ Attorney in Fact
☐ Trustee
☐ Guardian or Conservator
☐ Other: _____

Signer Is Representing: City of San Jose

RIGHT THUMBPRINT
OF SIGNER

Top of thumb here.

RD:
12/06/2000

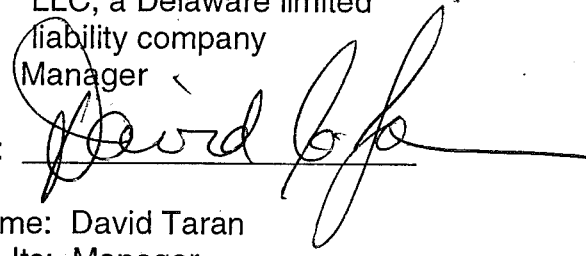
"Developer"

COYOTE VALLEY RESEARCH PARK,
LLC,
a Delaware limited liability company

By: Coyote Valley Properties, LLC,
a Delaware limited liability company
Its: Manager

By: Coyote Valley Managers, LLC,
a Delaware limited liability
company
Its: Manager

By: Divco Coyote Managers,
LLC, a Delaware limited
liability company
Its: Manager

By: 
Name: David Taran
Its: Manager

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

State of California

County of

Santa Clara

SS.

On

Dec. 7-00

Date

before me,

Marie A. Cannon Notary Public

Name and Title of Officer (e.g., "Jane Doe, Notary Public")

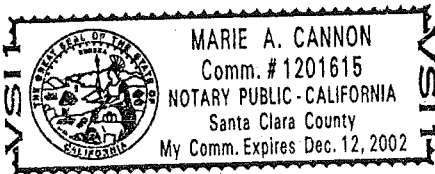
personally appeared

David A. Egan

Name(s) of Signer(s)

☒ personally known to me

☐ 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.

WITNESS my hand and official seal.

Marie A. Cannon

Signature of Notary Public

Place Notary Seal Above

OPTIONAL

Though the information below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent removal and reattachment of this form to another document.

Description of Attached Document

Title or Type of Document: _____

Document Date: _____

Number of Pages: _____

Signer(s) Other Than Named Above: _____

Capacity(ies) Claimed by Signer

Signer's Name: _____

☐ Individual

☐ Corporate Officer — Title(s): _____

☐ Partner — ☐ Limited ☐ General

☐ Attorney in Fact

☐ Trustee

☐ Guardian or Conservator

☐ Other: _____

Signer Is Representing: _____

RIGHT THUMBPRINT
OF SIGNER

Top of thumb here



HMH, Incorporated
Civil Engineers • Planners • Surveyors

CDCS# 99-06-053
legal

Ord. No. 26221

James T. Harper
William J. Wagner, R.C.E.

March 15, 1999
HMH 2658-05-06
Page 1 of 3 pages

EXHIBIT "A" LEGAL DESCRIPTION FOR A (PD) REZONING

Real property situate in the City of San Jose, County of Santa Clara, State of California, described as follows:

Beginning at the most southerly corner of Parcel 3 as shown upon that certain Parcel Map filed for record September 22, 1983 in Book 518 of Maps at pages 20 through 22, Santa Clara County Records;

Thence along the southwesterly line of said Parcel 3, the following twelve courses:

- (1) North 28° 52' 51" West, 978.98 feet;
- (2) Thence North 31° 58' 44" West, 291.53 feet;
- (3) Thence North 51° 39' 18" West, 130.35 feet;
- (4) Thence North 63° 12' 13" West, 18.96 feet;
- (5) Thence North 68° 31' 04" West, 409.78 feet;
- (6) Thence North 64° 34' 10" West, 313.30 feet;
- (7) Thence North 10° 32' 18" East, 401.20 feet;
- (8) Thence North 43° 29' 23" West, 91.37 feet;
- (9) Thence North 78° 01' 43" West, 97.70 feet;
- (10) Thence North 85° 26' 17" West, 768.08 feet;
- (11) Thence North 14° 16' 07" West, 242.44 feet;
- (12) Thence North 01° 34' 52" West, 867.05 feet;

Thence along the southwesterly line of Parcel 2 and the southwesterly, northwesterly and northeasterly lines of Parcel 1 of said Parcel Map, the following twenty seven courses:

- (1) North 74° 58' 53" West, 408.52 feet;
- (2) Thence North 34° 07' 21" West, 170.90 feet;
- (3) Thence North 06° 34' 27" East, 117.76 feet;
- (4) Thence North 17° 42' 51" West, 311.22 feet;
- (5) Thence North 73° 36' 57" West, 452.38 feet;
- (6) Thence North 25° 33' 24" West, 177.48 feet;
- (7) Thence North 51° 42' 46" West, 90.52 feet;
- (8) Thence North 84° 24' 44" West, 537.82 feet;
- (9) Thence North 33° 56' 28" West, 229.15 feet;
- (10) Thence North 56° 40' 05" West, 490.87 feet;
- (11) Thence North 70° 36' 22" West, 591.80 feet;
- (12) Thence North 83° 55' 01" West, 643.23 feet;
- (13) Thence North 42° 55' 46" West, 644.47 feet;
- (14) Thence North 03° 03' 18" East, 67.52 feet;
- (15) Thence North 17° 48' 38" East, 504.18 feet;
- (16) Thence North 62° 22' 11" East, 250.26 feet;
- (17) Thence North 57° 03' 36" East, 867.53 feet;
- (18) Thence North 48° 29' 54" East, 583.80 feet;

RECEIVED

JUN 17 1999

CITY OF SAN JOSE
PLANNING DEPARTMENT

EXHIBIT A

March 15, 1999
HMH 2658-05-06
Page 2 of 3 pages

- (19) Thence South 62° 48' 07" East, 245.75 feet;
- (20) Thence South 14° 02' 32" East, 41.11 feet;
- (21) Thence South 61° 05' 27" East, 504.24 feet;
- (22) Thence South 55° 30' 12" East, 85.00 feet;
- (23) Thence South 34° 29' 48" West, 40.00 feet;
- (24) Thence South 55° 30' 12" East, 30.00 feet;
- (25) Thence North 34° 29' 48" East, 40.00 feet;
- (26) Thence South 55° 30' 12" East, 616.58 feet;
- (27) Thence South 49° 57' 55" East, 620.24 feet to the southwesterly prolongation of the northwesterly line of Parcel A as shown upon that certain Record of Survey filed for record December 9, 1970 in Book 276 of Maps at pages 22 and 23, Santa Clara County Records;

Thence North 54° 09' 19" East, 160.27 feet to the northwesterly corner of said Parcel A;

Thence along the northwesterly line of said Parcel A, the following six courses:

- (1) North 54° 09' 19" East, 298.76 feet;
- (2) Thence North 81° 07' 20" East, 199.81 feet;
- (3) Thence North 71° 28' 35" East, 302.45 feet;
- (4) Thence North 81° 08' 01" East, 261.34 feet;
- (5) Thence North 63° 54' 59" East, 209.79 feet;
- (6) Thence South 52° 42' 20" East, 100.00 feet to the northwesterly line of Lot 4 as shown on that certain Map entitled "Map of the Oliver Blanchard Subdivision..." filed for record December 17, 1917 in Book P of Maps at pages 30 and 31, Santa Clara County Records;

Thence along said northwesterly line the following three courses:

- (1) North 39° 07' 06" East, 334.91 feet;
- (2) Thence North 33° 22' 08" East, 410.00 feet;
- (3) Thence North 24° 06' 28" East, 77.88 feet to the northeasterly line of said Lot 4;

Thence along said northeasterly line and the southwesterly line of Lot 2 of said Map, South 42° 54' 52" East, 1576.52 feet to the southeasterly line of said Lot 2;

Thence along said southeasterly line and the southeasterly line of Lot 1 of said Map, North 48° 19' 07" East, 919.59 feet to the southwesterly line of the Union Pacific Railroad;

Thence along said southwesterly line the following six courses:

- (1) South 42° 59' 24" East, 1968.41 feet;
- (2) Thence South 42° 59' 24" East, 424.26 feet to the beginning of a tangent curve to the right;
- (3) Thence along said curve, having a radius of 5679.65 feet, through a central angle of 02° 34' 20", an arc length of 254.99 feet;
- (4) Thence North 49° 00' 44" East, 22.70 feet;
- (5) Thence South 39° 31' 14" East, 130.66 feet;
- (6) Thence South 39° 01' 23" East, 1400.94 feet to the northwesterly line of Bailey Avenue;

March 15, 1999
HMH 2658-05-06
Page 3 of 3 pages

Thence along said northwesterly line, the following fourteen courses:

- (1) South $33^{\circ} 38' 05''$ West, 285.95 feet;
- (2) Thence South $41^{\circ} 00' 10''$ West, 294.17 feet;
- (3) Thence South $44^{\circ} 11' 00''$ West, 338.50 feet;
- (4) Thence South $48^{\circ} 30' 30''$ West, 378.94 feet to the beginning of a tangent curve to the right;
- (5) Thence along said curve, having a radius of 28.00 feet, through a central angle of $90^{\circ} 00' 00''$, an arc length of 43.98 feet;
- (6) Thence South $48^{\circ} 30' 30''$ West, 106.00 feet to the beginning of a non-tangent curve to the right, from which the center bears South $48^{\circ} 30' 30''$ West;
- (7) Thence along said curve, having a radius of 28.00 feet, through a central angle of $90^{\circ} 00' 00''$, southeasterly, an arc length of 43.98 feet;
- (8) Thence South $48^{\circ} 30' 30''$ West, 997.40 feet;
- (9) Thence South $49^{\circ} 46' 39''$ West, 138.70 feet;
- (10) Thence North $86^{\circ} 26' 42''$ West, 223.14 feet;
- (11) Thence South $48^{\circ} 28' 49''$ West, 158.11 feet;
- (12) Thence South $03^{\circ} 33' 55''$ West, 223.43 feet;
- (13) Thence South $48^{\circ} 31' 44''$ West, 371.17 feet;
- (14) Thence South $51^{\circ} 26' 13''$ West, 80.10 feet to the southwesterly line of said Parcel 3;

Thence along said southwesterly line the following five courses:

- (1) North $41^{\circ} 28' 15''$ West, 343.52 feet;
- (2) Thence South $48^{\circ} 31' 44''$ West, 230.00 feet;
- (3) Thence South $19^{\circ} 28' 15''$ East, 237.95 feet;
- (4) Thence South $41^{\circ} 28' 16''$ East, 100.04 feet to the beginning of a tangent curve to the left;
- (5) Thence along said curve, having a radius of 20.00 feet, through a central angle of $88^{\circ} 02' 36''$, an arc length of 30.73 feet to the northwesterly line of Bailey Avenue;

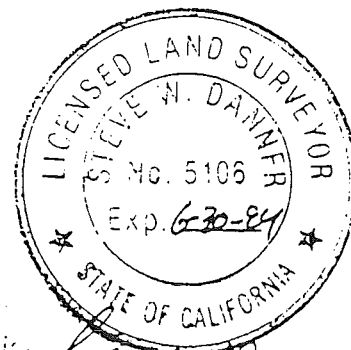
Thence along said northwesterly line the following three courses:

- (1) South $50^{\circ} 29' 08''$ West, 765.85 feet;
- (2) Thence North $39^{\circ} 30' 57''$ West, 25.00 feet;
- (3) Thence South $50^{\circ} 29' 03''$ West, 135.30 feet to the Point of Beginning.

Excepting therefrom that portion lying within Santa Teresa Boulevard.

Containing 688.545 acres, more or less.

EXHIBIT A





CITY CLERK

CITY OF SAN JOSÉ, CALIFORNIA

Office of the City Clerk
801 North First Street, Room 116
San José, California 95110
Telephone (408) 277-4424
FAX (408) 277-3285

STATE OF CALIFORNIA)
COUNTY OF SANTA CLARA)
CITY OF SAN JOSE)

I, Patricia L. O'Hearn, City Clerk and Ex-Officio Clerk of the Council of and for the City of San Jose, in said County of Santa Clara, and State of California, do hereby certify that "**Ordinance No. 26221**", the original copy of which is attached hereto, was passed for publication of title on the **24th day of October, 2000**, was published in accordance with the provisions of the Charter of the City of San Jose, and was given final reading and adopted on the **7th day of November, 2000**, by the following vote:

AYES: CHAVEZ, DIQUISTO, FISCALINI, LeZOTTE,
POWERS, SHIRAKAWA, WOODY; GONZALES

NOES: NONE

ABSENT: DIAZ

DISQ: DANDO

VACANT: DISTRICT 4

Said ordinance is effective as of **December 8, 2000**.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the corporate seal of the City of San Jose, this **13th day of November, 2000**.

(SEAL) Patricia L. O'Hearn
PATRICIA L. O'HEARN
CITY CLERK AND EX-OFFICIO
CLERK OF THE CITY COUNCIL

11/13/00:csd

EXHIBIT B

ORDINANCE NO. 26221

ORDINANCE OF THE CITY OF SAN JOSÉ REZONING CERTAIN REAL PROPERTY SITUATED ON BOTH SIDES OF SANTA TERESA BOULEVARD, SOUTHERLY OF TULARE HILL AND NORTHERLY OF BAILEY AVENUE TO (A)PD. PLANNED DEVELOPMENT ZONING DISTRICT TO ALLOW APPROXIMATELY 6.6 MILLION SQUARE FEET OF CAMPUS INDUSTRIAL USES ON APPROXIMATELY 689 GROSS ACRES

WHEREAS, all rezoning proceedings required under the provisions of Chapter 20.40 of Title 20 of the San José Municipal Code have been duly had and taken with respect to the real property hereinafter described; and

WHEREAS, the area encompassed by the subject proposed rezoning was the subject of an Environmental Impact Report (EIR) prepared in conformance with the California Environmental Quality Act of 1970 (CEQA), as amended, and found complete by the Planning Commission on October 5, 2000, which Commission determination was appealed to the City Council and the City Council held a duly noticed hearing and upheld the finding of the Planning Commission on October 24, 2000; and

WHEREAS, this Council of the City of San José, acting as lead agency under CEQA, proposes to approve a project which was the subject of said EIR, to wit: the adoption of an ordinance rezoning certain real property hereinafter described to A(PD) Planned Development Zoning District; and

WHEREAS, this Council has, on October 24, 2000, adopted a certain resolution making certain findings concerning mitigation measures, adopting a mitigation monitoring and reporting program, making findings concerning alternatives, and adopting a statement of overriding considerations in accordance with CEQA for the project; and

WHEREAS, the Council is the decision-making body for subject rezoning to A(PD) Planned Development Zoning District; and

WHEREAS, this Council does hereby certify that, as a decision-making body, it has considered and approves the information contained in such EIR prior to acting upon or approving such project;

NOW THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF SAN JOSÉ,

SECTION 1. All that real property hereinafter described in this section, hereinafter referred

EXHIBIT B

to as "subject property," is hereby rezoned as A(PD) Planned Development.

The base district zoning of the subject property shall be A-Agricultural. The PD zoning of the subject property shall be that development plan for the subject property entitled, "Coyote Valley Research Park within the North Coyote Valley Campus Industrial Area," dated July 28, 1999, last revised October 24, 2000.

Said General Development Plan is on file in the office of the Director of Planning and is available for inspection by anyone interested therein, and said General Development Plan is by this reference adopted and incorporated herein the same as if it were fully set forth herein.

The subject property referred to in this section is all that real property situate in the County of Santa Clara, State of California, described in attached Exhibit "A."

SECTION 2. The district map of the City is hereby amended accordingly.

SECTION 3. The land development approval which is the subject of City File No. (PDCSH 99-06-053) is subject to the operation of Part 2.75 of Chapter 15.12 of Title 15 of the San José Municipal Code. The applicant for or recipient of such land use approval hereby acknowledges receipt of notice that the issuance of a building permit to implement such land development approval may be suspended, conditioned or denied where the City Manager has determined that such action is necessary to remain within the aggregate operational capacity of the sanitary sewer system available to the City of San José or to meet the discharge standards of the sanitary sewer system imposed by the California Regional Water Quality Control Board for the San Francisco Bay Region.

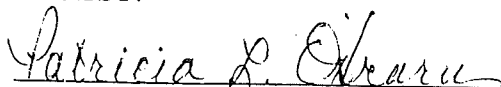
PASSED FOR PUBLICATION OF TITLE this 24th day of October, 2000.

AYES:	CHAVEZ, DIAZ, DIQUISTO, FISCALINI, LeZOTTE,
NOES:	POWERS, SHIRAKAWA, WOODY; GONZALES
ABSENT:	NONE
VACANT:	DISTRICT 4
DISQUAL:	DANDO



Ron Gonzales, Mayor

ATTEST:


 Patricia L. O'Hearn, City Clerk

C: William Wagner, HMH, Inc., P.O. Box 611510, San Jose, CA 95161-1510
 David Taran, Member, Coyote Valley Research Park, LLC, 150 Almaden Blvd, Ste 700,
 San Jose, CA 95113
 Randy Lamb, Gibson Speno, 60 South Market Street, Ste 1120,

EXHIBIT B



HMH, Incorporated
Civil Engineers • Planners • Surveyors

FD/SH 99-06-053
legal

Ord. No. 26221

James T. Harper
William J. Wagner, R.C.E.

March 15, 1999
HMH 2658-05-06
Page 1 of 3 pages

EXHIBIT "A"
LEGAL DESCRIPTION FOR A (PD) REZONING

Real property situate in the City of San Jose, County of Santa Clara, State of California, described as follows:

Beginning at the most southerly corner of Parcel 3 as shown upon that certain Parcel Map filed for record September 22, 1983 in Book 518 of Maps at pages 20 through 22, Santa Clara County Records;

Thence along the southwesterly line of said Parcel 3, the following twelve courses:

- (1) North 28° 52' 51" West, 978.98 feet;
- (2) Thence North 31° 58' 44" West, 291.53 feet;
- (3) Thence North 51° 39' 18" West, 130.35 feet;
- (4) Thence North 63° 12' 13" West, 18.96 feet;
- (5) Thence North 68° 31' 04" West, 409.78 feet;
- (6) Thence North 64° 34' 10" West, 313.30 feet;
- (7) Thence North 10° 32' 18" East, 401.20 feet;
- (8) Thence North 43° 29' 23" West, 91.37 feet;
- (9) Thence North 78° 01' 43" West, 97.70 feet;
- (10) Thence North 85° 26' 17" West, 768.08 feet;
- (11) Thence North 14° 16' 07" West, 242.44 feet;
- (12) Thence North 01° 34' 52" West, 867.05 feet;

Thence along the southwesterly line of Parcel 2 and the southwesterly, northwesterly and northeasterly lines of Parcel 1 of said Parcel Map, the following twenty seven courses:

- (1) North 74° 58' 53" West, 408.52 feet;
- (2) Thence North 34° 07' 21" West, 170.90 feet;
- (3) Thence North 06° 34' 27" East, 117.76 feet;
- (4) Thence North 17° 42' 51" West, 311.22 feet;
- (5) Thence North 73° 36' 57" West, 452.38 feet;
- (6) Thence North 25° 33' 24" West, 177.48 feet;
- (7) Thence North 51° 42' 46" West, 90.52 feet;
- (8) Thence North 84° 24' 44" West, 537.82 feet;
- (9) Thence North 33° 56' 28" West, 229.15 feet;
- (10) Thence North 56° 40' 05" West, 490.87 feet;
- (11) Thence North 70° 36' 22" West, 591.80 feet;
- (12) Thence North 83° 55' 01" West, 643.23 feet;
- (13) Thence North 42° 55' 46" West, 644.47 feet;
- (14) Thence North 03° 03' 18" East, 67.52 feet;
- (15) Thence North 17° 48' 38" East, 504.18 feet;
- (16) Thence North 62° 22' 11" East, 250.26 feet;
- (17) Thence North 57° 03' 36" East, 867.53 feet;
- (18) Thence North 48° 29' 54" East, 583.80 feet;

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CITY OF SAN JOSE
PLANNING DEPARTMENT

EXHIBIT B

March 15, 1999
HMH 2658-05-06
Page 2 of 3 pages

(19) Thence South 62° 48' 07" East, 245.75 feet;
(20) Thence South 14° 02' 32" East, 41.11 feet;
(21) Thence South 61° 05' 27" East, 504.24 feet;
(22) Thence South 55° 30' 12" East, 85.00 feet;
(23) Thence South 34° 29' 48" West, 40.00 feet;
(24) Thence South 55° 30' 12" East, 30.00 feet;
(25) Thence North 34° 29' 48" East, 40.00 feet;
(26) Thence South 55° 30' 12" East, 616.58 feet;
(27) Thence South 49° 57' 55" East, 620.24 feet to the southwesterly prolongation of the northwesterly line of Parcel A as shown upon that certain Record of Survey filed for record December 9, 1970 in Book 276 of Maps at pages 22 and 23, Santa Clara County Records;

Thence North 54° 09' 19" East, 160.27 feet to the northwesterly corner of said Parcel A;

Thence along the northwesterly line of said Parcel A, the following six courses:

- (1) North 54° 09' 19" East, 298.76 feet;
- (2) Thence North 81° 07' 20" East, 199.81 feet;
- (3) Thence North 71° 28' 35" East, 302.45 feet;
- (4) Thence North 81° 08' 01" East, 261.34 feet;
- (5) Thence North 63° 54' 59" East, 209.79 feet;
- (6) Thence South 52° 42' 20" East, 100.00 feet to the northwesterly line of Lot 4 as shown on that certain Map entitled "Map of the Oliver Blanchard Subdivision..." filed for record December 17, 1917 in Book P of Maps at pages 30 and 31, Santa Clara County Records;

Thence along said northwesterly line the following three courses:

- (1) North 39° 07' 06" East, 334.91 feet;
- (2) Thence North 33° 22' 08" East, 410.00 feet;
- (3) Thence North 24° 06' 28" East, 77.88 feet to the northeasterly line of said Lot 4;

Thence along said northeasterly line and the southwesterly line of Lot 2 of said Map, South 42° 54' 52" East, 1576.52 feet to the southeasterly line of said Lot 2;

Thence along said southeasterly line and the southeasterly line of Lot 1 of said Map, North 48° 19' 07" East, 919.59 feet to the southwesterly line of the Union Pacific Railroad;

Thence along said southwesterly line the following six courses:

- (1) South 42° 59' 24" East, 1968.41 feet;
- (2) Thence South 42° 59' 24" East, 424.26 feet to the beginning of a tangent curve to the right;
- (3) Thence along said curve, having a radius of 5679.65 feet, through a central angle of 02° 34' 20", an arc length of 254.99 feet;
- (4) Thence North 49° 00' 44" East, 22.70 feet;
- (5) Thence South 39° 31' 14" East, 130.66 feet;
- (6) Thence South 39° 01' 23" East, 1400.94 feet to the northwesterly line of Bailey Avenue;

March 15, 1999
HMH 2658-05-06
Page 3 of 3 pages

Thence along said northwesterly line, the following fourteen courses:

- (1) South 33° 38' 05" West, 285.95 feet;
- (2) Thence South 41° 00' 10" West, 294.17 feet;
- (3) Thence South 44° 11' 00" West, 338.50 feet;
- (4) Thence South 48° 30' 30" West, 378.94 feet to the beginning of a tangent curve to the right;
- (5) Thence along said curve, having a radius of 28.00 feet, through a central angle of 90° 00' 00", an arc length of 43.98 feet;
- (6) Thence South 48° 30' 30" West, 106.00 feet to the beginning of a non-tangent curve to the right, from which the center bears South 48° 30' 30" West;
- (7) Thence along said curve, having a radius of 28.00 feet, through a central angle of 90° 00' 00", southeasterly, an arc length of 43.98 feet;
- (8) Thence South 48° 30' 30" West, 997.40 feet;
- (9) Thence South 49° 46' 39" West, 138.70 feet;
- (10) Thence North 86° 26' 42" West, 223.14 feet;
- (11) Thence South 48° 28' 49" West, 158.11 feet;
- (12) Thence South 03° 33' 55" West, 223.43 feet;
- (13) Thence South 48° 31' 44" West, 371.17 feet;
- (14) Thence South 51° 26' 13" West, 80.10 feet to the southwesterly line of said Parcel 3;

Thence along said southwesterly line the following five courses:

- (1) North 41° 28' 15" West, 343.52 feet;
- (2) Thence South 48° 31' 44" West, 230.00 feet;
- (3) Thence South 19° 28' 15" East, 237.95 feet;
- (4) Thence South 41° 28' 16" East, 100.04 feet to the beginning of a tangent curve to the left;
- (5) Thence along said curve, having a radius of 20.00 feet, through a central angle of 88° 02' 36", an arc length of 30.73 feet to the northwesterly line of Bailey Avenue;

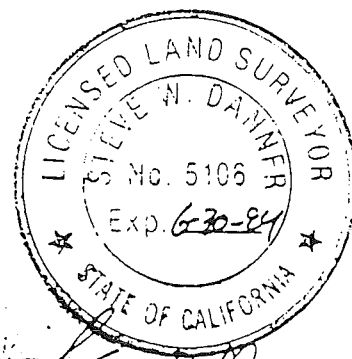
Thence along said northwesterly line the following three courses:

- (1) South 50° 29' 08" West, 765.85 feet;
- (2) Thence North 39° 30' 57" West, 25.00 feet;
- (3) Thence South 50° 29' 03" West, 135.30 feet to the Point of Beginning.

Excepting therefrom that portion lying within Santa Teresa Boulevard.

Containing 688.545 acres, more or less.

EXHIBIT B



SAN JOSE POST-RECORD

~ SINCE 1910 ~

90 N. First Street, Suite 100, San Jose, California 95113-1225
Telephone (408) 287-4866 • Fax (408) 287-2544

SAN JOSE CITY CLERK

PROOF OF PUBLICATION

(2015.5 C.C.P.)

State of California)
County of Santa Clara) ss

Notice Type: GORSJ SAN JOSE ORDINANCE (1 PUB)

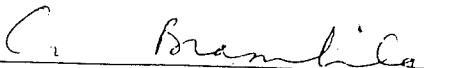
Ad Description: ORDINANCE #26221

I am a citizen of the United States; I am over the age of eighteen years, and not a party to or interested in the above entitled matter. I am the principal clerk of the printer and publisher of the SAN JOSE POST-RECORD, a newspaper published in the English language in the City of San Jose, and adjudged a newspaper of general circulation as defined by the laws of the State of California by the Superior Court of the County of Santa Clara, State of California, under date of February 3, 1922, Case No. 27,844. That the notice, of which the annexed is a printed copy, has been published in each regular and entire issue of said newspaper and not in any supplement thereof on the following dates, to-wit:

10/31/00

Executed on: 10/31/00
At Los Angeles, California

I certify (or declare) under penalty of perjury that the foregoing is true and correct.


Signature

This space for filing stamp only

25/8

SJ#: 168173

ORDINANCE NO. 26221
ORDINANCE OF THE CITY OF SAN JOSE REZONING CERTAIN REAL PROPERTY SITUATED ON BOTH SIDES OF SANTA TERESA BOULEVARD, SOUTHERLY OF TULARE HILL AND NORTHERLY OF BAILEY AVENUE TO (A)PD. PLANNED DEVELOPMENT ZONING DISTRICT TO ALLOW APPROXIMATELY 6.6 MILLION SQUARE FEET OF CAMPUS INDUSTRIAL USES ON APPROXIMATELY 689 GROSS ACRES PASSED FOR PUBLICATION OF TITLE this 24th day of October 2000, by the following vote:
AYES: CHAVEZ, DIAZ, DIQUISTO, FISCALINI, LEZOTTE, POWERS, SHIRAKAWA, WOODY, GONZALES
NOES: NONE
ABSENT: NONE
VACANT: DISTRICT 4
DISQUAL: DANDO
ATTEST: PATRICA L. O'HEARN
City Clerk
RON GONZALES
Mayor
10/31/00

SJ- 168173#

EXHIBIT B

EXHIBIT C

Summary of Vested Elements

- (1) General Plan land use designation of Campus Industrial; and
- (2) Planned Development Zoning. PDCSH 99-06-053; and
- (3) Planned Development Permit PDSH 00-02-021 and PDSH 00-06-051 and PDSH 00-08-062; and
- (4) Vesting Tentative Map No. PT 00-03-034; and
- (5) Tree Removal Permit TR 00-04-053
- (6) North Coyote Valley Master Development Plan as amended to date; and
- (7) Master Cooperation Agreement by and between the City of San Jose and Coyote Valley Research Park;
- (8) Mitigation Monitoring and Reporting Plan;
- (9) North Coyote Valley Fire and Flood Control Incentive Zone, Ordinance No. 26223
- (10) Bailey Extension Agreement
- (11) Water District Agreement
- (12) This Development Agreement

ORDINANCE NO. 26222

AN ORDINANCE OF THE CITY OF SAN JOSE
APPROVING THE DEVELOPMENT AGREEMENT
BETWEEN THE CITY OF SAN JOSE AND COYOTE
VALLEY RESEARCH PARK LLC RELATIVE TO THE
DEVELOPMENT OF PROPERTY IN NORTH COYOTE
VALLEY

BE IT ORDAINED BY THE COUNCIL OF THE CITY OF SAN JOSE:

SECTION 1. This Ordinance is adopted under the authority of Government Code Section 65864 et seq., and pursuant to the provisions of Ordinance No. 24297 which establishes procedures and requirements for consideration of development agreements (hereinafter the "ENABLING ORDINANCE").

SECTION 2. This Ordinance incorporates by reference that certain Development Agreement by and between the CITY OF SAN JOSE (hereinafter "CITY") and COYOTE VALLEY RESEARCH PARK LLC (hereinafter "CVRP") substantially in the form attached hereto as Exhibit A (hereinafter "DEVELOPMENT AGREEMENT").

SECTION 3. The CVRP 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 October 5, 2000 and certified by the City Council, on appeal, on October 24, 2000 and the City Council considered and approved the information and conclusions contained in the EIR prior to approving this Ordinance.

SECTION 4. The Council of the City of San Jose finds that the following are the relevant facts concerning the proposed DEVELOPMENT AGREEMENT:

1. The General Plan for the area subject to this Agreement is designated Campus Industrial.
2. CVRP proposes a single-user on approximately 689 acres.
3. CVRP proposes to construct 6.6 million square feet of new building area. At buildout approximately 20,000 employees would be based on this site.
4. CVRP requests a DEVELOPMENT AGREEMENT to enable phased buildout of the site.
5. Planned Development Zoning, No. PDCSH 99-06-053 (PD Zoning) and Planned Development Permit Nos. PDSH 00-02-021 and PDSH 00-06-051 have been approved for the proposed development prior to the effective date of this Ordinance.
6. Vesting Tentative Map No. PTSH 00-03-034 for the subject property has been approved prior to the effective date of this Ordinance.
7. Tree Removal Permit TR 00-04-053 for the subject property has been approved prior to the effective date of this Ordinance.
8. The North Coyote Valley Master Development Plan for the subject property has been approved prior to the final adoption of this Ordinance.
9. Under the proposed DEVELOPMENT AGREEMENT, CVRP would be required to comply with the terms of the approved PD Zoning.

SECTION 5. This Council, based upon analysis of the facts set forth above, finds and concludes that:

1. The unusually substantial investment and costs by DEVELOPER in the Subject Property and the associated public improvements will provide public improvements and facilities and improvements from which the public will benefit and the Project will be a substantial generator of fees, revenues, and taxes to CITY. DEVELOPER has made commitments to a very high standard of quality.

RD:WHH:ED
10/24/00

SECTION 6. As required by Section 10 of the ENABLING ORDINANCE, the City Council hereby adopts the following as its findings:

1. The proposed development is consistent with the General Plan and all applicable specific or area plans.
2. The proposed development should be encouraged in order to meet important economic, social, environmental or planning goals of the CITY.
3. The DEVELOPMENT AGREEMENT will facilitate the development of the subject property in the manner proposed.
4. The unusually substantial investment and costs incurred by DEVELOPER in development of the Subject Property and the associated public improvements will provide public improvements and facilities and improvements from which the public will benefit and the Project will be a substantial generator of fees, revenues, and taxes to CITY and DEVELOPER has made commitments to a very high standard of quality.
5. The DEVELOPMENT AGREEMENT is consistent with the provisions of Ordinance No. 24297.

SECTION 7. The City Council hereby approves the DEVELOPMENT AGREEMENT substantially in the form attached hereto as Exhibit "A," and the City Clerk is hereby authorized and directed to execute such a DEVELOPMENT AGREEMENT on behalf of the CITY of San Jose as soon as this ordinance becomes effective.

RD:WHH:ED
10/24/00

PASSED FOR PUBLICATION OF TITLE this 24th day of October,
2000, by the following vote:

AYES: CHAVEZ, DIAZ, DIQUISTO, FISCALINI, LeZOTTE,
POWERS, SHIRAKAWA, WOODY; GONZALES

NOES: NONE

ABSENT: NONE

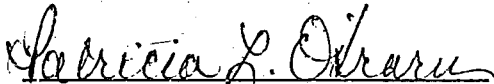
VACANT: DISTRICT 4

DISQUAL: DANDO



RON GONZALES
Mayor

ATTEST:



PATRICIA L. O' HEARN
City Clerk