



Council Meeting: June 19, 2012

SUBJECT: Approval of Various Actions Regarding a Parcel Map for Carmel Partners to Construct a Mixed Use Development at Olson Way between Frances Street and Aries Way

BACKGROUND

A vesting tentative map #2010-7493 was approved by the Planning Commission on September 27, 2010 to subdivide an area bordered by Frances Street, Washington Avenue, Aries Way and Plaza del Sol into four blocks (A, B, C, and D). A revised tentative map #2011-7841 for Blocks C and D owned by CP III Town and Country, LLC, also known as Carmel Partners, was approved administratively by the Director of Community Development on January 11, 2012 to relocate the property lines. The property lines are relocated from the back of the sidewalk to the back of street curb in order to place private grease interceptors and stormwater treatment units on private property rather than within the public right-of-way. These improvements as well as the sidewalks and street trees will be maintained by the property owner. The City has retained public sidewalk and utility easements along all property frontages.

DISCUSSION

Agreements

Pursuant to Sunnyvale Municipal Code section 18.20.250.(a) and applicable condition of approval of the vesting tentative map and the Special Development Permit #2011-7661, the Subdivider shall execute a subdivision agreement to ensure that all public improvements required by the project will be completed in accordance with the terms and provisions in the subdivision agreement. The Subdivision Agreement SD-12-2 is ready to be executed (Attachment A).

In accordance with applicable conditions of approval of the vesting tentative map, the Subdivider is required to execute a notice of covenant related to private construction over public easements. The City staff has reviewed the "Notice of Covenant for Private Construction and Private Improvements Located within the Public Utility Easement and the Public Sidewalk Easement" (the "NOTICE OF COVENANT") and this document is ready to be executed (Attachment B).

In accordance with applicable conditions of approval of the revised vesting tentative map, the Subdivider is required to execute a maintenance agreement to maintain certain public improvements on private property for each block. The City staff has reviewed the "Improvement Maintenance and Access Right Agreement" (the "MAINTENANCE AGREEMENT") and this document is ready to be executed (Attachment C).

Bus Shelter

Block C of the development currently contains a VTA bus shelter. The current location limits the functionality of the ground floor retail space for the approved development. As part of the conditions of approval for the development, the Subdivider is required to relocate the existing bus shelter and associated facilities to Plaza del Sol. As part of that relocation, the existing public right-of-way easement would be abandoned. A new right-of-way is not needed for the new bus shelter since the new bus shelter will be located on public property. There is a cooperative agreement between the City and the VTA that requires the City to maintain the bus shelter for the Frances Street transit bus facilities. The Subdivider will relocate the existing shelter and build a new concrete bus pad (Attachment D). VTA has no objections to the new bus shelter location. Plaza del Sol is owned by the City of Sunnyvale as the Successor Agency to the Redevelopment Agency of the City of Sunnyvale. Approval of the new location is needed. The Successor Agency will take actions related to the new bus shelter location under a separate report.

Parcel Map

The areas to be accepted for dedication and for abandonment are shown on the parcel map as Attachment E and further highlighted on Attachment F. The dedication is needed to comply with the Downtown Specific Plan Streetscape design standards. The abandonment of existing right-of-way is to avoid placement of private grease interceptors and stormwater treatment units in the public right-of-way.

The parcel map was examined by Public Works staff and found to be in conformance with the revised vesting tentative map, Sunnyvale Municipal Code Title 18 *Subdivision*, and the State of California "Subdivision Map Act." The Subdivider shall execute a Subdivision Agreement and provide improvement securities (\$444,000 for faithful performance and \$444,000 for labor and materials) to guarantee completion of public improvements.

RECOMMENDATION

Staff recommends that City Council take the following actions:

1. Authorize the Director of Public Works to execute the Subdivision Agreement, the NOTICE OF COVENANT and the MAINTENANCE AGREEMENT, and forward those signed documents for recordation;
2. Authorize the Director of Public Works to sign the Certificate of Abandonment to vacate portions of existing rights-of-way for public street and bus shelter purpose as shown on the parcel map.
3. Authorize the Director of Public Works and the Director of Community Development to sign the parcel map and forward the parcel map for recordation, upon Subdivider's execution of all documents listed under item 1, payment of development fees and submittal of other documents deemed necessary by the Director of Public Works.

Reviewed by:

Kent Steffens, Director of Public Works
Prepared by: Bennett Chun, Civil Engineer

Hanson Hom, Director of Community Development

Approved by:

Gary M. Luebbbers, City Manager

Attachments

- A. Subdivision Agreement SD-12-2
- B. Notice of Covenant For Private construction and Private Improvements Located Within the Public Utility Easement and the Public Sidewalk Easement
- C. Improvement Maintenance and Access Right Agreement
- D. New bus shelter location
- E. Parcel Map
- F. Areas of dedication and abandonment

ATTACHMENT A

RECORDING REQUESTED BYNAME: City of SunnyvaleWHEN RECORDED MAIL TO:NAME: City of Sunnyvale/Engineering DivisionADDRESS: P.O. Box 3707CITY/STATE/ZIP: Sunnyvale, CA 94088-3707

(DOCUMENT WILL ONLY BE RETURNED TO NAME & ADDRESS IDENTIFIED ABOVE)

(SPACE ABOVE FOR RECORDER'S USE)

SUBDIVISION AGREEMENT**SD-12-2**

THIS SUBDIVISION AGREEMENT (the "Agreement"), is made and entered into in the City of Sunnyvale, County of Santa Clara, State of California, this _____ day of _____, 2012, by and between the CITY OF SUNNYVALE, a municipal corporation of the State of California, hereinafter called "City" and CP III T&C Sunnyvale, LLC, hereinafter called "Subdivider";

WITNESSETH:

This Agreement is entered upon the basis of the following facts, understandings and intentions of the City and the Subdivider:

- A. On September 27, 2010, the City Planning Commission approved a vesting tentative map (the "Tentative Map") with conditions (Planning Application #2010-7493) for an area known as the Town and Country Village, and identified as Santa Clara County Assessor's Parcels numbered 209-07-003, 004, 005, 006, 008, 009, 014, 015, 016, 017 and 018 (the "Subdivision Area"). Subdivider is one of the two property owners/applicants in the Subdivision Area, and Subdivider owns the properties identified as Santa Clara County Assessor's Parcels numbered 209-07-003, 004, 005, 006, 008 and 009. The adjacent properties, as shown on the Tentative Map, are currently owned by BRE Properties Inc., based upon current records from the Santa Clara County Recorder's Office.
- B. On November 14, 2011, the City Planning Commission also approved a Special Development Permit (SDP) with conditions (Planning Application #2011-7661)

for a project in certain portions of the Subdivision Area owned by the Subdivider (the "Project Area").

- C. On January 11, 2012, City approved a revised vesting tentative map (the "Revised Vesting Map") in conjunction with Planning Application #2011-7841, relocating the property lines to the back of the street curb.
- D. As shown on the Revised Tentative Map, property owners desire to file multiple maps for phased development. BRE Properties Inc. has filed a first parcel map with the City, known as the "BRE Parcel Map" as stipulated in the Subdivision Agreement SD-11-5. The subject BRE Parcel Map has been or will be recorded with the Santa Clara County Recorder's Office.
- E. Subdivider has heretofore filed with City a separate parcel map (the "Carmel Parcel Map") as the second map for the Subdivision Area parcels owned by the Subdivider. Subdivider has also filed with City partial improvement plans in the Subdivision Area, designated as SD 12-2.
- F. Subdivider has requested that the Carmel Parcel Map be approved by the Director of Public Works and the improvement plans be approved by the City Engineer in accordance with City ordinances.
- G. Subdivider, by said Carmel Parcel Map, has offered for dedication to City those certain streets, ways and easements as delineated on said Carmel Parcel Map.
- H. City's approval of said Carmel Parcel Map is conditioned upon the execution by Subdivider of this Agreement.

NOW, THEREFORE, in consideration of Subdivider's execution of this Agreement and delivery of the improvement securities required under section 2, the City hereby approves the Carmel Parcel Map and, subject to completion in accordance with this Agreement, the acceptance of streets and easements therein, and Subdivider and City agree as follows:

1. Completion of Improvements.

- (a) Subdivider and/or the other owner in the Subdivision Area shall complete all improvements for public use in the Subdivision Area consistent with the Planning Application #2011-7661 conditions of approval (the "COA's").
- (b) Subdivider shall furnish, construct and install at Subdivider's own expense all improvements as required by Title 18 of the Sunnyvale Municipal Code, or as amended, and as required by the Revised Vesting Map for the Subdivision Area in accordance with all City approved plans and specifications.
- (c) The improvements may be completed in construction sequences and portions of the improvements may be undertaken by BRE Properties Inc., for certain improvements adjacent to its property. The scope of the improvements and the COA's for each construction sequence shall be approved by the City in regards to construction phasing and mitigation plan prior to any permit issuance. If Subdivider fails to comply with the requirement of the Construction Mitigation Plan required pursuant to the COA's, then City may exercise any or all of the remedies provided for therein.
- (d) Any deviation from this Paragraph 1 is subject to mutual agreement upon a 30-day advance written notice and subject to Paragraph 16.

2. Improvement Securities.

(a) Faithful Performance Bond – Subdivider has furnished and delivered to City concurrently with this Agreement, adequate and acceptable improvement security as required by Title 18 of the Sunnyvale Municipal Code, or as amended, in the amount of Four Hundred Forty-Four Thousand and No/100 dollars (\$444,000.00) to secure Subdivider's faithful performance of furnishing, constructing or installing all improvements required by Paragraph 1 above.

(b) Labor And Material Bond – Subdivider has furnished and delivered to City concurrently with this Agreement, adequate and acceptable improvement security as required by Title 18 of the Sunnyvale Municipal Code, or as amended, in the amount of Four Hundred Forty-Four Thousand and No/100 dollars (\$444,000.00) as security for the payment to the contractor, his/her subcontractors and to all persons furnishing materials, provisions, provender, or other supplies, or equipment or teams to them and used in, upon, or about the improvements required to be furnished, constructed and installed in Paragraph 1 above, or for performing any work or labor of any kind in, about or upon said improvements, and for the payment of amounts due under the Unemployment Insurance Act with respect to such work or labor in connection with the furnishing, constructing, or installing said improvements, and for payment of a reasonable attorney's fee to be fixed by the court in case suit is brought by the City.

(c) The amount of the improvement securities provided by Subdivider under Paragraphs 2.(a) and 2.(b), as shown on the Engineer's Opinion of Probable Costs (attached hereto as Exhibit "A"), shall be adjusted annually based on the Engineering News Record Construction Price Index issued in May of each year. Subdivider shall have an affirmative obligation to provide the City with evidence of valid security no later than May 31 of each year until all improvements required by Paragraph 1 have been constructed, provided, however, that no legal action will be taken by the City based on this provision without prior written notice to the Subdivider.

(d) City shall reduce Subdivider's security amount upon Subdivider's completion of improvements required by Paragraph 1 above and receipt of an unconditional lien release in accordance with the Sunnyvale Municipal Code Section 18.20.260.

(e) Notwithstanding Paragraph 2.(d) above, Subdivider shall maintain a minimum of twenty-five percent (25%) of the faithful performance securities required by Paragraph 1 for a period of one (1) year ("Warranty Period") from completion and acceptance by the Director of Public Works of improvements required by Paragraph 1 above, against any defective work or labor done by Subdivider or its contractors or defective materials supplied by Subdivider or its contractors as warranty security ("Warranty Security"). City shall release the Warranty Security upon expiration of the Warranty Period and settlement of any claims filed during the Warranty Period related to work, labor or materials provided by Subdivider or its contractors.

(f) In light of the special circumstances associated with there being multiple owner(s) within the Subdivision Area, the City will allow Subdivider to share the obligation to provide the 25% Warranty Security on the condition that the total amount of all securities is sufficient to cover the entire Warranty Security obligation.

3. Indemnification. Subdivider shall indemnify and hold harmless City, its officers, employees, and agents from any and all liability, damages, claims, or causes of action for injury to person or persons, or damage to property which may arise out of, or occur by reason of the performance or work by Subdivider or its contractors in furtherance of this agreement and the Conditions of Approval, including all costs and attorney fees incurred in defending any claim arising as a result thereof. Any performance or work provided by other property owner(s) or their contractors within the Subdivision Area will not be an obligation of Subdivider and such other property owner(s) shall indemnify the City and Subdivider therefore under a separate agreement.

4. Insurance. Concurrently with the acceptance of this Agreement, Subdivider shall furnish and deliver to City a certificate showing that Subdivider has such public liability and property damage insurance insuring Subdivider against any loss or liability of any kind or nature whatsoever which may arise during the performance of, or which may result from any of the work herein required to be done by Subdivider, including all costs of defending any claim arising as a result thereof. Such policy shall be in an aggregate amount of at least One Million Dollars (\$1,000,000.00) for the death or injury to any person or persons in any one accident or occurrence. Subdivider shall also provide Certificates from its contractors who will perform the work which shall show Workers' Compensation Insurance and Employer's Liability Insurance for all of the latter's employees. Said policies shall remain in full force and effect until this Agreement shall be fully performed and shall state by its terms or by an endorsement thereof that said policy shall not be canceled until the City shall have at least thirty (30) days notice in writing of said cancellation.

A contractual liability endorsement shall be added to each insurance policy extending coverage to include the liability assumed in Paragraph 4 above. THE CITY OF SUNNYVALE MUST BE NAMED AS AN ADDITIONAL INSURED.

5. Fees and Charges. The following fees and charges shall be paid prior to Carmel Parcel Map recordation or any encroachment permit issuance whichever occurs first:

The fee amount listed below is subject to adjustment based upon the fee schedule at the time of payment:

1.	Sanitary Sewer	
	a. Connection	\$ 219,474.56
	b. Existing Sanitary Sewer Frontage Charge	\$ N.A.
2.	Storm Drain Connection	\$ N.A.

3.	Water	
	a. Connection	\$ 39,479.85
	b. Existing Water Main Frontage Charge	\$ N.A.
	c. Water Meters	\$ 9,935.76
	d. Tapping Fee	\$ N.A.
4.	Fire Hydrants	\$ N.A.
5.	Inspection and/or Engineering (Based upon 100% of improvements as required by the tentative map)	\$ 2,300.00 in addition to the amount paid by other under Subdivision Agreement SD-11-5
6.	Street Lighting System	\$ N.A.
7.	Street Trees	\$ 590.40
8.	Maintenance Deposit (Based upon 100% of improvements as required by the tentative map)	\$ Paid by other under Subdivision Agreement SD-11-5
9.	Other: <u>Parcel Map Fee</u>	\$ 2,283.50
	TOTAL FEES AND CHARGES	\$ 274,064.07

Please note there are other applicable fees such as technology fees and/or building clearance fee associated with the project that need to be paid separately at the time of each corresponding permit issuance.

The parties acknowledge that all applicable fees associated with Lots 1 and 2, as part of the approved vesting tentative map shall be subject to a separate subdivision agreement with the owner(s) of such Lots, and which have been paid by such owner(s) prior to Lots 1 and 2 parcel map recordation or any encroachment permit associated with Lots 1 and 2.

6. Construction Yard and Laydown Areas. Subdivider shall locate any construction yard for the storage of equipment, vehicles, supplies and materials or the preparation or fabrication thereof, to be used in connection with the installation of improvements for

said subdivision or the construction of buildings, therein, in such a manner so as to cause a minimum of inconvenience to persons living in the areas immediately adjacent to said subdivision, and to obtain the approval of the Director of Public Works to the proposed location of the yard. Immediately upon completion of the final building to be constructed in the subdivision, or unit thereof, to which this agreement refers, Subdivider shall cease using the construction yard and to remove therefrom all supplies, materials, equipment, or vehicles being stored or kept thereon. Subdivider agrees not to use the construction yard in connection with the installation of improvements or construction of buildings in any other subdivision, or any other unit of the subdivision to which this agreement refers. City may extend the time within which the construction yard may be used or within which supplies, materials, equipment or vehicles may be stored or kept thereon if City shall determine that the granting of such extension will not be detrimental to the public welfare. No extension will be made except on the basis of a written application made by Subdivider stating fully the grounds and facts relied upon it for such extension.

7. Time Limitations. Subdivider shall perform all of the work required by Paragraph 1 on or before eighteen (18) months from the effective date of this Agreement, however, that City may extend the time within which City work and improvements shall be completed if City shall determine that the granting of such extension will not be detrimental to the public welfare. No extension will be made except on the basis of a written application made by Subdivider stating fully the grounds and facts relied upon for such extension.

8. Inspections. The Director of Public Works shall inspect all of the improvements made pursuant hereto to determine that they comply with all City regulations.

9. Workmanlike Manner During Construction. Subdivider shall keep and maintain all areas within the improved or partially improved public streets or public rights-of-way contiguous and adjacent to and within the hereinabove referenced to Subdivision Area, including streets being constructed and/or improved pursuant to this Agreement, free and clear of all dirt, mud, sand, gravel, rocks, bricks, stones, shingles, roofing material, lumber, tool sheds, construction buildings and other similar items at all times during the improvement and construction of the improvement and all buildings and other structures within said Subdivision.

10. Maintenance Deposit. – Concurrently with the acceptance of this Agreement, Subdivider shall provide maintenance deposit in the amount of Two Thousand Two Hundred Two and 26/100 dollars (\$2,202.26) which has been paid by BRE Properties, Inc. under Subdivision Agreement SD-11-5 to guarantee that all areas to be improved within public streets and public rights-of-way, as required by the approved improvements plans, are properly maintained, repaired, replaced, restored and rebuilt including all concrete work, street pavement, street lighting system, storm drain system, sanitary sewer system, water main system and proper clean up and sweeping of all debris, buildings, equipment and other items. In the event Subdivider fails, neglects, or refuses to maintain said areas, City is hereby authorized to expend all or any portion of

said deposit during construction and during the one year maintenance period to accomplish the above for a clean and safe project site.

11. Maintenance Agreement. – Subdivider shall execute and record an “Improvement Maintenance and Access Right Agreement” prior to Carmel Parcel Map recordation or encroachment permit issuance whichever occurs first.

12. Binding on Successors and Assigns. This Agreement shall inure to the benefit of and be binding upon the successors and assigns of the respective parties hereto.

13. Assignment Prohibited. This Agreement shall not be assigned without the prior written consent of the City.

14. Recordation of Agreement. Concurrently with recordation of the first parcel map, Subdivider shall cause recordation of this Agreement with the County Recorder. By recordation of this Agreement, it is the parties intent to provide notice to future purchasers that the obligations, conditions, and benefits set forth shall run with the land. City shall record this Agreement if Subdivider fails to record subject Agreement.

15. Covenants, Conditions and Restrictions. The Declaration of Covenants, Conditions and Restrictions (C. C. & R.'s) applicable to the Property Area within the Subdivision Area as approved by the City of Sunnyvale shall be filed in the office of the Recorder of Santa Clara County. A certificate of recording or other evidence of recording shall be filed with the City Clerk.

16. Miscellaneous Provisions.

(a) All modifications, amendments or waivers under this Agreement must be in writing and signed by the authorized representatives of the parties also known as “City” and “Subdivider”.

(b) The Director of Public Works or his/her designee is the authorized representatives for the City.

(c) This Agreement shall be construed and interpreted according to California law, and any action to enforce the terms of this Agreement or for the breach thereof shall be brought and tried in the County of Santa Clara.

(d) This Agreement is not subject to any other agreement(s) between the two property owners within the Subdivision Area.

(e) Time is of the essence.

(f) The provisions of this Agreement are severable. If any portion is held invalid by a court of competent jurisdiction, the remainder of this Agreement shall remain in full force and effect.

(g) Each of the Exhibits referenced in this Agreement are attached hereto and incorporated herein.

(h) This Agreement may be signed in multiple counterparts each of which shall be deemed to be an original but all of which shall constitute a single agreement.

IN WITNESS WHEREOF, the City of Sunnyvale has caused this Agreement to be executed on the ____ day of _____, 2012, and Subdivider has caused this Agreement to be executed the day and year first above written.

CITY OF SUNNYVALE
A Municipal Corporation

APPROVED:
As to Form:

SUBDIVIDER:
CP III T&C Sunnyvale, LLC

Kathryn A. Berry
Senior Assistant City Attorney

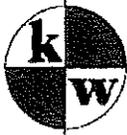
By _____
Mark Garrell, Vice President

As to Content:

Mark Rogge, City Engineer
Assistant Director of Public Works

All SUBDIVIDER signatures must be acknowledged by a Notary Public.
Attach signature authority for SUBDIVIDER signature.

Attachment:
Exhibit A – Engineer’s Opinion of Probable Costs



KIER & WRIGHT
Civil Engineers & Surveyors, Inc.

June 6, 2012

Carmel Lofts - Mixed Use

Block C and D

Storm Drain

NO.	DESCRIPTION	QUANTITY	UNITS	UNIT COST	EXTENSION
1	60" MH Kristar MFS Unit	4	EA	\$12,500.00	\$ 50,000.00
2	Kristar Catch Basin	1	EA	\$9,000.00	\$ 9,000.00
				SUBTOTAL	\$ 59,000.00

Sanitary Sewer

NO.	DESCRIPTION	QUANTITY	UNITS	UNIT COST	EXTENSION
1	Sanitary Sewer Manhole	3	EA	\$5,660.00	\$ 16,980.00
2	Clean Out to Grade	3	EA	\$315.00	\$ 945.00
3	4" PVC	77	LF	\$106.00	\$ 8,162.00
				SUBTOTAL	\$ 26,087.00

Water

NO.	DESCRIPTION	QUANTITY	UNITS	UNIT COST	EXTENSION
1	6" Domestic Water Meter	2	EA	\$5,000.00	\$ 10,000.00
2	1.5" Irrigation Meter & Connection	2	EA	\$3,000.00	\$ 6,000.00
				SUBTOTAL	\$ 16,000.00

Site Work

NO.	DESCRIPTION	QUANTITY	UNITS	UNIT COST	EXTENSION
1	Set iron pipe property corners	12	EA	\$230.00	\$ 2,760.00
2	4.0" AC Paving	580	SF	\$3.50	\$ 2,030.00
3	12.0" Class II A.B.	580	SF	\$5.50	\$ 3,190.00
4	6" Vertical Curb	124	LF	\$31.00	\$ 3,844.00
5	Valley Gutter	45	LF	\$21.00	\$ 945.00
6	PCC Sidewalk	7,430	SF	\$10.00	\$ 74,300.00
7	Driveway Apron	275	SF	\$14.00	\$ 3,850.00
8	Street Trees	22	EA	\$1,000.00	\$ 22,000.00
9	Street Light (luminaries/pole/foundation)	22	EA	\$3,000.00	\$ 66,000.00

ATTACHMENT A

10	Lighting conduit & service equip.	1	LS	\$15,000.00	\$	15,000.00
11	Striping	50	LF	\$1.50	\$	75.00
12	Signage	20	EA	\$150.00	\$	3,000.00
13	Irrigation	1	LS	\$12,000.00	\$	12,000.00
14	Demo for Bus Shelter	1	LS	\$3,000.00	\$	3,000.00
15	Bus Shelter Foundation & Relocation	1	LS	\$6,000.00	\$	6,000.00
16	Demo for VTA Stress PAD	1	LS	\$8,000.00	\$	8,000.00
17	VTA Stress Pad	1100	SF	\$40.00	\$	44,000.00
SUBTOTAL					\$	269,994.00

BLOCK C & D SUBTOTAL \$ 370,000.00
 20% CONTINGENCY: \$ 74,000.00
BLOCK C & D TOTAL \$ 444,000.00



ATTACHMENT B

RECORDING REQUESTED BY:
City of Sunnyvale, California

AFTER RECORDING, RETURN TO:
CITY OF SUNNYVALE
Public Works Department/Engineering Division
Sunnyvale, California 94088

NOTICE OF COVENANT FOR PRIVATE CONSTRUCTION AND PRIVATE IMPROVEMENTS LOCATED WITHIN THE PUBLIC UTILITY EASEMENT AND THE PUBLIC SIDEWALK EASEMENT

The Undersigned owner (herein "UNDERSIGNED"), shall refer collectively to multiple owners where appropriate, of that certain parcel of real property as shown as Lot 3 and Lot 4 on that Parcel Map (herein "PROPERTY") in book _____, page _____ in the Official Records of the Santa Clara County Recorders Office attached hereto and incorporated herein by this reference.

WHEREAS, the UNDERSIGNED are the owners of the PROPERTY which is burdened by a public utility easement and a public sidewalk easement (herein "EASEMENTS") held by the City of Sunnyvale, a municipal corporation (herein "CITY"); and

WHEREAS, the CITY and the UNDERSIGNED executed a Subdivision Agreement on _____, 2012 (herein "SUBDIVISION AGREEMENT") to complete all subdivision improvements; and

WHEREAS, CITY and the UNDERSIGNED executed the Improvement Maintenance and Access Rights Agreement on _____, 2012 (herein "IMPROVEMENT MAINTENANCE AGREEMENT") to identify improvement maintenance responsibilities; and

WHEREAS, the UNDERSIGNED have requested permission to construct and maintain grease interceptors and appurtenances, storm drain system and storm water treatment units and appurtenances, (herein "PRIVATE IMPROVEMENTS"); and

WHEREAS, PG&E, AT&T, and Comcast Cable do not have any objections to the PRIVATE IMPROVEMENTS over the EASEMENTS; and

WHEREAS, the CITY has granted the UNDERSIGNED permission to encroach upon the EASEMENTS upon the following terms:

1. The UNDERSIGNED do/does hereby express and declare the following covenants to be binding upon themselves, his/her/their heirs, successors in interest and assigns, intending that the covenants shall constitute covenants running with the land as to which all future purchasers or persons, howsoever interested in said parcel of hereinafter described PROPERTY shall be bound.
2. In consideration for permission granted to the UNDERSIGNED by the CITY to operate/maintain/repair/construct as required by the SUBDIVISION AGREEMENT and the IMPROVEMENT MAINTENANCE AGREEMENT, those PRIVATE IMPROVEMENTS upon a portion of the PROPERTY hereinabove described, in, on, under, over, along, and across EASEMENTS, as shown on the Parcel Map and described as:

Those areas designated as the Public Sidewalk Easement and Public Utility Easement along the frontages of Aries Way, Taaffe Street, Olson Way and South Frances Street and as shown on the Parcel Map.

3. The UNDERSIGNED agree(s) to permit the CITY, its officers, employees and agents to enter upon said EASEMENTS at any and every place therein for the purpose of repair, maintenance or replacement of the public facilities on or in the EASEMENTS and, except as caused by the acts of negligence of CITY or any City agent, employee or contractor, hereby expressly waive(s) any and all claims for damages or liabilities in connection with CITY's use of the EASEMENT.
4. The UNDERSIGNED hereby acknowledge(s) the existence of the EASEMENTS and assume(s) the risk of building thereover and agree(s) to defend, indemnify and hold CITY, its City Council, its officers, employees and/or agents free and harmless from any claim, damage or demand made by reason of the acts of negligence of the UNDERSIGNED in operating, maintaining, repairing and/or constructing the PRIVATE IMPROVEMENTS on, under, over, along, and across the EASEMENTS.
5. The UNDERSIGNED agree(s) to reimburse CITY upon written demand for any damages caused by the UNDERSIGNED or its/their agents, employees or contractors to CITY-owned facilities by virtue of construction of PRIVATE

IMPROVEMENTS within the EASEMENTS within sixty (60) calendar days of said demand.

6. The UNDERSIGNED agree(s) to remove at UNDERSIGNED's sole cost and expense, on reasonable demand of CITY, PRIVATE IMPROVEMENTS or any portion thereof which prohibits or interferes with the CITY's ability to maintain, repair, or replace its facilities located in the EASEMENTS area, and if the UNDERSIGNED fails to so remove the PRIVATE IMPROVEMENTS, or portions thereof, upon demand of CITY, CITY shall remove or cause such to be removed and bill the UNDERSIGNED. The UNDERSIGNED agrees to pay CITY within sixty (60) calendar days of receipt of an invoice documenting CITY's cost to remove the PRIVATE IMPROVEMENTS.
7. The UNDERSIGNED represent(s) to CITY that he/she/they are the owner(s) of the PROPERTY.
8. The CITY has consent letters from other public utility companies on file regarding the PRIVATE IMPROVEMENTS.
9. This document is to be recorded by CITY in the Official Records of the Santa Clara County Recorder's Office.

Approved As to Form:

OWNER
CP III T&C Sunnyvale, LLC

Kathryn A. Berry
Senior Assistant City Attorney

Mark Garrell
Vice President

As to Content:

Kent Steffens
Director of Public Works

ATTACHMENT C

RECORDING REQUESTED BY

NAME: City of Sunnyvale

WHEN RECORDED MAIL TO:

NAME: City of Sunnyvale/Engineering
Division
P.O. Box 3707

ADDRESS: Sunnyvale, CA 94088-3707

CITY/STATE/ZIP:

(DOCUMENT WILL ONLY BE RETURNED TO NAME & ADDRESS IDENTIFIED ABOVE)

(SPACE ABOVE FOR RECORDER'S USE)

IMPROVEMENT MAINTENANCE AND ACCESS RIGHT AGREEMENT

THIS AGREEMENT (the "Agreement") is made as of _____, 2012 (the "Effective Date"), by and between the CITY OF SUNNYVALE, a public body corporate and politic (the "City"), and CP III T&C Sunnyvale, LLC, A Delaware Limited Liability Company (the "Operator").

W I T N E S S E T H:

WHEREAS, the Operator and the City have entered into that certain Subdivision Agreement dated as of _____, 2012 (the "Subdivision Agreement SD-12-2"), pursuant to which the Operator shall construct improvements as required by the City.

WHEREAS, there are improvements located on the Operator's property in the Public Utility Easements (PUE) and in the Public Sidewalk Easements (PSWE) depicted on the Parcel Map which was recorded in book _____, pages _____ of the Official Records of the Santa Clara County Recorder's Office (the "Parcel Map" as shown on Exhibit A).

WHEREAS, the Operator and the City have agreed that the City or the Operator shall be responsible for the operation and maintenance of certain improvements as listed and assigned and respectively identified on Exhibit B attached hereto, in the PUE and in the PSWE, pursuant to the terms and conditions set forth herein. The improvements identified on Exhibit B to be maintained by the Operator are herein collectively referred to as "Operator Maintained Improvements". The improvements identified on Exhibit B to be maintained by the City are herein collectively referred to as "City Maintained Improvements".

WHEREAS, the Operator conveys a PUE to the City of Sunnyvale for surface and subsurface improvements, including access to the PUE and the Public Improvements, as shown on Exhibit B. The rights of the City shall be non-exclusive, and the Operator shall have the right and authority (a) to maintain private improvements within the PUE and (b) to convey other easements or rights of use within the PUE, provided the conveyance does not violate or unreasonably interfere with the rights of the City. The private improvements located within the PUE are defined in the NOTICE OF COVENANT FOR PRIVATE CONSTRUCTION AND PRIVATE IMPROVEMENTS LOCATED WITHIN THE PUBLIC UTILITY EASEMENT AND THE PUBLIC SIDEWALK EASEMENT, recorded on the same date, in the Official Records of the County of Santa Clara.

NOW, THEREFORE, in consideration of the mutual promises and agreements herein contained, the parties hereto agree as follows:

Section 1. Identification of Property. This Agreement and the Covenant Agreement shall govern each party's obligations in the areas where the PUE and the PSWE are located on the Parcel Map.

There are other improvements that are operated and maintained by other public agencies such as PG&E, Comcast and AT&T, that are located within the PUE and the PSWE (herein collectively referred to as "Other Public Improvements"). Those Other Public Improvements are not listed in Exhibit B and are not part of this Agreement.

Section 2. Term. The term (the "Term") of this Agreement shall commence on the Effective Date and shall be perpetual, unless earlier terminated pursuant to the terms of this Agreement for default under Section 15.

Section 3. Use.

a. Permitted Uses.

The sidewalks and Other Public Improvements located in the PSWE and in the PUE shall be used in a manner that is consistent with the laws and ordinances governing the use of sidewalks and public utilities in the City.

b. Prohibited Uses.

- (i) The Operator shall not intentionally do or permit to be done in, on or about the PUE and the PSWE, nor bring or keep or permit to be brought or kept therein, anything that is prohibited by or will cause a cancellation of, or materially adversely affect any insurance for the PUE and the PSWE that Operator is required to maintain pursuant to Section 9.
- (ii) The Operator shall not engage in any conduct done in or about the PUE and the PSWE which conflicts with any law, statute, ordinance, or governmental rule or regulation now in force or which may hereafter be

enacted or promulgated. Operator shall promptly comply with all laws, statutes, ordinances, and governmental rules, regulations, or requirements now in force or which may hereafter be in force, and with the requirements of any board of fire underwriters or other similar body now or hereafter constituted relating to or affecting the Operator Maintained Improvements or acts in the PUE and PSWE, excluding structural changes not relating to or affecting the condition, use, or occupancy of the PUE and the PSWE.

c. Hazardous Materials

Operator agrees that during the Term of this Agreement, Operator shall not be in material violation of any federal, state or local law, ordinance or regulation relating to industrial hygiene, soil, water, or environmental conditions on, under or about the PUE and the PSWE including, but not limited to, Hazardous Material Laws. The term "Hazardous Material Laws" as used in this Agreement shall mean any federal, state or local law, ordinance or regulation relating to a substance, or waste whose presence, use, manufacture, disposal, transportation, or release, either by itself or in combination with other materials is: (i) potentially injurious to the public health, safety or welfare, and the environment, (ii) regulated or monitored by any governmental authority, and (iii) a basis for potential liability of Operator to any governmental agency or third party under any applicable statute. Hazardous Materials shall include, but not be limited to, hydrocarbons, petroleum, gasoline, and/or crude oil or any products, by-products or fractions thereof.

Operator further agrees that during the Term of this Agreement, there shall be no intentional use, presence, disposal, storage, generation, release, or threatened release on, from or under the PUE and the PSWE in material violation of any Hazardous Material Laws.

d. No Charge for Use.

Operator shall not impose or permit the imposition of any charge for the use of the PUE, the PSWE and public improvements without City's consent. In no event shall Operator be entitled to any compensation or reimbursement from the City for the services Operator performs and the obligations Operator incurs under this Agreement. If the City permits the imposition of a charge, the proceeds thereof shall be used for actual and direct expenses for operating and maintaining those corresponding public improvements as listed in Exhibit B. The foregoing shall not prevent charging tenants or owners for utility services provided by the public agencies.

Section 4. Repair, Maintenance and Operation.

- a. During the Term of this Agreement, the Operator shall at its own expense operate, repair, and maintain the PUE, the PSWE and the Operator Maintained Improvements as shown on Exhibit B in good order, condition and repair and shall pay all costs and expenses of any nature whatsoever of operating and replacing the same. Such costs and expenses shall include, but not be limited to the costs of insurance premiums, maintenance, repairs and replacements (whether of a capital or non-capital nature), facility/energy consumption, compliance with legal requirements, compliance with all utilities, and all public charges, taxes and assessments of any nature whatsoever. Unless caused by its own acts of negligence, Operator shall not be under any obligation to pay any cost or expense of any kind or character in connection with or related to the repair, management, operation, maintenance or replacement of City Maintained Improvements within the PUE, the PSWE during the Term of this Agreement. The standards of operation and maintenance of the PUE, the PSWE and the Operator Maintained Improvements required under this Agreement shall be in accordance with the City standards generally applicable to other public sidewalks, public improvements and easements in the City. Operator shall use its best efforts to confirm that the operation and maintenance obligations of the PUE, the PSWE and the Operator Maintained Improvements are met to the extent that they apply. In the event the Operator fails to perform the management, maintenance, repair and operation of the PUE, the PSWE and the Operator Maintained Improvements as provided herein, the City shall notify Operator in writing of such failure to perform, specifying the respects in which it considers the Operator's performance to be unsatisfactory. Upon the failure of the Operator to improve or to commence and diligently proceed to improve such performance within sixty (60) days after such notice, the City shall have the right to undertake or cause to be undertaken such management, maintenance, repair and operational activities. In such event, the Operator shall promptly upon demand reimburse the City for all reasonable costs and expenses incurred by the City for such management, maintenance, repair and operational activities.
- b. City shall at its own expense operate, repair, and maintain the City Maintained Improvements as shown on Exhibit B in good order, condition and repair and shall pay all costs and expenses of any nature whatsoever of operating, repairing or replacing the same, including the costs or expenses of restoring the PUE, PSWE and any Operator Maintained Improvements to their condition prior to the commencement or undertaking of any repairs or replacements of City Maintained Improvements. Unless caused by its own acts of negligence, City shall not be under any obligation to pay any cost or expense of any kind or character in connection with or related to the repair, management, operation, maintenance or replacement of Operator Maintained Improvements within the PUE, the PSWE during the Term of this Agreement.

Section 5. Permits and Licenses.

Operator shall, at its own expense, also be responsible for obtaining and maintaining any and all governmental permits, licenses and approvals necessary or desirable with respect to maintaining, repairing and/or replacing Operator Maintained Improvements within the PUE, the PSWE.

Section 6. Additions and/or Alterations to the Improvements.

- a. Improvements. The Operator Maintained Improvements and the City Maintained Improvements in the PUE and in the PSWE are herein collectively referred to as "Improvements".
- b. By the Operator. The Operator may, upon written approval from the City, at the Operator's expense, make any addition or alteration to the Improvements which do not impair the use provided in Section 3. Any such addition shall be performed diligently and in a first-class workmanlike manner by a licensed contractor after obtaining appropriate permits and approvals from the City or other authorized agency.
- c. By the City. The City shall have the right during the Term of this Agreement, at its own expense, to make or permit to be made, any addition or alteration to the Improvements which are now or may hereafter be permitted by law, to attach fixtures, structures or signs thereto, and to place any personal property on or in the PUE and the PSWE.
- d. Part of Improvements. Any additions or alterations to the Improvements shall automatically become part of the Improvements.

Section 7. Policies and Rules. The Operator shall establish and maintain such general policies, rules and regulations for the repair, management, maintenance, operation and use of the PUE and the PSWE consistent with the provisions of this Agreement and the standards of the City applicable to other public improvements and sidewalks as may be necessary under this Agreement. Such policies, rules and regulations must be approved by the City which approval shall not be unreasonably withheld or delayed.

Section 8. Access Rights. Operator grants to City an access right to operate and maintain, at its own cost, risk and expense, the City Maintained Improvements. Grants made pursuant to this section shall be limited to the Term of the Agreement.

Section 9. Insurance.

- a. Obligations of Operator. During the Term of this Agreement, the Operator shall at its expense, procure, carry, and maintain in full force and effect in a

form acceptable to City insurance coverage by the following policies of insurance:

- (i) Workers' Compensation Insurance, in accordance with the law;
- (ii) Liability Insurance with a minimum combined single-limit coverage of One Million Dollars (\$1,000,000) on an occurrence basis and One Million (\$1,000,000) combined single limit, arising out of or resulting from: (i) personal injury, death, or property damage sustained or alleged to have been sustained by any person for any reason on the PUE and the PSWE or as a result of business or activity at the PUE and the PSWE; or (ii) personal injury, death, or property damage sustained or alleged to have been sustained by operation, ownership, or use of automobiles, including owned, non-owned, and hired automobiles; provided, however, that such insurance may exclude coverage for any claim for injury to person or property arising from the gross negligence or willful misconduct of the City or its officers, employees, agents or contractors; any claim that arises solely by reason of the actions or omissions of an Unrelated Third Party (as defined in Section 25) or in connection with the PUE and the PSWE; or any claim that arises solely by reason of the design of the Improvements on the PUE and the PSWE to the extent that the design has been approved by the City and the design element is one normally approved by the City for public improvements.
- (iii) Property Insurance insuring the PUE and PSWE against loss or damage by a standard all risk policy (excluding flood and earthquake if insurance for those risks is not available at a commercially reasonable rate) in amounts such that the proceeds of such insurance shall not be less than the full replacement value of the Operator Maintained Improvements, or should insurance in such amount not be commercially reasonably available, such lesser amount as may be reasonably acceptable to the City. Operator shall only be required to maintain property insurance if such insurance is available to Operator. In the event Operator is unable to maintain such insurance, the City may maintain such insurance or cause such insurance to be maintained. The Operator shall reimburse the City for the reasonable costs the City incurs in connection with this subsection (a)(iii) or provide a reasonable alternative.
- (iv) Any other insurance reasonably requested the City.
- (v) All policies of liability insurance obtained and maintained by Operator in accordance with this section shall name the City and the City's contractors as additional insureds and shall further provide that the insurance policy so endorsed will be the primary insurance providing coverage for City and City employees.

- (vi) All insurance provided under this section shall: (a) be periodically reviewed by the parties for the purpose of mutually increasing the minimum limits of such insurance, from time to time, to amounts which may be reasonable and customary for similar improvements of like size and operation; and (b) effected under policies issued by insurers of recognized responsibility, licensed or permitted to do business in the State of California.
- (vii) Operator may use its insurance proceeds to fulfill its obligations under Section 10 and any proceeds that remain after repair, replacement or reconstruction shall be paid to Operator.
- b. Certificates. Certificates of Insurance shall be furnished by Operator to City and shall provide that no cancellation, reduction or material modification of coverage will occur without thirty (30) days' prior written notice to City. In the event Operator does not comply with the requirements of this Section 9, City may, at its option, purchase insurance coverage to protect the City and Operator shall reimburse City for all reasonable sums paid by City under this section within thirty (30) days after written notice is received from City of amount expended. Acceptance of insurance certificates by City shall not limit or eliminate the duties or responsibilities of Operator set forth in this Agreement.
- c. Waiver of Subrogation. Operator releases City from any claims for damage to any person or to the PUE and the PSWE and the Improvements in or to the PUE and the PSWE that are caused by or result from risks insured against under any insurance policies carried by Operator and in force at the time of any such damage. Operator shall cause each insurance policy obtained by it to provide that the insurance company waives all right of recovery by way of subrogation against City or City in connection with any damage covered by any policy.

Section 10. Damage or Destruction of Improvements.

In the event that the Operator Maintained Improvements are damaged by fire or other insured casualty or event during the Term of this Agreement, Operator shall at Operator's sole cost, within thirty (30) days, commence and diligently pursue to completion the repair, replacement or reconstruction of the Operator Maintained Improvements.

In the event that the City Maintained Improvements are damaged by fire or other insured casualty or event during the Term of this Agreement, City shall at City's sole cost, within thirty (30) days, commence and diligently pursue to completion the repair, replacement or reconstruction of the City Maintained Improvements.

Section 11. Assignment of Agreement.

Unless otherwise permitted herein, at any time after the date hereof, this Agreement shall not be transferred without the prior written consent of the City where such consent shall not be unreasonably withheld or delayed. A transfer consists of any of the following, whether voluntary or involuntary and whether effected by death, operation of law or otherwise: (i) any assignment, mortgage, pledge, encumbrance, or other transfer of any interest in this Agreement; (ii) any occupancy of any portion of the PUE and the PSWE by any persons other than Operator and its employees; and (iii) any changes of ownership in the Operator, including any transfer or fifty percent or more of the interests in Operator including the dissolution, merger, consolidation, or other reorganization of Operator. Notwithstanding the foregoing, the Operator may assign this Agreement and its rights thereunder without written consent of the City to (i) a wholly owned subsidiary of Operator, or (ii) to an entity that is purchasing all or a substantial portion of Operator's retail operations on the parcels adjacent to the PUE and the PSWE.

Section 12. Law Governing. This Agreement shall be governed by the laws of the State of California, subject to the waivers, exclusions and provisions herein contained.

Section 13. Notices. All notices, statements, demands, requests, consents, approvals, authorizations, offers, agreements, appointments or designations hereunder by either party to the other shall be in writing and shall be sufficiently given and served upon the other party, if sent by United States registered mail, return receipt requested, postage prepaid and addressed as follows:

City	City of Sunnyvale 456 West Olive Avenue P.O. Box 3707 Sunnyvale, California 94088-3707 Attention: Director of Public Works Attn: Kent Steffens Telephone: (408) 730-7415 Facsimile: (408) 730-7286
Operator	CP III T&C Sunnyvale, LLC Attn: General Counsel Telephone: Facsimile:
With a copy to	CP III T&C Sunnyvale, LLC Attn: Telephone: Facsimile:

or at such other address as either party shall later designate for such purpose by written notice to the other party.

Section 14. Waiver. The waiver by either party of any breach by the other of any term, covenant or condition hereof shall not operate as a waiver of any subsequent breach of the same or any other term, covenant or condition hereof.

Section 15. Default by Operator. The Operator shall be deemed to be in default hereunder if (a) the Operator shall fail to observe or perform any term, covenant or condition contained herein for a period of sixty (60) days after written notice thereof from the City to the Operator, or (b) the Operator shall abandon or vacate the PUE and PSWE, or (c) the Operator's interest in this Agreement or any part hereof shall be assigned or transferred in violation of Section 11, or (d) the Operator shall file any petition or institute any proceedings wherein or whereby the Operator asks or seeks or prays to be adjudicated a bankrupt, or to be discharged from any or all of its debts or obligations, or for a readjustment of the Operator's debts, or for any other similar relief, then and in any of such events, the Operator shall be deemed to be in default hereunder.

If the Operator should, after notice of such default, fail to remedy any default or commence the correction thereof within sixty (60) days after such notice, or thereafter fails to diligently pursue such correction to completion, then the City shall have the right, at its option, without any further demand or notice:

- (i) to terminate this Agreement and to re-enter the PUE and the PSWE and eject all parties in possession therefrom, in which case this Agreement shall terminate, and the Operator shall have no further rights or claims hereunder; or
- (ii) to continue this Agreement in effect, in which case it may enforce all of its rights and remedies hereunder.

In the event the City terminates this Agreement as hereinabove provided, the City shall be entitled to pursue all rights and remedies available at law or in equity.

The foregoing remedies of the City are in addition to and not exclusive of any other remedy of the City.

Upon terminating, the Operator shall not hinder the City or its designee in taking over the operation of the PUE, the PSWE and the Improvements.

Section 16. No Release of Operator. Any assignment by Operator of its obligations under this Agreement shall not relieve Operator of its obligations hereunder, whether occurring before or after such consent or assignment, unless the City approves such assignment and the assignee assumes in writing all obligations of the Operator

under this Agreement and City approves the form of the written assignment, provided no such consent or approval shall be required for the transfers authorized under Section 11 of this Agreement. The consent by City to any assignment shall not relieve Operator from the obligation to obtain City's express written consent to any other assignment except as herein provided. The acceptance of payment by City from any other person shall not be deemed to be a waiver by City of any provision of this Agreement or to be a consent to any assignment or other transfer. Consent to one assignment or other transfer shall not be deemed to constitute consent to any subsequent assignment or other transfer.

Section 17. Assignment by City. The City shall have the right to transfer and assign, in whole or in part, all its rights and obligations under this Agreement provided that the transferee/assignee assumes in writing all obligations of the City under this Agreement and in the PUE and the PSWE and in such event such transferee/assignee shall be deemed to have assumed such obligations and no further liability or obligation shall thereafter accrue against the City under this Agreement from and after the date of such transfer or assignment. City shall not be relieved of any obligation of City under this Agreement prior to any such transfer or assignment unless Operator has approved the form related thereto.

Section 18. Nondiscrimination. The Operator covenants by and for itself, its successors and assigns, and all persons claiming under or through it, that this Agreement is made and accepted upon and subject to the following conditions:-

That there shall be no discrimination against or segregation of any person or group of persons, on account of sex, marital status, race, color, creed, national origin, ancestry, gender, disability or sexual orientation, in the leasing, subleasing, transferring, use, or enjoyment of the PUE and PSWE herein operated nor shall the Operator itself, or any person claiming under or through it, establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy, of Operators, lessees, sublessees, sub-Operators, or vendees within or on the PUE and the PSWE herein operated.

The foregoing conditions shall not create any rights in Operator that are not otherwise expressly set forth herein.

Section 19. Indemnification. The City shall not be liable at any time for any loss, damage, or injury to the property or person of any person whomsoever at any time occasioned by or arising out of any act or omission of the Operator, or of anyone holding under the Operator or the occupancy or use of the PUE, the PSWE and the Improvements or any part thereof by or under the Operator, or directly or indirectly from any state or condition of the PUE, the PSWE and the Improvements or any part thereof during the Term of this Agreement except for the willful misconduct or the negligence of the City.

Notwithstanding anything to the contrary under this Agreement, and irrespective of any insurance carried by the Operator for the benefit of the City and the City's employees, the Operator agrees to protect, defend, indemnify and hold the City and the City's employees harmless from any and all damages or liabilities of whatsoever nature arising under the terms of this Agreement or arising out of or in connection with the PUE, the PSWE and the Operator Maintained Improvements during the Term of this Agreement. The foregoing indemnity shall survive termination of this Agreement. The foregoing indemnity shall not apply to: (i) any claim for injury to person or property arising from the gross negligence or willful misconduct of the City or its officers, employees, agents, licencees or contractors; (ii) to any claim that arises solely by reason of the actions or omissions of an Unrelated Third Party or in connection with the PUE, the PSWE and the Improvements; or (iii) any claim that arises solely by reason of the design of the Improvements on the PUE and the PSWE to the extent that the design has been approved by the City and the design element is one normally approved by the City for public improvements. An Unrelated Third Party is a person or entity who is not directly or indirectly an employee, officer, agent, representative, tenant, contractor or subcontractor of the Operator.

Section 20. Certain Covenants of the Operator. Without limiting Operator's other obligations hereunder, Operator shall not do, or permit or authorize others to do any of the following:

- a. Operate or use the PUE, the PSWE and the Operator Maintained Improvements in any manner or for any purposes other than as herein set forth;
- b. Knowingly or intentionally engage in any act which would, to an ordinarily prudent person in the position of Operator, be reasonably foreseeable to cause material damage to the PUE, the PSWE and the Improvements;
- c. Abandon the PUE and/or the PSWE during the Term of this Agreement;
- d. Knowingly use or occupy, or knowingly permit the PUE and the PSWE, or any parts thereof, to be used or occupied, for any unlawful, disreputable or ultra-hazardous use (including the prohibited or unauthorized use, storage or disposal of hazardous material), or operate or conduct the business of the PUE and the PSWE in any manner known to constitute or give rise to a nuisance of any kind;
- e. Make, authorize or permit any material modifications or alterations to the PUE, the PSWE and the Operator Maintained Improvements except as expressly authorized by this Agreement;
- f. Enter into or amend any contract or agreement affecting the PUE, the PSWE and the Operator Maintained Improvements that conflicts in any material respect with the terms of this Agreement or that does not contain an express

provision that it will terminate automatically upon the expiration or earlier termination of this Agreement.

Section 21. Execution. This Agreement may be simultaneously executed in any number of counterparts, each of which when so executed shall be deemed to be an original, but all together shall constitute but one and the same Agreement, and it is also understood and agreed that separate counterparts of this Agreement may be separately executed by the City and the Operator, all with the same force and effect as though the same counterpart had been executed simultaneously by both the City and the Operator. The counterparts of this Agreement and all ancillary documents may be executed and delivered by facsimile or other electronic signature by any of the parties to any other party and the receiving party may rely on the receipt of such document so executed and delivered by facsimile or other electronic means as if the original had been received.

Section 22. Validity. If any one or more of the terms, provisions, promises, covenants, conditions or option provisions of this Agreement shall to any extent be adjudged invalid, unenforceable, void or voidable for any reason whatsoever by a court of competent jurisdiction, each and all of the remaining terms, provisions, promises, covenants, conditions and option provisions of this Agreement shall not be affected thereby and shall be valid and enforceable to the fullest extent permitted by law.

Section 23. Binding Effect. This Agreement, and the terms, provisions, promises, covenants, conditions and option provisions hereof, shall be binding upon and shall inure to the benefit of the parties hereto and their respective heirs, legal representatives, successors and assigns.

Section 24. No Lease. This Agreement (i) is not a lease, and (ii) shall not make Operator an agent for the City.

Section 25. Estoppel Certificate. Within ten (10) days after delivery of a written request, each party shall execute and deliver to the other party an estoppel certificate certifying as to such facts with regard to this Agreement and the PUE and the PSWE as the either party may reasonably request from time to time.

Section 26. Conflict. In the event of any conflict between the terms and conditions of this Agreement and the terms and conditions of other agreements, the terms of this Agreement shall prevail.

Section 27. Successors and Assigns. This Agreement shall inure to the benefit and binds each of the Parties successors and assigns.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed and attested by their proper officers thereunto duly authorized, and their official seals to be hereto affixed, as of the day and year first above written.

THE CITY OF SUNNYVALE

By: _____
Kent Steffens
Director of Public Works

APPROVED AS TO FORM:

Kathryn A. Berry
Senior Assistant City Attorney

CP III T&C Sunnyvale, LLC
A Delaware Limited Liability Company

By: _____
Mark Garrell
Vice President

Attachments:
Exhibit A Parcel Map
Exhibit B Improvement Maintenance List

EXHIBIT A

Parcel Map

Exhibit B

Improvement Maintenance and Access Right Agreement

Listed below are improvements to be maintained by the Operator or by the City, respectively as indicated for each improvement item.

1. Sidewalks and Driveway Approaches:
 - a. Pavement (Operator)
 - b. Access ramps and detectable warning surfaces therein (Operator)
 - c. Base course, sub-base, and subgrade under sidewalks and driveway approaches (Operator)

2. Utility System
 - a. Fire hydrants (City)
 - b. Water meters and water improvements from the street up to the water meters (City)
 - c. Backflow preventers (reduced pressure and/or double check detection type) (Operator)
 - d. Sanitary sewer system including laterals and cleanouts (Operator)
 - e. Grease interceptors (Operator)
 - f. Storm drain system and stormwater treatment units (Operator)

3. Streetscapes (except along Washington Avenue)
 - a. Street trees including structural soil therefore (Operator)
 - b. Street tree well hardware including grates (Operator)
 - c. Root barriers (Operator)
 - d. Other landscaping including turf, shrubs, and other plant materials (Operator)
 - e. Irrigation systems for landscaping including timers, controllers, piping, valves, heads, conduits, power supply and backflow preventers. (Operator)

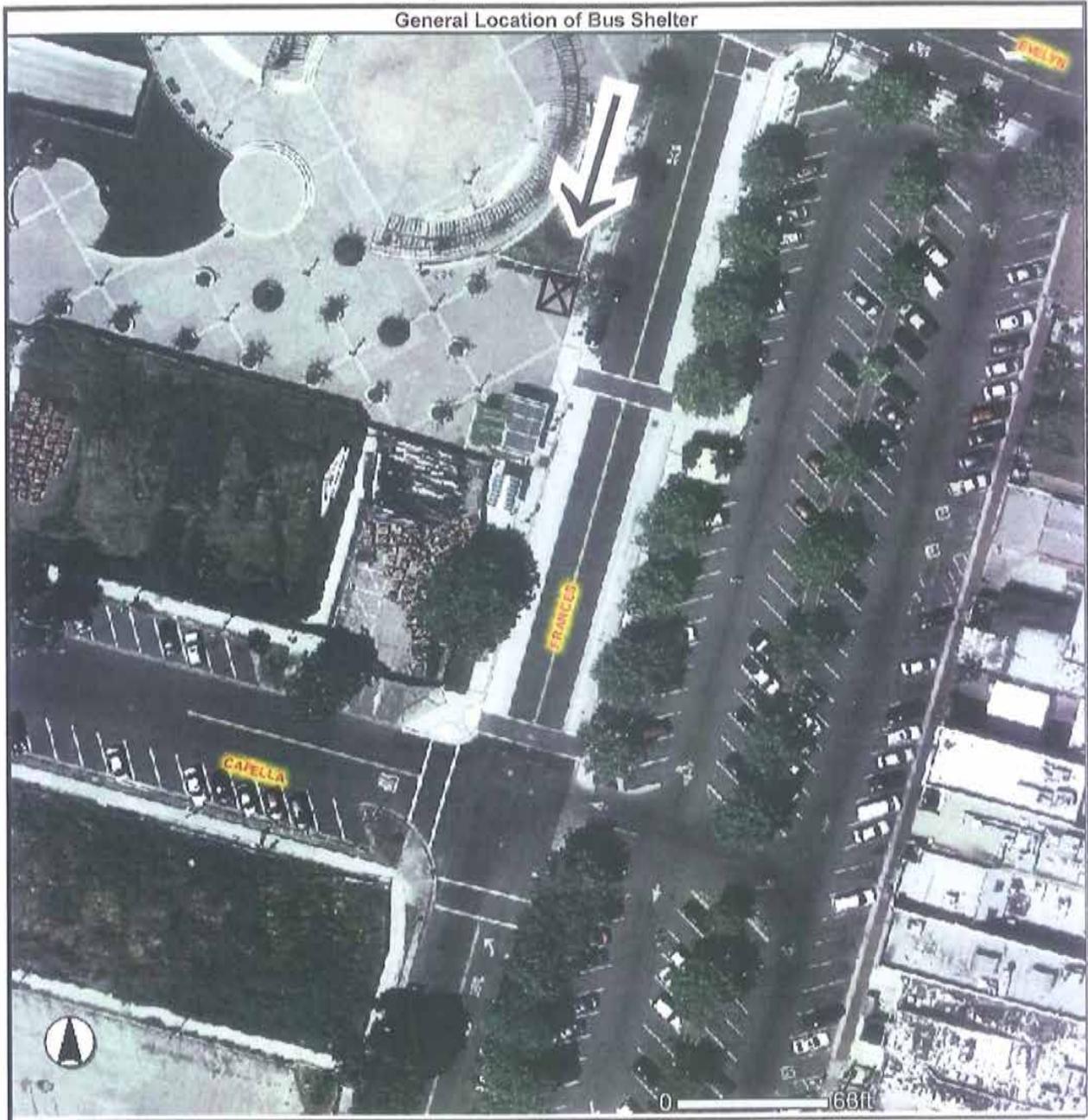
4. Street lighting
 - a. Street light fixtures and standards (poles) (City)
 - b. Conductors and conduits (City)
 - c. Pull boxes (City)
 - d. Photocells, transformers, and/or other electrical equipment that is a part of the street lighting system (City)
 - e. Electrical receptacles at each street tree or street light for twinkle lights (Operator)

5. Street appurtenances
 - a. Street furniture (bike racks, bike lockers, trash receptacles, benches, ash urns and news racks, etc.) (Operator)

- b. Street name signs and posts, restricted parking signs and posts, and traffic regulatory signs and posts. (City)
- c. Bollards, kiosks, drinking fountains, planter pots, other signage and posts (such as directional signs and posts) therefore (if any)
(Operator)

ATTACHMENT D

General Location of Bus Shelter



ATTACHMENT E

OWNER'S STATEMENT

WE HEREBY STATE THAT WE ARE THE OWNERS OF, OR HAVE SOME RIGHT, TITLE OR INTEREST IN AND TO THE REAL PROPERTY INCLUDED WITHIN THE SUBDIVISION SHOWN UPON THE HEREON MAP. THAT WE ARE THE ONLY PERSONS WHOSE CONSENT IS NECESSARY TO PASS A CLEAR TITLE TO SAID REAL PROPERTY; THAT WE HEREBY CONSENT TO THE PREPARATION AND FILING OF SAID MAP AND SUBDIVISION AS SHOWN WITHIN THE DISTINCTIVE BORDER LINE.

THE REAL PROPERTY DESCRIBED BELOW IS DEDICATED AS AN EASEMENT FOR PUBLIC PURPOSES FOR ALL STREETS AND PORTIONS OF STREETS NOT PREVIOUSLY EXISTING AS DELINEATED HEREON AND DESIGNATED AS "STREET HEREIN DEDICATED", AND ALSO DEDICATED TO PUBLIC USE EASEMENTS FOR ANY AND ALL PUBLIC USES UNDER, UPON AND OVER SAID STREETS AND PORTIONS THEREOF.

THE REAL PROPERTY DESCRIBED BELOW IS DEDICATED AS AN EASEMENT FOR PUBLIC PURPOSES FOR PUBLIC SIDEWALKS OVER THE LAND DESIGNATED AND DELINEATED AS "P.S.W.E." (PUBLIC SIDEWALK EASEMENT).

THE REAL PROPERTY DESCRIBED BELOW IS DEDICATED AS AN EASEMENT FOR ANY AND ALL PUBLIC SERVICE FACILITIES INCLUDING POLES, WIRES, CONDUITS, GAS, AND ALL APPURTENANCES TO THE ABOVE, UNDER, UPON, OR OVER THOSE CERTAIN STRIPS OF LAND DESIGNATED AS "P.U.E." (PUBLIC UTILITY EASEMENT). THE ABOVE MENTIONED PUBLIC SERVICE EASEMENTS ARE TO BE KEPT OPEN AND FREE FROM BUILDINGS AND STRUCTURES OF ANY KIND EXCEPT PUBLIC SERVICE STRUCTURES, IRRIGATION SYSTEMS AND APPURTENANCES THERETO.

WE ALSO HEREBY STATE THAT THE MAINTENANCE RESPONSIBILITIES OF THE IMPROVEMENTS LOCATED WITHIN THE "P.S.W.E." AND "P.U.E." SHALL BE IN ACCORDANCE WITH THE IMPROVEMENT MAINTENANCE AND ACCESS RIGHT AGREEMENT SEPARATELY RECORDED ON _____, 2012 AS DOCUMENT NO. _____.

AS OWNER:
CP III T&C Sunnyvale, LLC, a Delaware limited liability company,

BY: _____

ITS: _____

OWNER'S ACKNOWLEDGMENT

STATE OF CALIFORNIA) SS.
COUNTY OF SANTA CLARA)

ON _____, 2012 BEFORE ME, _____
A NOTARY PUBLIC IN AND FOR SAID STATE, PERSONALLY APPEARED

WHO PROVED TO ME ON THE BASIS OF SATISFACTORY EVIDENCE TO BE THE PERSON(S) WHOSE NAME(S) IS/ARE SUBSCRIBED TO THE WITHIN INSTRUMENT AND ACKNOWLEDGED TO ME THAT HE/SHE/THEY EXECUTED THE SAME IN HIS/HER/their AUTHORIZED CAPACITY(IES), AND THAT BY HIS/HER/their SIGNATURE(S) ON THE INSTRUMENT THE PERSON(S), OR THE ENTITY UPON BEHALF OF WHICH THE PERSON(S) ACTED, EXECUTED THE INSTRUMENT.

I CERTIFY UNDER PENALTY OF PERJURY UNDER THE LAWS OF THE STATE OF CALIFORNIA THAT THE FOREGOING PARAGRAPH IS TRUE AND CORRECT.

WITNESS MY HAND

NOTARY'S SIGNATURE _____
PRINTED NOTARY'S NAME _____
NOTARY'S PRINCIPAL PLACE OF BUSINESS _____
NOTARY'S COMMISSION NUMBER _____
EXPIRATION OF NOTARY'S COMMISSION _____

MULTIPLE PARCEL MAPS NOTE

THIS MAP IS THE SECOND PARCEL MAP OF THE TENTATIVE MAP APPROVED BY THE PLANNING COMMISSION AT THEIR MEETING ON SEPTEMBER 27, 2010 AND NOVEMBER 14, 2011 WITH A SPECIAL DEVELOPMENT PERMIT #2010-7493 AND #2011-7661, AND SUBSEQUENT APPROVED REVISIONS AS PLANNING APPLICATION #2011-7841.

THE FIRST PARCEL MAP RECORDED ON _____, 2012, IN BOOK _____ OF MAPS AT PAGES _____, SANTA CLARA COUNTY RECORDS.

PARCEL MAP

BEING A TWO LOT SUBDIVISION OF ALL OF THAT LAND AS DESCRIBED IN THAT CERTAIN GRANT DEED RECORDED AUGUST 8, 2011 AS DOCUMENT NO. 21269819, OFFICIAL RECORDS OF SANTA CLARA COUNTY, AND LYING WITHIN THE

CITY OF SUNNYVALE
COUNTY OF SANTA CLARA, STATE OF CALIFORNIA

JUNE, 2012

CONSISTING OF TWO SHEETS



KIER & WRIGHT
CIVIL ENGINEERS & SURVEYORS, INC.
3350 Scott Boulevard, Building 22
Santa Clara, California 95054

CERTIFICATE OF ABANDONMENT

PER SECTION 66445(i) AND SECTION 66499.20 1/2 OF THE SUBDIVISION MAP ACT THE FOLLOWING EASEMENTS SHOWN ON THE PARCEL MAP HEREON ARE HEREBY ABANDONED:

1. PORTION OF PUBLIC STREETS AS DELINEATED AND DEDICATED FOR PUBLIC USE ON TRACT NO. 4040 RECORDED IN BOOK 198 OF MAPS AT PAGE 42, SANTA CLARA COUNTY RECORDS.
2. BUS SHELTER EASEMENT DEDICATED FOR PUBLIC USE IN THAT DOCUMENT RECORDED AS INSTRUMENT NO. 19222012, OFFICIAL RECORDS.

DATE _____ KENT STEFFENS RCE 43002
DIRECTOR OF PUBLIC WORKS
CITY OF SUNNYVALE, CALIFORNIA

APPROVAL BY THE DIRECTOR OF COMMUNITY DEVELOPMENT

I CERTIFY THAT THIS PARCEL MAP IS CONSISTENT WITH THE CITY OF SUNNYVALE'S GENERAL PLAN AND THE APPROVED TENTATIVE MAP; AND COMPLIES WITH THE CONDITIONS OF APPROVAL AS APPROVED BY THE PLANNING COMMISSION AT THEIR MEETING ON SEPTEMBER 27, 2010 AND NOVEMBER 14, 2011 WITH A SPECIAL DEVELOPMENT PERMIT #2010-7493 AND #2011-7661, AND SUBSEQUENT APPROVED REVISIONS AS PLANNING APPLICATION #2011-7841.

DATE _____ HANSON HOM
DIRECTOR OF COMMUNITY DEVELOPMENT
CITY OF SUNNYVALE, CALIFORNIA

CERTIFICATE OF ACCEPTANCE OF DEDICATION AND CONSENT OF MAP APPROVAL

THIS IS TO CERTIFY THAT ALL DEDICATIONS OF EASEMENTS, PUBLIC STREETS, RIGHTS-OF-WAY OR OTHER INTERESTS IN, OVER OR UPON THE REAL PROPERTY AS SHOWN AND DESIGNATED ON THIS MAP BEING OFFERED TO THE CITY OF SUNNYVALE, A MUNICIPAL CORPORATION, IS HEREBY ACCEPTED AND CONSENT TO RECORD GIVEN BY THE UNDERSIGNED DIRECTOR OF PUBLIC WORKS ON BEHALF OF THE CITY COUNCIL OF THE CITY OF SUNNYVALE PURSUANT TO AUTHORITY CONFERRED BY SUNNYVALE MUNICIPAL CODE, SECTION 18.20.280 (C) AND 18.04.030(G)(3).

DATE _____ KENT STEFFENS RCE 43002
DIRECTOR OF PUBLIC WORKS
CITY OF SUNNYVALE, CALIFORNIA

SOIL REPORT NOTE

A SOILS REPORT HAS BEEN PREPARED BY TREADWELL & ROLLO, ENTITLED "GEOTECHNICAL INVESTIGATION CARMEL LOFTS", PROJECT NO. 731576301, DATED JANUARY 18, 2012, A COPY OF WHICH HAS BEEN FILED WITH THE CITY OF SUNNYVALE.

CITY ENGINEER'S STATEMENT

I HEREBY STATE THAT I HAVE EXAMINED THE HEREON PARCEL MAP, THAT THE SUBDIVISION AS SHOWN HEREON IS SUBSTANTIALLY THE SAME AS IT APPEARED ON THE TENTATIVE MAP AND ANY APPROVED ALTERATIONS THEREOF; THAT ALL PROVISIONS OF THE SUBDIVISION MAP ACT, AS AMENDED, AND OF ANY LOCAL ORDINANCE APPLICABLE AT THE TIME OF APPROVAL OF THE TENTATIVE MAP HAVE BEEN COMPLIED WITH.

DATE _____ MARK ROGGE RCE 56888
CITY ENGINEER
CITY OF SUNNYVALE, CALIFORNIA

I AM SATISFIED THAT SAID MAP IS TECHNICALLY CORRECT.

DATE _____ ROGER HIGDON RCE 21755

SURVEYOR'S STATEMENT

THIS MAP WAS PREPARED BY ME OR UNDER MY DIRECTION AND IS BASED UPON A FIELD SURVEY IN CONFORMANCE WITH THE REQUIREMENTS OF THE SUBDIVISION MAP ACT AND LOCAL ORDINANCE AT THE REQUEST OF CP III T&C SUNNYVALE, LLC, ON DECEMBER, 2011. I HEREBY STATE THAT THIS PARCEL MAP SUBSTANTIALLY CONFORMS TO THE APPROVED OR CONDITIONALLY APPROVED TENTATIVE MAP, IF ANY; THAT THE SURVEY IS TRUE AND COMPLETE AS SHOWN; THAT ALL MONUMENTS ARE OF THE CHARACTER AND OCCUPY THE POSITIONS INDICATED, OR THAT THEY WILL BE SET IN THOSE POSITIONS ON OR BEFORE DECEMBER 2012; THAT THE MONUMENTS ARE, OR WILL BE, SUFFICIENT TO ENABLE THE SURVEY TO BE RETRACED.

DATE _____ RYAN M. AMAYA L.S. 6134



RECORDER'S STATEMENT

FILE NO. _____ FEE \$ _____ PAID. ACCEPTED FOR RECORD AND FILED THIS _____ DAY OF _____, 2012, AT _____ M. IN BOOK _____ OF MAPS AT PAGE(S) _____, SANTA CLARA COUNTY RECORDS, AT THE REQUEST OF KIER & WRIGHT CIVIL ENGINEERS & SURVEYORS, INC.

REGINA ALCOMENDRAS, COUNTY RECORDER
SANTA CLARA COUNTY, CALIFORNIA

BY: _____
DEPUTY

PARCEL MAP

BEING A TWO LOT SUBDIVISION OF ALL OF THAT LAND AS DESCRIBED IN THAT CERTAIN GRANT DEED RECORDED AUGUST 8, 2011 AS DOCUMENT NO. 21269819, OFFICIAL RECORDS OF SANTA CLARA COUNTY, AND LYING WITHIN THE

CITY OF SUNNYVALE
 COUNTY OF SANTA CLARA, STATE OF CALIFORNIA
 SCALE: 1" = 40'
 JUNE, 2012
 CONSISTING OF TWO SHEETS

KIER & WRIGHT
 CIVIL ENGINEERS & SURVEYORS, INC.
 3350 Scott Boulevard, Building 22
 Santa Clara, California 95054

LEGEND

DISTINCTIVE BORDER	
PROPOSED PROPERTY LINE	
ADJACENT PROPERTY LINE	
CENTERLINE	
PROPOSED EASEMENT	
EXISTING EASEMENT	
FOUND MONUMENT AS NOTED	
SET STANDARD STREET MONUMENT	
SET 3/4" IRON PIPE L5 6134	
RECORD INFORMATION W/ REFERENCE	

ABBREVIATIONS

FND	FOUND
MON	MONUMENT
O.R.	OFFICIAL RECORDS
(R)	RADIAL
P.S.W.E.	PUBLIC SIDEWALK EASEMENT
I.E.E.	INGRESS & EGRESS EASEMENT
P.U.E.	PUBLIC UTILITY EASEMENT

NOTES

- ALL DISTANCES ARE IN FEET AND DECIMALS THEREOF.
- THE AREA WITHIN THE DISTINCTIVE BORDER LINE IS 1.598± ACRES.
- THE DISTINCTIVE BORDER DENOTES THE BOUNDARY OF THE SUBDIVISION.

CURVE TABLE

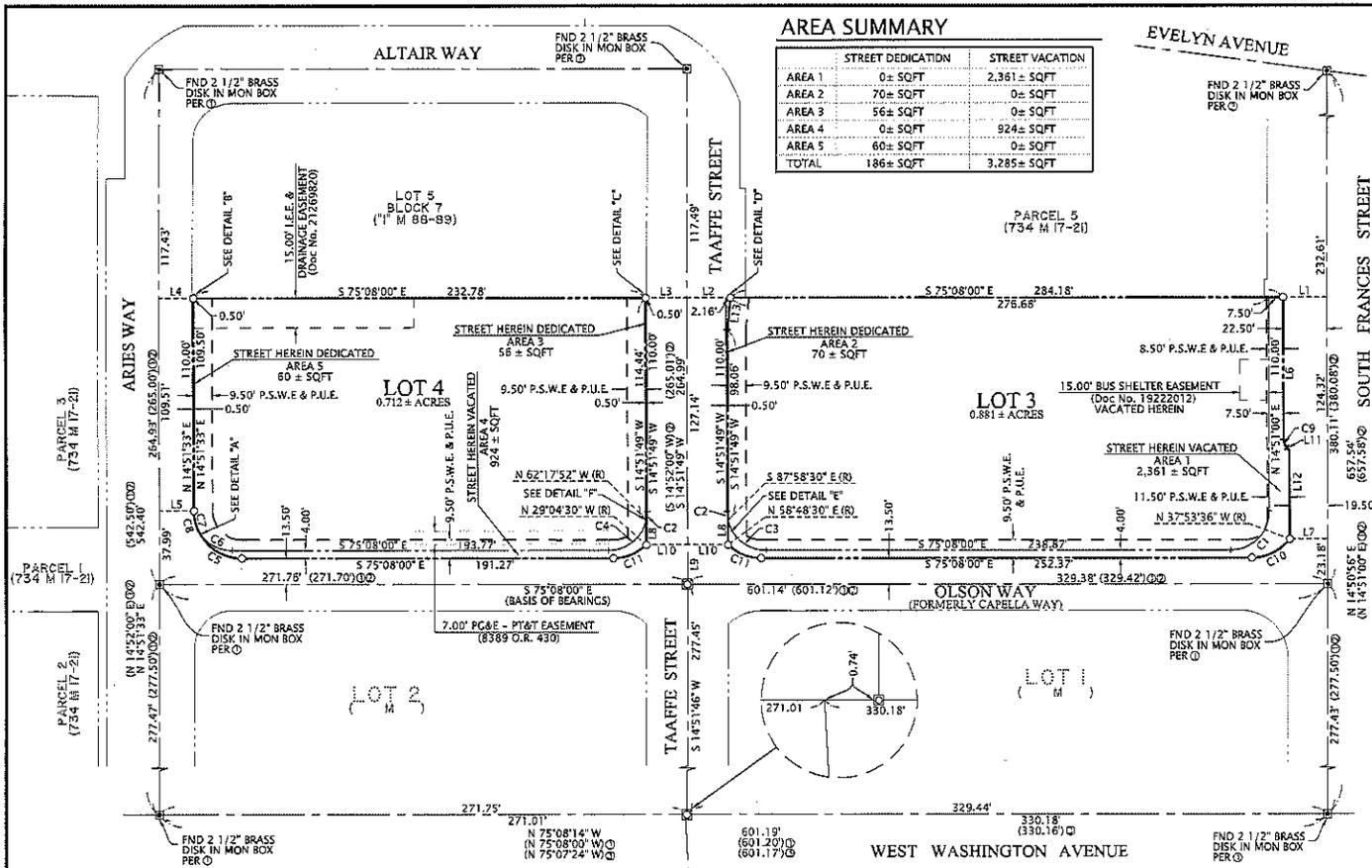
CURVE	RADIUS	DELTA	LENGTH
C1	20.00'	90°01'00"	31.42'
C2	20.00'	12°50'19"	4.48'
C3	20.00'	77°09'30"	26.93'
C4	20.00'	77°09'52"	26.94'
C5	24.50'	60°36'57"	25.92'
C6	20.00'	54°49'34"	19.14'
C7	24.50'	29°22'36"	12.56'
C8	20.00'	35°09'59"	12.28'
C9	5.50'	44°58'56"	4.32'
C10	24.50'	52°45'36"	22.56'
C11	24.50'	43°56'30"	18.79'

LINE TABLE

LINE	BEARING	DISTANCE
L1	S 75°08'00" E	22.50'
L2	S 75°08'00" E	22.66'
L3	S 75°08'00" E	21.00'
L4	S 75°08'00" E	18.00'
L5	N 75°08'27" W	18.00'
L6	N 14°50'56" E	73.35'
L7	S 75°09'04" E	19.50'
L8	S 14°51'49" W	12.70'
L9	S 14°51'49" W	20.36'
L10	S 75°08'11" E	21.00'
L11	N 30°08'00" W	1.97'
L12	N 14°50'56" E	45.70'
L13	S 20°39'04" W	16.47'

AREA SUMMARY

STREET DEDICATION	STREET VACATION
AREA 1	0± SQFT
AREA 2	70± SQFT
AREA 3	56± SQFT
AREA 4	0± SQFT
AREA 5	60± SQFT
TOTAL	186± SQFT

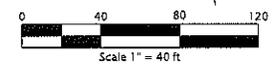
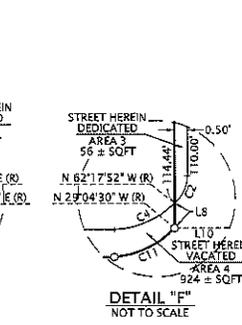
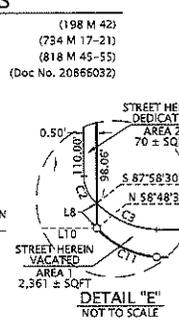
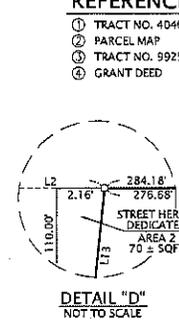
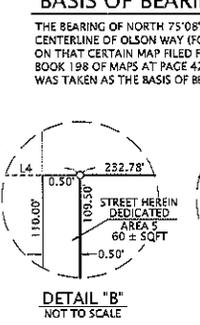
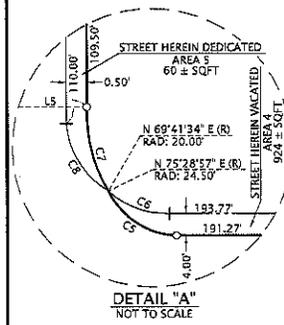


BASIS OF BEARINGS

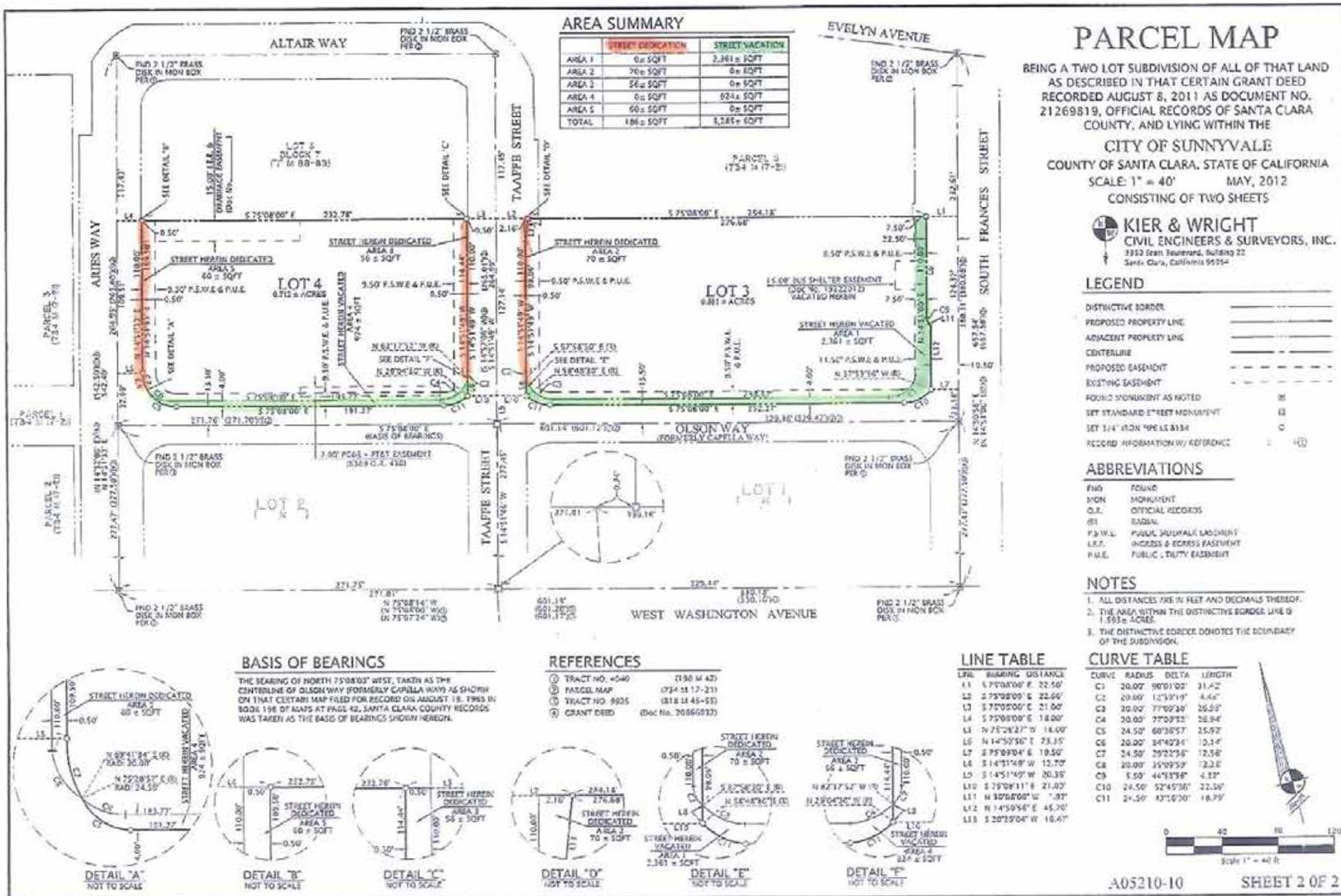
THE BEARING OF NORTH 75°08'00" WEST, TAKEN AS THE CENTERLINE OF OLSON WAY (FORMERLY CAPELLA WAY) AS SHOWN ON THAT CERTAIN MAP FILED FOR RECORD ON AUGUST 19, 1965 IN BOOK 198 OF MAPS AT PAGE 42, SANTA CLARA COUNTY RECORDS WAS TAKEN AS THE BASIS OF BEARINGS SHOWN HEREON.

REFERENCES

- ① TRACT NO. 4040 (198 M 42)
- ② PARCEL MAP (734 M 17-21)
- ③ TRACT NO. 8925 (818 M 45-55)
- ④ GRANT DEED (Doc No. 20865032)



ATTACHMENT F



PARCEL MAP

BEING A TWO LOT SUBDIVISION OF ALL OF THAT LAND AS DESCRIBED IN THAT CERTAIN GRANT DEED RECORDED AUGUST 8, 2011 AS DOCUMENT NO. 21269819, OFFICIAL RECORDS OF SANTA CLARA COUNTY, AND LYING WITHIN THE CITY OF SUNNYVALE COUNTY OF SANTA CLARA, STATE OF CALIFORNIA SCALE: 1" = 40' MAY, 2012 CONSISTING OF TWO SHEETS

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