

RECORDING REQUESTED BY

NAME: City of Sunnyvale

WHEN RECORDED MAIL TO:

NAME: City of Sunnyvale/Engineering Division

ADDRESS: P.O. Box 3707

CITY/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/DP-XX-XX

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 _____, 201x, by and between the CITY OF SUNNYVALE, a municipal corporation of the State of California, hereinafter called "City" and XXXXXXXX, 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 <Date>, the City Council approved a vesting tentative map (the "Tentative Map") with conditions (Planning Application #201X-XXXX) for an area known as the <Street Address>, and identified as Santa Clara County Assessor's Parcel numbered XXX-XX-XXX (the "Subdivision Area").
- B. The "Notice of Conditions of Approval" was recorded on XXXXX with the Santa Clara County Recorder's Office as Document No. XXXXXX.
- C. Subdivider has requested that the final/parcel map and the improvement plans be approved by the City in accordance with City ordinances.
- D. Subdivider, by said final/parcel map, has offered for dedication to City those certain easements as delineated on said final map.
- E. City's approval of said final/parcel map is conditioned upon the execution by Subdivider of this Agreement.

F. On <Date>, the Director of Public Works approved the final/parcel map.

NOW, THEREFORE, in consideration of Subdivider's execution of this Agreement and delivery of the improvement securities required under section 2, 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 shall complete all improvements for public use in the Subdivision Area consistent with the Planning Application #201X-XXXX 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 Tentative Map in accordance with all City approved plans and specifications.
- (c) 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 _____ and No/100 dollars (\$XXXXXXXX.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 _____ and No/100 dollars (\$XXXXXXXX.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 payment of a reasonable attorney's fee to be fixed by the court in case suit is brought by the City.

(c) 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.

(d) Notwithstanding Paragraph 2.(c) 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.

(e) Maintenance Bond – Subdivider has furnished and delivered to City concurrently with this Agreement, adequate and acceptable maintenance security to install and maintain all private streets, curbs, walkways, lighting systems, private sanitary sewer, water mains, and storm drains within all common and open areas, as well as continual maintenance of all landscaping and appurtenances, in the amount of _____ and No/100 dollars (\$XXXXXXXX.00) as guarantee for the above-mentioned maintenance, including repair and replacement on an emergency basis, for a period commencing from the date of this Agreement until 75 percent of the units for the Property (xxx) are sold. Said security shall remain in full force and effect even though the common areas have been transferred to the Homeowners Association, if applicable. If after a 15-day notice period, deficiencies are not corrected, the City shall have the right to demand that the corrections be made through the bonding company, or that funds held by financial institutions or escrow agents be released to the City. The City shall have the right to draw from and use any part of or the total of any security held by the City for the purpose of securing the performance of said maintenance.

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 final map recordation or any encroachment permit issuance whichever occurs first:

1. Sanitary Sewer	
a. Connection	\$ _____
b. Existing Sanitary Sewer Frontage Charge	\$ _____ N.A.
2. Storm Drain Connection	\$ _____ N.A.
3. Water	
a. Connection	\$ _____
b. Existing Water Main Frontage Charge	\$ _____ N.A.
c. Water Meters	\$ _____
d. Tapping Fee	\$ _____
e. Abandonment Fee	_____
4. Fire Hydrants	\$ _____ N.A.
5. Inspection and/or Engineering (Based upon 100% of improvements as required by the tentative map)	\$ _____
6. Street Lighting System	\$ _____ N.A.
7. Street Trees	\$ _____
8. Maintenance Deposit (Based upon 100% of improvements as required by the tentative map)	\$ _____
9. Other: Final Map Fee, Traffic Control Plans	\$ _____
TOTAL FEES AND CHARGES	\$ _____

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

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 has posted and filed with City a cash deposit in the amount of _____ and No/100 dollars (\$XXXX.00) 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.<IF REQUIRED> – As required by the COA's, Subdivider shall execute a Maintenance Agreement for perpetual maintenance of the <INSERT

MAINTENANCE AREA> area prior to encroachment permit issuance. The subject Maintenance Agreement shall be recorded prior to first building occupancy.

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 final 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 _____, 201x, and Subdivider has caused this Agreement to be executed the day and year first above written.

CITY OF SUNNYVALE
A Municipal Corporation

SUBDIVIDER:

XXXXXX, a California limited liability company

XXXXX LLC, a California limited liability
Company, its Manager

By:

Manuel Pineda, Director of Public Works

By:

(Name), (Title)

APPROVED AS TO FORM:

Robert L. Boco, Sr. Assistant City Attorney

By: _____
(Name), (Title)

APPROVED AS TO CONTENT:

Craig M. Mobeck, City Engineer
Assistant Director of Public Works

All SUBDIVIDER signatures must be acknowledged by a notary public.
Director of Public Works signature must be acknowledged by a notary public.

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

EXHIBIT "A"

Engineer's Opinion of Probable Costs