

RESOLUTION NO. **XX-XXX**

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF CUPERTINO
ACCEPTING THE DEDICATION OF PRIVATE PROPERTY RIGHTS TO 21970,
21972, 22000, AND 22549 McCLELLAN ROAD FOR THE CONSTRUCTION OF
SIDEWALKS ON McCLELLAN ROAD AND WAIVING FUTURE
REIMBURSEMENT OF CITY-FUNDED PUBLIC IMPROVEMENTS

WHEREAS, the City desires to construct sidewalks on McClellan Road in areas where the sidewalks are currently discontinuous; and

WHEREAS, section 14.04.110 of the City of Cupertino Municipal Code allows the City to provide a waiver of future reimbursement of the cost for City-funded public improvements when the property owner donates the property rights necessary for the improvement project; and

WHEREAS, four property owners have donated property rights along their property frontages necessary for the construction of the McClellan Sidewalk Improvements-Phase 2 Project.

NOW, THEREFORE, BE IT RESOLVED, that the City Council of the City of Cupertino hereby accepts the dedication of property to 21970, 21972, 22000, AND 22549 McClellan Road and as further described in each of the four Agreements Regarding Offer of Dedication and Waiver of Future Reimbursement, attached as Exhibits A through D.

PASSED AND ADOPTED at a regular meeting of the City Council of the City of Cupertino this 20th day of February 2018, by the following vote:

<u>Vote</u>	<u>Members of the City Council</u>
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AYES:	TBD
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NOES:	TBD
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ABSENT:	TBD
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ABSTAIN:	TBD
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ATTEST:

APPROVED:

Grace Schmidt, City Clerk

Darcy Paul, Mayor, City of Cupertino

OFFICIAL BUSINESS.
Document entitled to free
recording per Government
Code § 6103 and § 27383

RECORDING REQUESTED BY AND
WHEN RECORDED MAIL TO:

City of Cupertino
10300 Torre Avenue
Cupertino, California 95014
Attn: Director of Public Works

SPACE ABOVE THIS LINE FOR RECORDING USE

**AGREEMENT REGARDING OFFER OF DEDICATION AND
WAIVER OF FUTURE REIMBURSEMENT**

This Agreement Regarding Offer of Dedication and Waiver of Future Reimbursement ("Agreement") is made and effective this _____ day of _____, 20__, by Giriraj Jain and Manju Bansal, husband and wife, as community property with right of survivorship ("Owner") and the City of Cupertino, a municipal corporation ("City"). Owner and City may each be referred to as a "Party," or collectively as the "Parties."

RECITALS

A. Owner is the owner in fee of real property with a street address of 21970 McClellan Road in the City of Cupertino, County of Santa Clara, designated as Assessor's Parcel No. 356-08-032, more particularly described in Exhibit A (the "Site").

B. Section 14.04.110 of the City of Cupertino Municipal Code provides that if the City or another property owner installs improvements that benefit a property, the owner of the benefitted property is required to reimburse the City or the property owner for its reasonable share of the costs of such improvements when the benefitted property owner seeks a land use entitlement from City. Section 18.56.040 of the City of Cupertino Municipal Code imposes a similar reimbursement requirement. Both sections provide, however, that if a property owner dedicates necessary right-of-way to the City without charge, the City may enter into an agreement with the owner to waive future reimbursement requirements.

C. City is in the process of trying to improve the walkability of routes to schools, particularly those areas lacking curb, gutter and sidewalk. A portion of the Site is among those areas the City desires to improve.

D. Owner has agreed to dedicate to City that certain approximately 397 square foot portion of the Site as depicted in the diagram attached hereto and incorporated herein as Exhibit B and more particularly described in the legal description attached hereto and incorporated herein as Exhibit C (the "Dedication Area"), in consideration of the City's limited waiver of future reimbursement requirements.

NOW THEREFORE, in consideration of the mutual promises, approvals, and covenants made by the Parties and other considerations, the value, adequacy and receipt of which are hereby acknowledged, the Parties agree as follows:

1. Offer of Dedication. Owner does hereby irrevocably offer to dedicate in fee the Dedication Area for street, highway, public utility, public pedestrian, landscaping and any other public purpose (the "Offer"). The Offer is irrevocable and shall be absolutely binding upon the Owner, its heirs, successors, assigns, and all persons claiming an interest in the Site through them.

2. Condition of Title; Removal of Liens. Owner shall work in good faith with City, at no cost to City, to remove any and all encumbrances or liens (other than the lien for current taxes not yet due and payable), including any deed of trust securing the obligation to pay a mortgage loan, encumbering all or any portion of the Dedication Area. With respect to deed(s) of trust, City shall prepare and provide to Owner the forms of partial reconveyance instrument(s) required to remove the Dedication Area from the lien(s) of such deed(s) of trust. The removal of all such liens, including lien(s) of deed(s) of trust, shall be a condition precedent to the effectiveness of City's waiver of the right to future reimbursement as set forth in Section 5 below.

3. Time and Manner of Acceptance.

3.1 The Offer may be accepted by Resolution of the City Council of the City of Cupertino and not in any other manner. Any purported acceptance of the Offer by or on behalf of the City, other than in this manner, shall be null and void and of no force or effect.

3.2 The Offer shall remain in effect until accepted by Resolution of the City Council. The Offer may not be terminated, or the right to accept the Offer abandoned, except by Resolution of the City Council in the same manner as prescribed for summary vacation of streets or highways by Part 3 (commencing with Section 8300) of Division 9 of the Streets and Highways Code.

3.3 Upon acceptance of the Offer, the City shall mail a copy of its Resolution of Acceptance to the then-owners of the Site at the address shown on the latest County of Santa Clara secured assessment roll and at the address listed in the Offer for notices.

4. Use of Property Prior to Acceptance of Offer.

4.1 The City shall incur no liability with respect to the Offer and shall not assume any responsibility for the Dedication Area or any improvements to the Dedication Area except to the extent that the Dedication Area has been accepted by appropriate action of the City Council.

4.2 Before the lawful acceptance of the Offer by the City, Owner agrees that it will not use the Dedication Area in any way that will interfere with the future use of the Dedication Area for public right-of-way.

4.3 Upon acceptance, the City shall be responsible for removing or relocating, as appropriate, all public or private improvements existing upon the Dedication Area at the time the Offer is duly recorded to the extent that such relocation is necessary for the City's use of the Dedication Area.

5. Limited Waiver of Reimbursement Requirement. Subject to satisfaction of the lien removal condition set forth in Section 2 above and the limitations of this Section 5, upon City's acceptance of the Offer, City hereby agrees to waive any and all future reimbursements for the costs of any improvements installed by City or its contractors on the Dedication Area ("City Work"), including reimbursements required by Sections 14.04.100 and 18.56.040 of the Cupertino Municipal Code, which may be charged to Owner at such time as Owner obtains a future land use entitlement with respect to the Site. This waiver of right to future reimbursement shall include only the costs of the City Work and shall remain in effect for twenty-five (25) years following City's acceptance of the Offer. Notwithstanding any other provision hereof to the contrary, Owner shall remain obligated to pay any development impact fees, including roadway impact fees, and the costs of any other improvements required in connection with the applicable land use entitlement. Further, in recognition of the fact that the City Work improvements will have a limited useful life, following expiration of the 25-year period, City shall have the right to require Owner to fund the cost of reconstructing any public improvements within the Dedication Area that City could then lawfully require Owner to fund in the absence of this Agreement.

6. Notices. Any notices which either Party may desire to give to the other Party under this Agreement must be in writing and may be given either by (i) personal service; (ii) delivery by a reputable document delivery service, such as but not limited to, Federal Express, which provides a receipt showing date and time of delivery; or (iii) mailing in the United States Mail, certified mail, postage prepaid, return receipt requested, addressed to the address of the Party as set forth below or at any other address as that Party may later designate by notice:

To City: City of Cupertino
10300 Torre Avenue
Cupertino, CA 95014
Attention: Public Works Director

With a copy to: City of Cupertino
10300 Torre Avenue
Cupertino, CA 95014

Attention: City Attorney

To Owner:

Giriraj Jain and Manju Bansal
21970 McClellan Road
Cupertino, CA 95014

7. Agreement Runs with Land; Recordation. The provisions of this Agreement shall inure to the benefit of and be binding upon the owners of the Site and their heirs, successors or assigns, and any other person claiming an interest in the Site through them. Upon execution, this Agreement shall be recorded in the Official Records of Santa Clara County.

8. Waiver of Further Compensation. Owner hereby expressly and unconditionally waives any and all right to claim, demand, or receive any further compensation for the Dedication Area which Owner may be eligible to receive under the California Relocation Assistance Act (Government Code §7260, *et seq.*), Article 1, § 19 of the California Constitution, the California Eminent Domain Law (Code of Civil Procedure §1230.010, *et seq.*), and/or the California Code of Regulations, Title 25 or other applicable local, state, or federal statute, ordinance, regulation, rule, or decisional law (collectively "Compensatory Laws"), including, but not limited to, the fair market value of the Dedication Area, severance damages, loss of goodwill, loss of profits, or relocation benefits and assistance, or claims for unreasonable precondemnation activities or inverse condemnation, or any other compensation as a result of the Parties' agreements hereunder or the City's acceptance of the Offer. Furthermore, Owner hereby expressly releases the City of Cupertino, and its respective officials, officers, employees, representatives, successors and assigns, from any liability, responsibility, or obligation to pay any further compensation for the Dedication Area which Owner may be eligible to receive under the Compensatory Laws as a result of City's acceptance thereof.

9. Authority to Execute. The person or persons executing this Agreement on behalf of Owner warrants and represents that he/she/they has/have the authority to execute this Agreement on behalf of Owner and warrants and represents that he/she/they has/have the authority to bind Owner to the performance of its obligations hereunder.

10. Entire Agreement. This Agreement embodies the entire integrated agreement and understanding between the Parties hereto. There are no other agreements or understandings, oral or written, with reference to the subject matter hereof that are not merged herein and superseded hereby, except as set forth herein above.

11. Amendments. This Agreement may only be terminated or modified in a writing executed by both Parties and recorded in the Official Records of Santa Clara County.

12. Governing Law; Venue. This Agreement shall be construed and enforced in accordance with the laws of the State of California, without reference to choice of law provisions. Any legal actions under this Agreement shall be brought only in the Superior Court of the County of Santa Clara, State of California.

13. Interpretation. This Agreement shall be construed according to its fair meaning, and not strictly for or against any Party. This Agreement shall be deemed to have been prepared jointly by the Parties hereto, and the terms of this Agreement have been negotiated by the Parties and the language used in this Agreement shall be deemed to be the language chosen by the Parties to express their mutual intent. This Agreement shall be construed without regard to any presumption or rule requiring construction against the Party causing such instrument or any portion thereof to be drafted, or in favor of the Party receiving a particular benefit under the Agreement. No rule of strict construction will be applied against any Party hereto. When used herein, the singular form of the word includes the plural form in appropriate context. Use of the term "including" is meant to be without limitation, such as "including but not limited to" or similar. Section headings in this Agreement are for convenience only and are not intended to be used in interpreting or construing the terms, covenants or conditions contained in this Agreement.

14. No Partnership. Nothing herein contained shall be construed to create a joint venture or partnership or to create the relationship of principal and agent or of any association between City and Owner.

15. Further Cooperation. Each Party hereto agrees to execute any and all documents and writings which may be necessary or expedient and do such other acts as will further the purposes hereof.

16. Successors and Assigns. This Agreement is binding upon and shall inure to the benefit of the respective successors, heirs, and assigns of the Parties.

17. No Third-Party Beneficiaries. This Agreement is made and entered into for the sole protection and benefit of the signatory Parties and their successors and assigns. No other person shall have any right of action based upon any provision in this Agreement.

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the day and year first written above.

CITY:

CITY OF CUPERTINO, a California
municipal corporation

By: _____

David Brandt, City Manager

[Notary Acknowledgment Required]

OWNER:

Giriraj Jain and Manju Bansal, husband and
wife, as community property with right of
survivorship

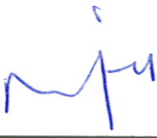
By:  _____

Name: Giriraj Jain

[Notary Acknowledgment Required]

APPROVED AS TO FORM:

By: _____
Randolph S. Hom, City
Attorney

By:  _____
Name: Manju Bansal

[Notary Acknowledgment Required]

ATTEST:

By: _____
Grace Schmidt, City Clerk

ACKNOWLEDGMENTS

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

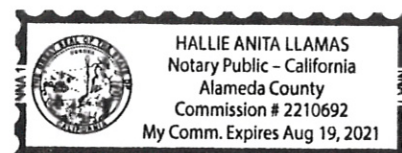
STATE OF CALIFORNIA)
COUNTY OF Santa Clara)

On January 4, 2018 before me, Hallie Anita Llamas, Notary Public, personally appeared Girij Jain, 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 and official seal.

Signature: Hallie Anita Llamas (seal)



A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

STATE OF CALIFORNIA)
COUNTY OF Santa Clara)

On January 4, 2018 before me, Hallie Anita Llamas, Notary Public, personally appeared Manju Bansal, 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 and official seal.

Signature: Hallie Anita Llamas (seal)

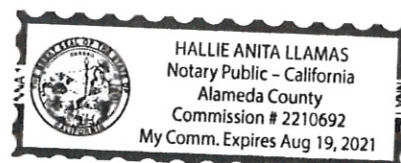


EXHIBIT A

Legal Description of Site

For APN/Parcel ID(s): 356-08-032

THE LAND REFERRED TO HEREIN BELOW IS SITUATED IN THE CITY OF CUPERTINO, COUNTY OF SANTA CLARA, STATE OF CALIFORNIA AND IS DESCRIBED AS FOLLOWS:

BEGINNING AT A POINT IN THE SOUTH LINE OF MCCLELLAN ROAD THAT IS DISTANT THEREON WEST 100 FEET FROM THE INTERSECTION OF SAID SOUTH LINE WITH THE EAST LINE OF COLONY TRACT MONTA VISTA ACCORDING TO THE MAP THEREOF HEREINAFTER REFERRED TO; THENCE PARALLEL WITH THE EAST LINE OF SAID TRACT SOUTH 120.12 FEET TO THE SOUTH LINE OF LOT 22 OF SAID TRACT; THENCE WEST ALONG SAID LINE 64.12 FEET MORE OR LESS TO THE EAST LINE OF MCCLELLAN ROAD; THENCE ALONG SAID LINE NORTH 105.12 FEET TO A POINT THAT IS DISTANT SOUTH 15 FEET FROM THE INTERSECTION OF THE SOUTH LINE OF MCCLELLAN ROAD EXTENDED, WITH THE EAST LINE OF MCCLELLAN ROAD EXTENDED; THENCE CONTINUING ALONG SAID LINE OF MCCLELLAN ROAD ON A CURVE TO THE RIGHT WITH A RADIUS OF 15 FEET FOR A DISTANCE OF 23.56 FEET; THENCE EAST ALONG THE SOUTH LINE OF MCCLELLAN ROAD 49.12 FEET, MORE OR LESS, TO THE POINT OF BEGINNING, BEING A PART OF LOT 22, AS THE SAME IS SO DESIGNATED AND DELINEATED UPON THAT CERTAIN MAP ENTITLED, "MAP OF COLONY TRACT, MONTA VISTA" WHICH SAID MAP WAS FILED FOR RECORD IN THE OFFICE OF THE RECORDER OF THE COUNTY OF SANTA CLARA, STATE OF CALIFORNIA, ON APRIL 11, 1917 IN VOLUME "P" OF MAPS, PAGE 21

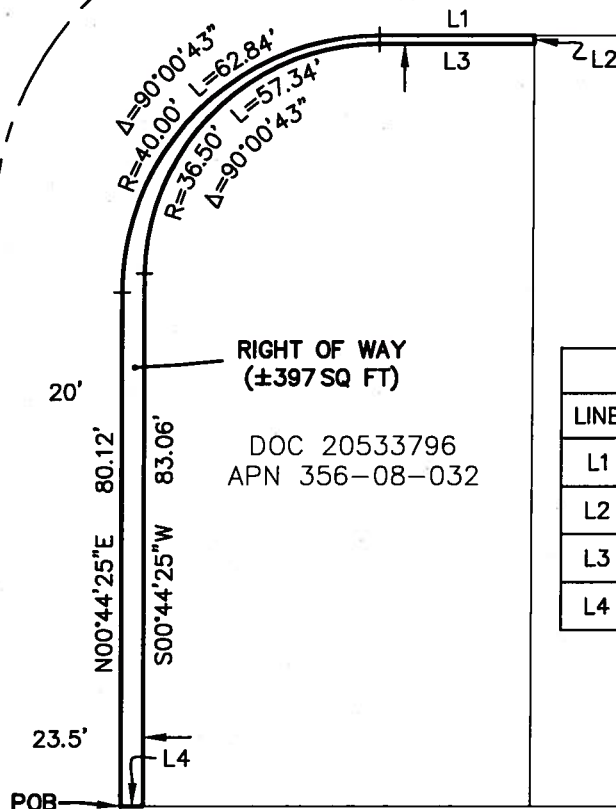
EXCEPTING THE FOLLOWING DESCRIBED LAND CONVEYED TO THE COUNTY OF SANTA CLARA:

THAT PART OF LOT 22, AS SHOWN ON THAT CERTAIN MAP ENTITLED, "MAP OF COLONY TRACT, MONTA VISTA", AS RECORDED IN VOLUME "P" OF MAPS AT PAGE 21 IN THE OFFICE OF THE RECORDER OF THE COUNTY OF SANTA CLARA, STATE OF CALIFORNIA, BEGINNING AT A POINT ON THE SOUTH LINE OF MCCLELLAN ROAD 40 FEET WIDE, DISTANT ALONG SAID SOUTH LINE OF MCCLELLAN ROAD WESTERLY 124.12 FEET AND AT RIGHT ANGLES SOUTHERLY 20 FEET FROM A STONE MONUMENT AT THE INTERSECTION OF THE CENTER LINE OF BYRNE AVENUE WITH THE CENTER LINE OF SAID MCCLELLAN ROAD; THENCE FROM SAID POINT OF BEGINNING FOLLOWING THE EXISTING RIGHT OF WAY LINE OF SAID MCCLELLAN ROAD WESTERLY 25 FEET ON A CURVE TO THE LEFT WITH A RADIUS OF 15 FEET FROM A DISTANCE OF 23.56 FEET, AND SOUTHERLY 25.00 FEET TO A POINT; THENCE LEAVING SAID RIGHT OF WAY LINE FROM A TANGENT DUE NORTH OPPOSITE IN DIRECTION TO SAID LINE LAST HEREIN DESCRIBED FOR A DISTANCE OF 62.83 FEET TO THE POINT OF BEGINNING.

BYRNE
AVENUE

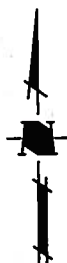
McCLELLAN ROAD

McCLELLAN ROAD



RIGHT OF WAY
(±397 SQ FT)
DOC 20533796
APN 356-08-032

LINE TABLE		
LINE	BEARING	LENGTH
L1	S89°14'52"E	24.22'
L2	S0°53'48"W	0.56'
L3	N89°14'52"W	24.22'
L4	N89°15'35"W	3.50'



0 15 30
1 IN. = 30 FT.

LEGEND

POB POINT OF BEGINNING

SHEET 1 OF 1

Date: 2017-11-13
Designed: JC
Drawn: RF
Checked: TG
Proj. Engr.: JC
489301PL31

HMH
1570 Oakland Road
San Jose, CA 95131
(408) 487-2200
HMHca.com

EXHIBIT "B"
PLAT TO ACCOMPANY DESCRIPTION:
RIGHT OF WAY

CUPERTINO

CALIFORNIA



November 13, 2017
HMH 4893.01.450
Page 1 of 1

EXHIBIT "C"
RIGHT OF WAY

REAL PROPERTY in the City of Cupertino, County of Santa Clara, State of California, being a portion of that certain parcel of land described in the grant deed recorded December 9, 2009, in Document No. 20533796 of Official Records, Santa Clara County Records, described as follows:

BEGINNING at the southwesterly corner of said parcel of land being on the easterly line of McClellan Road;
Thence along said easterly line and the southerly line of McClellan Road the following three courses:

1. Thence North $00^{\circ}44'25''$ East, 80.12 feet;
2. Thence along a tangent curve to the right, having a radius of 40.00 feet, through a central angle of $90^{\circ}00'43''$ for an arc length of 62.84 feet;
3. Thence South $89^{\circ}14'52''$ East, 24.22 feet, to the easterly line of said parcel of land;

Thence along said easterly line, South $00^{\circ}53'48''$ West, 0.56 feet, to a line parallel with and 20.56 feet southerly of the center line of McClellan Road;

Thence along said parallel line, North $89^{\circ}14'52''$ West, 24.22 feet;

Thence along a tangent curve to the left, having a radius of 36.50 feet, through a central angle of $90^{\circ}00'43''$ for an arc length of 57.34 feet, to a line parallel with and 23.50 feet easterly of the centerline of McClellan Road;

Thence along said parallel line, South $00^{\circ}44'25''$ West, 83.06 feet, to the southerly line of said parcel of land;

Thence along said southerly line, North $89^{\circ}15'35''$ West, 3.50 feet, to the POINT OF BEGINNING.

Containing 397 square feet, more or less.



OFFICIAL BUSINESS.
Document entitled to free
recording per Government
Code § 6103 and § 27383

RECORDING REQUESTED BY AND
WHEN RECORDED MAIL TO:

City of Cupertino
10300 Torre Avenue
Cupertino, California 95014
Attn: Director of Public Works

SPACE ABOVE THIS LINE FOR RECORDING USE

**AGREEMENT REGARDING OFFER OF DEDICATION AND
WAIVER OF FUTURE REIMBURSEMENT**

This Agreement Regarding Offer of Dedication and Waiver of Future Reimbursement ("Agreement") is made and effective this _____ day of _____, 20__, by Koji Otsuka and Masako Otsuka, Co-trustees, and successor trustee, of The Koji and Masako Otsuka Revocable Trust, UDT May 12, 2016 ("Owner") and the City of Cupertino, a municipal corporation ("City"). Owner and City may each be referred to as a "Party," or collectively as the "Parties."

RECITALS

A. Owner is the owner in fee of real property with a street address of 21972 McClellan Road in the City of Cupertino, County of Santa Clara, designated as Assessor's Parcel No. 356-08-031, more particularly described in Exhibit A (the "Site").

B. Section 14.04.110 of the City of Cupertino Municipal Code provides that if the City or another property owner installs improvements that benefit a property, the owner of the benefitted property is required to reimburse the City or the property owner for its reasonable share of the costs of such improvements when the benefitted property owner seeks a land use entitlement from City. Section 18.56.040 of the City of Cupertino Municipal Code imposes a similar reimbursement requirement. Both sections provide, however, that if a property owner dedicates necessary right-of-way to the City without charge, the City may enter into an agreement with the owner to waive future reimbursement requirements.

C. City is in the process of trying to improve the walkability of routes to schools, particularly those areas lacking curb, gutter and sidewalk. A portion of the Site is among those areas the City desires to improve.

D. Owner has agreed to dedicate to City that certain approximately 374 square foot portion of the Site as depicted in, the diagram attached hereto and incorporated herein as Exhibit B and more particularly described in the legal description attached hereto and incorporated herein as Exhibit C (the "Dedication Area"), in consideration of the City's limited waiver of future reimbursement requirements.

NOW THEREFORE, in consideration of the mutual promises, approvals, and covenants made by the Parties and other considerations, the value, adequacy and receipt of which are hereby acknowledged, the Parties agree as follows:

1. Offer of Dedication. Owner does hereby irrevocably offer to dedicate in fee the Dedication Area for street, highway, public utility, public pedestrian, landscaping and any other public purpose (the "Offer"). The Offer is irrevocable and shall be absolutely binding upon the Owner, its heirs, successors, assigns, and all persons claiming an interest in the Site through them.

2. Condition of Title; Removal of Liens. Owner shall work in good faith with City, at no cost to City, to remove any and all encumbrances or liens (other than the lien for current taxes not yet due and payable), including any deed of trust securing the obligation to pay a mortgage loan, encumbering all or any portion of the Dedication Area. With respect to deed(s) of trust, City shall prepare and provide to Owner the forms of partial reconveyance instrument(s) required to remove the Dedication Area from the lien(s) of such deed(s) of trust. The removal of all such liens, including lien(s) of deed(s) of trust, shall be a condition precedent to the effectiveness of City's waiver of the right to future reimbursement as set forth in Section 5 below.

3. Time and Manner of Acceptance.

3.1 The Offer may be accepted by Resolution of the City Council of the City of Cupertino and not in any other manner. Any purported acceptance of the Offer by or on behalf of the City, other than in this manner, shall be null and void and of no force or effect.

3.2 The Offer shall remain in effect until accepted by Resolution of the City Council. The Offer may not be terminated, or the right to accept the Offer abandoned, except by Resolution of the City Council in the same manner as prescribed for summary vacation of streets or highways by Part 3 (commencing with Section 8300) of Division 9 of the Streets and Highways Code.

3.3 Upon acceptance of the Offer, the City shall mail a copy of its Resolution of Acceptance to the then-owners of the Site at the address shown on the latest County of Santa Clara secured assessment roll and at the address listed in the Offer for notices.

4. Use of Property Prior to Acceptance of Offer.

4.1 The City shall incur no liability with respect to the Offer and shall not assume any responsibility for the Dedication Area or any improvements to the Dedication Area except to the extent that the Dedication Area has been accepted by appropriate action of the City Council.

4.2 Before the lawful acceptance of the Offer by the City, Owner agrees that it will not use the Dedication Area in any way that will interfere with the future use of the Dedication Area for public right-of-way.

4.3 Upon acceptance, the City shall be responsible for removing or relocating, as appropriate, all public or private improvements existing upon the Dedication Area at the time the Offer is duly recorded to the extent that such relocation is necessary for the City's use of the Dedication Area.

5. Limited Waiver of Reimbursement Requirement. Subject to satisfaction of the lien removal condition set forth in Section 2 above and the limitations of this Section 5, upon City's acceptance of the Offer, City hereby agrees to waive any and all future reimbursements for the costs of any improvements installed by City or its contractors on the Dedication Area ("City Work"), including reimbursements required by Sections 14.04.100 and 18.56.040 of the Cupertino Municipal Code, which may be charged to Owner at such time as Owner obtains a future land use entitlement with respect to the Site. This waiver of right to future reimbursement shall include only the costs of the City Work and shall remain in effect for twenty-five (25) years following City's acceptance of the Offer. Notwithstanding any other provision hereof to the contrary, Owner shall remain obligated to pay any development impact fees, including roadway impact fees, and the costs of any other improvements required in connection with the applicable land use entitlement. Further, in recognition of the fact that the City Work improvements will have a limited useful life, following expiration of the 25-year period, City shall have the right to require Owner to fund the cost of reconstructing any public improvements within the Dedication Area that City could then lawfully require Owner to fund in the absence of this Agreement.

6. Notices. Any notices which either Party may desire to give to the other Party under this Agreement must be in writing and may be given either by (i) personal service; (ii) delivery by a reputable document delivery service, such as but not limited to, Federal Express, which provides a receipt showing date and time of delivery; or (iii) mailing in the United States Mail, certified mail, postage prepaid, return receipt requested, addressed to the address of the Party as set forth below or at any other address as that Party may later designate by notice:

To City: City of Cupertino
10300 Torre Avenue
Cupertino, CA 95014
Attention: Public Works Director

With a copy to: City of Cupertino
10300 Torre Avenue

Cupertino, CA 95014
Attention: City Attorney

To Owner: Koji and Masako Otsuka
21972 McClellan Road
Cupertino, CA 95014

7. Agreement Runs with Land; Recordation. The provisions of this Agreement shall inure to the benefit of and be binding upon the owners of the Site and their heirs, successors or assigns, and any other person claiming an interest in the Site through them. Upon execution, this Agreement shall be recorded in the Official Records of Santa Clara County.

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9. Authority to Execute. The person or persons executing this Agreement on behalf of Owner warrants and represents that he/she/they has/have the authority to execute this Agreement on behalf of Owner and warrants and represents that he/she/they has/have the authority to bind Owner to the performance of its obligations hereunder.

10. Entire Agreement. This Agreement embodies the entire integrated agreement and understanding between the Parties hereto. There are no other agreements or understandings, oral or written, with reference to the subject matter hereof that are not merged herein and superseded hereby, except as set forth herein above.

11. Amendments. This Agreement may only be terminated or modified in a writing executed by both Parties and recorded in the Official Records of Santa Clara County.

12. Governing Law; Venue. This Agreement shall be construed and enforced in accordance with the laws of the State of California, without reference to choice of law

provisions. Any legal actions under this Agreement shall be brought only in the Superior Court of the County of Santa Clara, State of California.

13. Interpretation. This Agreement shall be construed according to its fair meaning, and not strictly for or against any Party. This Agreement shall be deemed to have been prepared jointly by the Parties hereto, and the terms of this Agreement have been negotiated by the Parties and the language used in this Agreement shall be deemed to be the language chosen by the Parties to express their mutual intent. This Agreement shall be construed without regard to any presumption or rule requiring construction against the Party causing such instrument or any portion thereof to be drafted, or in favor of the Party receiving a particular benefit under the Agreement. No rule of strict construction will be applied against any Party hereto. When used herein, the singular form of the word includes the plural form in appropriate context. Use of the term "including" is meant to be without limitation, such as "including but not limited to" or similar. Section headings in this Agreement are for convenience only and are not intended to be used in interpreting or construing the terms, covenants or conditions contained in this Agreement.

14. No Partnership. Nothing herein contained shall be construed to create a joint venture or partnership or to create the relationship of principal and agent or of any association between City and Owner.

15. Further Cooperation. Each Party hereto agrees to execute any and all documents and writings which may be necessary or expedient and do such other acts as will further the purposes hereof.

16. Successors and Assigns. This Agreement is binding upon and shall inure to the benefit of the respective successors, heirs, and assigns of the Parties.

17. No Third-Party Beneficiaries. This Agreement is made and entered into for the sole protection and benefit of the signatory Parties and their successors and assigns. No other person shall have any right of action based upon any provision in this Agreement.

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the day and year first written above.

CITY:

CITY OF CUPERTINO, a California
municipal corporation

By: _____

David Brandt, City Manager

OWNER:

Koji Otsuka and Masako Otsuka,
Co-trustees, and successor trustees, of The
Koji and Masako Otsuka Revocable Trust,
UDT May 12, 2016

By:  _____

Name: Koji Otsuka

[Notary Acknowledgment Required]

[Notary Acknowledgment Required]

APPROVED AS TO FORM:

By: _____
Randolph S. Hom, City
Attorney

By: Masako Otsuka
Name: Masako Otsuka

[Notary Acknowledgment Required]

ATTEST:

By: _____
Grace Schmidt, City Clerk

ACKNOWLEDGMENTS

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

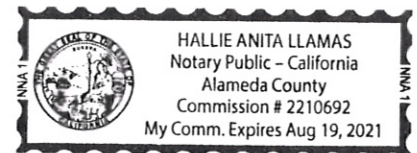
STATE OF CALIFORNIA)
COUNTY OF Santa Clara)

On December 7, 2017 before me, Hallie Anita Llamas Notary Public, personally appeared Koji Otsuka, 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 and official seal.

Signature: Hallie Anita Llamas (seal)



A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

STATE OF CALIFORNIA)
COUNTY OF _____)

On _____, 20__ before me, _____, Notary Public, personally appeared MASAKO OTSUKA, 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 and official seal.

Signature: Hallie Anita Llamas (seal)

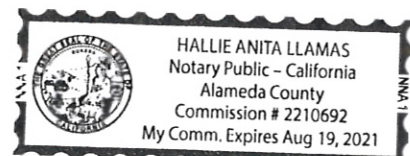


EXHIBIT A

Legal Description of Site

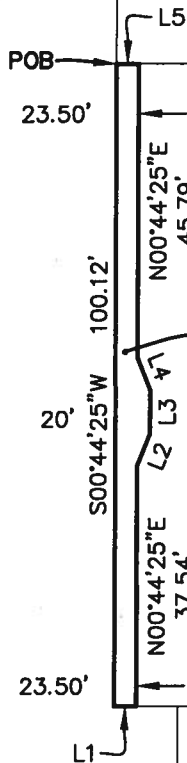
THE LAND REFERRED TO HEREIN BELOW IS SITUATED IN THE CITY OF CUPERTINO, COUNTY OF SANTA CLARA, STATE OF CALIFORNIA AND IS DESCRIBED AS FOLLOWS:

LOT 24, AS SHOWN ON THAT CERTAIN MAP ENTITLED, MAP OF COLONY TRACT MONTA VISTA, WHICH MAP WAS FILED FOR RECORD IN THE OFFICE OF THE RECORDER OF THE COUNTY OF SANTA CLARA, STATE OF CALIFORNIA ON APRIL 11, 1917 IN BOOK P, OF MAPS, PAGE(S) 21.

MCCLELLAN ROAD

30'

30'



RIGHT OF WAY
(±374 SQ FT)

DOC 23322212
APN 356-08-031

LINE TABLE		
LINE	BEARING	LENGTH
L1	S89°15'35\"E	3.50'
L2	N22°32'29\"E	5.39'
L3	N0°44'25\"E	6.79'
L4	N21°03'38\"W	5.39'
L5	N89°15'35\"W	3.50'



0 15 30
1 IN. = 30 FT.

LEGEND

POB POINT OF BEGINNING

SHEET 1 OF 1

Date: 2017-11-13
Designed: JC
Drawn: RF
Checked: TG
Proj. Eng.: JC
489301PL23



1570 Oakland Road (408) 487-2200
San Jose, CA 95131 HMHca.com

EXHIBIT "B"
PLAT TO ACCOMPANY DESCRIPTION:
RIGHT OF WAY

CUPERTINO

CALIFORNIA



November 13, 2017
HMH 4893.01.450
Page 1 of 1

EXHIBIT "C"
RIGHT OF WAY

REAL PROPERTY in the City of Cupertino, County of Santa Clara, State of California, being a portion of that certain parcel of land described in the grant deed recorded June 1, 2016, in Document No. 23322212 of Official Records, Santa Clara County Records, described as follows:

BEGINNING at the northwesterly corner of said parcel of land, being on the general easterly line of McClellan Road;

Thence along said general easterly line the following two courses:

1. Thence South $00^{\circ}44'25''$ West, 100.12 feet;
2. Thence South $89^{\circ}15'35''$ East, 3.50 feet, to a line parallel with and 23.50 feet easterly of the centerline of McClellan Road;

Thence along said parallel line, North $00^{\circ}44'25''$ East, 37.54 feet;

Thence North $22^{\circ}32'29''$ East, 5.39 feet;

Thence North $00^{\circ}44'25''$ East, 6.79 feet;

Thence North $21^{\circ}03'38''$ West, 5.39 feet, to a line parallel with and 23.50 feet easterly of the centerline of McClellan Road;

Thence along said parallel line, North $00^{\circ}44'25''$ East, 45.79 feet, to the northerly line of said parcel of land;

Thence along said northerly line, North $89^{\circ}15'35''$ West, 3.50 feet, to the POINT OF BEGINNING.

Containing 374 square feet, more or less.



OFFICIAL BUSINESS.
Document entitled to free
recording per Government
Code § 6103 and § 27383

RECORDING REQUESTED BY AND
WHEN RECORDED MAIL TO:

City of Cupertino
10300 Torre Avenue
Cupertino, California 95014
Attn: Director of Public Works

SPACE ABOVE THIS LINE FOR RECORDING USE

**AGREEMENT REGARDING OFFER OF DEDICATION AND
WAIVER OF FUTURE REIMBURSEMENT**

This Agreement Regarding Offer of Dedication and Waiver of Future Reimbursement ("Agreement") is made and effective this _____ day of _____, 20__, by Arnolfo N. Nite and Arlene D. Nite, trustees of The Arnolfo N. Nite and Arlene P. Nite Revocable Trust dated February 21, 2017 ("Owner") and the City of Cupertino, a municipal corporation ("City"). Owner and City may each be referred to as a "Party," or collectively as the "Parties."

RECITALS

A. Owner is the owner in fee of real property with a street address of 22000 McClellan Road in the City of Cupertino, County of Santa Clara, designated as Assessor's Parcel No. 356-08-051, more particularly described in Exhibit A (the "Site").

B. Section 14.04.110 of the City of Cupertino Municipal Code provides that if the City or another property owner installs improvements that benefit a property, the owner of the benefitted property is required to reimburse the City or the property owner for its reasonable share of the costs of such improvements when the benefitted property owner seeks a land use entitlement from City. Section 18.56.040 of the City of Cupertino Municipal Code imposes a similar reimbursement requirement. Both sections provide, however, that if a property owner dedicates necessary right-of-way to the City without charge, the City may enter into an agreement with the owner to waive future reimbursement requirements.

C. City is in the process of trying to improve the walkability of routes to schools, particularly those areas lacking curb, gutter and sidewalk. A portion of the Site is among those areas the City desires to improve.

D. Owner has agreed to dedicate to City that certain approximately 418 square foot portion of the Site as depicted in, the diagram attached hereto and incorporated herein as Exhibit B and more particularly described in the legal description attached hereto and incorporated herein as Exhibit C (the "Dedication Area"), in consideration of the City's limited waiver of future reimbursement requirements.

NOW THEREFORE, in consideration of the mutual promises, approvals, and covenants made by the Parties and other considerations, the value, adequacy and receipt of which are hereby acknowledged, the Parties agree as follows:

1. Offer of Dedication. Owner does hereby irrevocably offer to dedicate in fee the Dedication Area for street, highway, public utility, public pedestrian, landscaping and any other public purpose (the "Offer"). The Offer is irrevocable and shall be absolutely binding upon the Owner, its heirs, successors, assigns, and all persons claiming an interest in the Site through them.

2. Condition of Title; Removal of Liens. Owner shall work in good faith with City, at no cost to City, to remove any and all encumbrances or liens (other than the lien for current taxes not yet due and payable), including any deed of trust securing the obligation to pay a mortgage loan, encumbering all or any portion of the Dedication Area. With respect to deed(s) of trust, City shall prepare and provide to Owner the forms of partial reconveyance instrument(s) required to remove the Dedication Area from the lien(s) of such deed(s) of trust. The removal of all such liens, including lien(s) of deed(s) of trust, shall be a condition precedent to the effectiveness of City's waiver of the right to future reimbursement as set forth in Section 5 below.

3. Time and Manner of Acceptance.

3.1 The Offer may be accepted by Resolution of the City Council of the City of Cupertino and not in any other manner. Any purported acceptance of the Offer by or on behalf of the City, other than in this manner, shall be null and void and of no force or effect.

3.2 The Offer shall remain in effect until accepted by Resolution of the City Council. The Offer may not be terminated, or the right to accept the Offer abandoned, except by Resolution of the City Council in the same manner as prescribed for summary vacation of streets or highways by Part 3 (commencing with Section 8300) of Division 9 of the Streets and Highways Code.

3.3 Upon acceptance of the Offer, the City shall mail a copy of its Resolution of Acceptance to the then-owners of the Site at the address shown on the latest County of Santa Clara secured assessment roll and at the address listed in the Offer for notices.

4. Use of Property Prior to Acceptance of Offer.

4.1 The City shall incur no liability with respect to the Offer and shall not assume any responsibility for the Dedication Area or any improvements to the Dedication Area except to the extent that the Dedication Area has been accepted by appropriate action of the City Council.

4.2 Before the lawful acceptance of the Offer by the City, Owner agrees that it will not use the Dedication Area in any way that will interfere with the future use of the Dedication Area for public right-of-way.

4.3 Upon acceptance, the City shall be responsible for removing or relocating, as appropriate, all public or private improvements existing upon the Dedication Area at the time the Offer is duly recorded to the extent that such relocation is necessary for the City's use of the Dedication Area.

5. Limited Waiver of Reimbursement Requirement. Subject to satisfaction of the lien removal condition set forth in Section 2 above and the limitations of this Section 5, upon City's acceptance of the Offer, City hereby agrees to waive any and all future reimbursements for the costs of any improvements installed by City or its contractors on the Dedication Area ("City Work"), including reimbursements required by Sections 14.04.100 and 18.56.040 of the Cupertino Municipal Code, which may be charged to Owner at such time as Owner obtains a future land use entitlement with respect to the Site. This waiver of right to future reimbursement shall include only the costs of the City Work and shall remain in effect for twenty-five (25) years following City's acceptance of the Offer. Notwithstanding any other provision hereof to the contrary, Owner shall remain obligated to pay any development impact fees, including roadway impact fees, and the costs of any other improvements required in connection with the applicable land use entitlement. Further, in recognition of the fact that the City Work improvements will have a limited useful life, following expiration of the 25-year period, City shall have the right to require Owner to fund the cost of reconstructing any public improvements within the Dedication Area that City could then lawfully require Owner to fund in the absence of this Agreement.

6. Notices. Any notices which either Party may desire to give to the other Party under this Agreement must be in writing and may be given either by (i) personal service; (ii) delivery by a reputable document delivery service, such as but not limited to, Federal Express, which provides a receipt showing date and time of delivery; or (iii) mailing in the United States Mail, certified mail, postage prepaid, return receipt requested, addressed to the address of the Party as set forth below or at any other address as that Party may later designate by notice:

To City:

City of Cupertino
10300 Torre Avenue
Cupertino, CA 95014
Attention: Public Works Director

With a copy to:

City of Cupertino
10300 Torre Avenue
Cupertino, CA 95014
Attention: City Attorney

To Owner:

Arnolfo N. Nite and Arlene D. Nite
22000 McClellan Road
Cupertino, CA 95014

7. Agreement Runs with Land; Recordation. The provisions of this Agreement shall inure to the benefit of and be binding upon the owners of the Site and their heirs, successors or assigns, and any other person claiming an interest in the Site through them. Upon execution, this Agreement shall be recorded in the Official Records of Santa Clara County.

8. Waiver of Further Compensation. Owner hereby expressly and unconditionally waives any and all right to claim, demand, or receive any further compensation for the Dedication Area which Owner may be eligible to receive under the California Relocation Assistance Act (Government Code §7260, *et seq.*), Article 1, § 19 of the California Constitution, the California Eminent Domain Law (Code of Civil Procedure §1230.010, *et seq.*), and/or the California Code of Regulations, Title 25 or other applicable local, state, or federal statute, ordinance, regulation, rule, or decisional law (collectively "Compensatory Laws"), including, but not limited to, the fair market value of the Dedication Area, severance damages, loss of goodwill, loss of profits, or relocation benefits and assistance, or claims for unreasonable precondemnation activities or inverse condemnation, or any other compensation as a result of the Parties' agreements hereunder or the City's acceptance of the Offer. Furthermore, Owner hereby expressly releases the City of Cupertino, and its respective officials, officers, employees, representatives, successors and assigns, from any liability, responsibility, or obligation to pay any further compensation for the Dedication Area which Owner may be eligible to receive under the Compensatory Laws as a result of City's acceptance thereof.

9. Authority to Execute. The person or persons executing this Agreement on behalf of Owner warrants and represents that he/she/they has/have the authority to execute this Agreement on behalf of Owner and warrants and represents that he/she/they has/have the authority to bind Owner to the performance of its obligations hereunder.

10. Entire Agreement. This Agreement embodies the entire integrated agreement and understanding between the Parties hereto. There are no other agreements or understandings, oral or written, with reference to the subject matter hereof that are not merged herein and superseded hereby, except as set forth herein above.

11. Amendments. This Agreement may only be terminated or modified in a writing executed by both Parties and recorded in the Official Records of Santa Clara County.

12. Governing Law; Venue. This Agreement shall be construed and enforced in accordance with the laws of the State of California, without reference to choice of law

provisions. Any legal actions under this Agreement shall be brought only in the Superior Court of the County of Santa Clara, State of California.

13. Interpretation. This Agreement shall be construed according to its fair meaning, and not strictly for or against any Party. This Agreement shall be deemed to have been prepared jointly by the Parties hereto, and the terms of this Agreement have been negotiated by the Parties and the language used in this Agreement shall be deemed to be the language chosen by the Parties to express their mutual intent. This Agreement shall be construed without regard to any presumption or rule requiring construction against the Party causing such instrument or any portion thereof to be drafted, or in favor of the Party receiving a particular benefit under the Agreement. No rule of strict construction will be applied against any Party hereto. When used herein, the singular form of the word includes the plural form in appropriate context. Use of the term "including" is meant to be without limitation, such as "including but not limited to" or similar. Section headings in this Agreement are for convenience only and are not intended to be used in interpreting or construing the terms, covenants or conditions contained in this Agreement.

14. No Partnership. Nothing herein contained shall be construed to create a joint venture or partnership or to create the relationship of principal and agent or of any association between City and Owner.

15. Further Cooperation. Each Party hereto agrees to execute any and all documents and writings which may be necessary or expedient and do such other acts as will further the purposes hereof.

16. Successors and Assigns. This Agreement is binding upon and shall inure to the benefit of the respective successors, heirs, and assigns of the Parties.

17. No Third-Party Beneficiaries. This Agreement is made and entered into for the sole protection and benefit of the signatory Parties and their successors and assigns. No other person shall have any right of action based upon any provision in this Agreement.

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the day and year first written above.

CITY:

CITY OF CUPERTINO, a California
municipal corporation

By: _____

David Brandt, City Manager
[Notary Acknowledgment Required]

OWNER:

Arnolfo N. Nite and Arlene D. Nite, trustees
of The Arnolfo N. Nite and Arlene P. Nite
Revocable Trust dated February 21, 2017

By: _____

Name: Arnolfo N. Nite

[Notary Acknowledgment Required]

APPROVED AS TO FORM:

By: _____

Randolph S. Hom, City
Attorney

By: _____

Name: Arlene D. Nite

[Notary Acknowledgment Required]

ATTEST:

By: _____

Grace Schmidt, City Clerk

ACKNOWLEDGMENTS

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

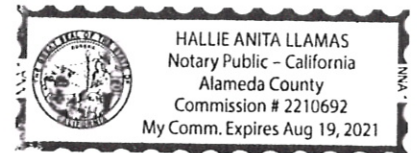
STATE OF CALIFORNIA)
COUNTY OF Santa Clara)

On December 27, 2017 before me, Hallie Anita Llamas, Notary Public, personally appeared Arnolfo N. Nite, 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 and official seal.

Signature: Hallie Anita Llamas (seal)



A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

STATE OF CALIFORNIA)
COUNTY OF Santa Clara)

On December 27, 2017 before me, Hallie Anita Llamas, Notary Public, personally appeared Arlene D. Nite, 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 and official seal.

Signature: Hallie Anita Llamas (seal)

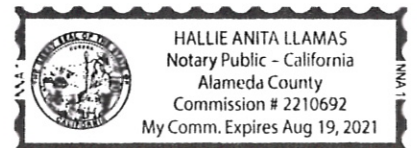


EXHIBIT A

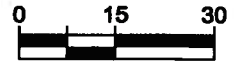
Legal Description of Site

THE LAND REFERRED TO HEREIN BELOW IS SITUATED IN THE CITY OF CUPERTINO, COUNTY OF SANTA CLARA, STATE OF CALIFORNIA AND IS DESCRIBED AS FOLLOWS:

ALL OF LOTS 55 AND 64, AS SHOWN ON THAT CERTAIN MAP ENTITLED, "MAP OF COLONY TRACT MONTE VISTA", IN THE CITY OF CUPERTINO, COUNTY OF SANTA CLARA, STATE OF CALIFORNIA, WHICH MAP WAS FILED FOR RECORD IN THE OFFICE OF THE RECORDER OF THE COUNTY OF SANTA CLARA, STATE OF CALIFORNIA ON APRIL 11, 1917, IN BOOK "P" OF MAPS, PAGES 21.

EXCEPTING THEREFROM, THAT PORTION OF LOT 55, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT THE NORTHEASTERLY CORNER OF SAID LOT 55; THENCE $64^{\circ} 12'$ WEST ALONG THE SOUTHEASTERLY LINE OF SAID LOT 86.72 FEET TO THE SOUTHWESTERLY CORNER THEREOF; THENCE NORTH $25^{\circ} 48'$ WEST ALONG THE SOUTHWESTERLY LINE OF SAID LOT 100.12 FEET TO THE NORTHWESTERLY CORNER THEREOF; THENCE NORTH $64^{\circ} 12'$ EAST ALONG THE NORTHWESTERLY LINE OF SAID LOT 50.00 FEET, MORE OR LESS TO THE SOUTHWESTERLY CORNER OF LOT 64, AS SHOWN UPON SAID MAP; THENCE SOUTH $25^{\circ} 48'$ EAST ALONG THE SOUTHEASTERLY PROLONGATION OF THE SOUTHWESTERLY LINE OF SAID LOT 64, 36.00 FEET TO A POINT; THENCE NORTH $64^{\circ} 12'$ EAST, PARALLEL WITH THE NORTHWESTERLY LINE OF SAID LOT 55, 72.75 MORE OR LESS (86.50' RECORD) TO THE WESTERLY LINE OF MADRID ROAD, AS SHOWN UPON SAID MAP; THENCE SOUTH $0^{\circ} 04'$ WEST, ALONG SAID WESTERLY LINE OF MADRID ROAD 72.75 FEET, MORE OR LESS TO THE POINT OF BEGINNING AS DESCRIBED IN LOT LINE ADJUSTMENT, RECORDED AUGUST 4, 1986 IN BOOK J 792, PAGE 37, OFFICIAL RECORDS, AND RECORDED SEPTEMBER 20, 1986 IN BOOK J863, PAGE 337, OFFICIAL RECORDS.



1 IN. = 30 FT.

LINE TABLE		
LINE	BEARING	LENGTH
L1	N25°02'54"W	5.00'

DOC 23595013
APN 356-08-051

RIGHT OF WAY
(±418 SQ FT)

MADRID ROAD

McCLELLAN ROAD

POB
L1
S64°56'27"W
25'
N64°56'28"E
48.83'
101.03'
R=274.95' L=52.52'
Δ=10°56'37"

N36°00'09"W(R)

LEGEND

POB

POINT OF BEGINNING

SHEET 1 OF 1

Date: 2017-11-14
Designed: JC
Drawn: RF
Checked: TG
Proj. Eng.: JC
489301PL14



1570 Oakland Road
San Jose, CA 95131
(408) 487-2200
HMHca.com

EXHIBIT "B"
PLAT TO ACCOMPANY DESCRIPTION:
RIGHT OF WAY

CUPERTINO

CALIFORNIA



November 14, 2017
HMH 4893.01.450
Page 1 of 1

EXHIBIT "C"
RIGHT OF WAY

REAL PROPERTY in the City of Cupertino, County of Santa Clara, State of California, being a portion of that certain parcel of land described in the grant deed recorded March 3, 2017, in Document No. 23595013 of Official Records, Santa Clara County Records, described as follows:

BEGINNING at the westerly corner of said parcel of land, being on the southeasterly line of McClellan Road;
Thence along said southeasterly line, North $64^{\circ}56'27''$ East, 101.03 feet;
Thence Southwesterly, along a non-tangent curve to the right, having a radius of 274.95 feet, whose center bears North $36^{\circ}00'09''$ West, through a central angle of $10^{\circ}56'36''$ for an arc length of 52.52 feet, to a line parallel with and 25 feet southeasterly of the centerline of McClellan Road;
Thence along said parallel line, South $64^{\circ}56'27''$ West, 48.83 feet, to the southwesterly line of said parcel of land;
Thence along said southwesterly line, North $25^{\circ}02'54''$ West, 5.00 feet, to the POINT OF BEGINNING.

Containing 418 square feet, more or less.



OFFICIAL BUSINESS.
Document entitled to free
recording per Government
Code § 6103 and § 27383

RECORDING REQUESTED BY AND
WHEN RECORDED MAIL TO:

City of Cupertino
10300 Torre Avenue
Cupertino, California 95014
Attn: Director of Public Works

SPACE ABOVE THIS LINE FOR RECORDING USE

**AGREEMENT REGARDING OFFER OF DEDICATION AND
WAIVER OF FUTURE REIMBURSEMENT**

This Agreement Regarding Offer of Dedication and Waiver of Future Reimbursement ("Agreement") is made and effective this _____ day of _____, 20__, Karen K. Ouyang-Shwe, an unmarried woman ("Owner") and the City of Cupertino, a municipal corporation ("City"). Owner and City may each be referred to as a "Party," or collectively as the "Parties."

RECITALS

A. Owner is the owner in fee of real property with a street address of 22549-22551 McClellan Road in the City of Cupertino, County of Santa Clara, designated as Assessor's Parcel No. 357-05-007, more particularly described in Exhibit A (the "Site").

B. Section 14.04.110 of the City of Cupertino Municipal Code provides that if the City or another property owner installs improvements that benefit a property, the owner of the benefitted property is required to reimburse the City or the property owner for its reasonable share of the costs of such improvements when the benefitted property owner seeks a land use entitlement from City. Section 18.56.040 of the City of Cupertino Municipal Code imposes a similar reimbursement requirement. Both sections provide, however, that if a property owner dedicates necessary right-of-way to the City without charge, the City may enter into an agreement with the owner to waive future reimbursement requirements.

C. City is in the process of trying to improve the walkability of routes to schools, particularly those areas lacking curb, gutter and sidewalk. A portion of the Site is among those areas the City desires to improve.

D. Owner has agreed to dedicate to City that certain approximately 1,001 square foot portion of the Site as depicted in the diagram attached hereto and incorporated herein as Exhibit B and more particularly described in the legal description attached hereto and incorporated herein as Exhibit C (the "Dedication Area"), in consideration of the City's limited waiver of future reimbursement requirements.

NOW THEREFORE, in consideration of the mutual promises, approvals, and covenants made by the Parties and other considerations, the value, adequacy and receipt of which are hereby acknowledged, the Parties agree as follows:

1. Offer of Dedication. Owner does hereby irrevocably offer to dedicate in fee the Dedication Area for street, highway, public utility, public pedestrian, landscaping and any other public purpose (the "Offer"). The Offer is irrevocable and shall be absolutely binding upon the Owner, its heirs, successors, assigns, and all persons claiming an interest in the Site through them.

2. Condition of Title; Removal of Liens. Owner shall work in good faith with City, at no cost to City, to remove any and all encumbrances or liens (other than the lien for current taxes not yet due and payable), including any deed of trust securing the obligation to pay a mortgage loan, encumbering all or any portion of the Dedication Area. With respect to deed(s) of trust, City shall prepare and provide to Owner the forms of partial reconveyance instrument(s) required to remove the Dedication Area from the lien(s) of such deed(s) of trust. The removal of all such liens, including lien(s) of deed(s) of trust, shall be a condition precedent to the effectiveness of City's waiver of the right to future reimbursement as set forth in Section 5 below.

3. Time and Manner of Acceptance.

3.1 The Offer may be accepted by Resolution of the City Council of the City of Cupertino and not in any other manner. Any purported acceptance of the Offer by or on behalf of the City, other than in this manner, shall be null and void and of no force or effect.

3.2 The Offer shall remain in effect until accepted by Resolution of the City Council. The Offer may not be terminated, or the right to accept the Offer abandoned, except by Resolution of the City Council in the same manner as prescribed for summary vacation of streets or highways by Part 3 (commencing with Section 8300) of Division 9 of the Streets and Highways Code.

3.3 Upon acceptance of the Offer, the City shall mail a copy of its Resolution of Acceptance to the then-owners of the Site at the address shown on the latest County of Santa Clara secured assessment roll and at the address listed in the Offer for notices.

4. Use of Property Prior to Acceptance of Offer.

4.1 The City shall incur no liability with respect to the Offer and shall not assume any responsibility for the Dedication Area or any improvements to the Dedication Area except to the extent that the Dedication Area has been accepted by appropriate action of the City Council.

4.2 Before the lawful acceptance of the Offer by the City, Owner agrees that it will not use the Dedication Area in any way that will interfere with the future use of the Dedication Area for public right-of-way.

4.3 Upon acceptance, the City shall be responsible for removing or relocating, as appropriate, all public or private improvements existing upon the Dedication Area at the time the Offer is duly recorded to the extent that such relocation is necessary for the City's use of the Dedication Area.

5. Limited Waiver of Reimbursement Requirement. Subject to satisfaction of the lien removal condition set forth in Section 2 above and the limitations of this Section 5, upon City's acceptance of the Offer, City hereby agrees to waive any and all future reimbursements for the costs of any improvements installed by City or its contractors on the Dedication Area ("City Work"), including reimbursements required by Sections 14.04.100 and 18.56.040 of the Cupertino Municipal Code, which may be charged to Owner at such time as Owner obtains a future land use entitlement with respect to the Site. This waiver of right to future reimbursement shall include only the costs of the City Work and shall remain in effect for twenty-five (25) years following City's acceptance of the Offer. Notwithstanding any other provision hereof to the contrary, Owner shall remain obligated to pay any development impact fees, including roadway impact fees, and the costs of any other improvements required in connection with the applicable land use entitlement. Further, in recognition of the fact that the City Work improvements will have a limited useful life, following expiration of the 25-year period, City shall have the right to require Owner to fund the cost of reconstructing any public improvements within the Dedication Area that City could then lawfully require Owner to fund in the absence of this Agreement.

6. Notices. Any notices which either Party may desire to give to the other Party under this Agreement must be in writing and may be given either by (i) personal service; (ii) delivery by a reputable document delivery service, such as but not limited to, Federal Express, which provides a receipt showing date and time of delivery; or (iii) mailing in the United States Mail, certified mail, postage prepaid, return receipt requested, addressed to the address of the Party as set forth below or at any other address as that Party may later designate by notice:

To City:

City of Cupertino
10300 Torre Avenue

Cupertino, CA 95014
Attention: Public Works Director

With a copy to:

City of Cupertino
10300 Torre Avenue
Cupertino, CA 95014
Attention: City Attorney

To Owner:

Karen K. Ouyang-Shwe
22549 McClellan Road
Cupertino, CA 95014

7. Agreement Runs with Land; Recordation. The provisions of this Agreement shall inure to the benefit of and be binding upon the owners of the Site and their heirs, successors or assigns, and any other person claiming an interest in the Site through them. Upon execution, this Agreement shall be recorded in the Official Records of Santa Clara County.

8. Waiver of Further Compensation. Owner hereby expressly and unconditionally waives any and all right to claim, demand, or receive any further compensation for the Dedication Area which Owner may be eligible to receive under the California Relocation Assistance Act (Government Code §7260, *et seq.*), Article 1, § 19 of the California Constitution, the California Eminent Domain Law (Code of Civil Procedure §1230.010, *et seq.*), and/or the California Code of Regulations, Title 25 or other applicable local, state, or federal statute, ordinance, regulation, rule, or decisional law (collectively "Compensatory Laws"), including, but not limited to, the fair market value of the Dedication Area, severance damages, loss of goodwill, loss of profits, or relocation benefits and assistance, or claims for unreasonable precondemnation activities or inverse condemnation, or any other compensation as a result of the Parties' agreements hereunder or the City's acceptance of the Offer. Furthermore, Owner hereby expressly releases the City of Cupertino, and its respective officials, officers, employees, representatives, successors and assigns, from any liability, responsibility, or obligation to pay any further compensation for the Dedication Area which Owner may be eligible to receive under the Compensatory Laws as a result of City's acceptance thereof.

9. Authority to Execute. The person or persons executing this Agreement on behalf of Owner warrants and represents that he/she/they has/have the authority to execute this Agreement on behalf of Owner and warrants and represents that he/she/they has/have the authority to bind Owner to the performance of its obligations hereunder.

10. Entire Agreement. This Agreement embodies the entire integrated agreement and understanding between the Parties hereto. There are no other agreements or understandings, oral or written, with reference to the subject matter hereof that are not merged herein and superseded hereby, except as set forth herein above.

11. Amendments. This Agreement may only be terminated or modified in a writing executed by both Parties and recorded in the Official Records of Santa Clara County.

12. Governing Law; Venue. This Agreement shall be construed and enforced in accordance with the laws of the State of California, without reference to choice of law provisions. Any legal actions under this Agreement shall be brought only in the Superior Court of the County of Santa Clara, State of California.

13. Interpretation. This Agreement shall be construed according to its fair meaning, and not strictly for or against any Party. This Agreement shall be deemed to have been prepared jointly by the Parties hereto, and the terms of this Agreement have been negotiated by the Parties and the language used in this Agreement shall be deemed to be the language chosen by the Parties to express their mutual intent. This Agreement shall be construed without regard to any presumption or rule requiring construction against the Party causing such instrument or any portion thereof to be drafted, or in favor of the Party receiving a particular benefit under the Agreement. No rule of strict construction will be applied against any Party hereto. When used herein, the singular form of the word includes the plural form in appropriate context. Use of the term "including" is meant to be without limitation, such as "including but not limited to" or similar. Section headings in this Agreement are for convenience only and are not intended to be used in interpreting or construing the terms, covenants or conditions contained in this Agreement.

14. No Partnership. Nothing herein contained shall be construed to create a joint venture or partnership or to create the relationship of principal and agent or of any association between City and Owner.

15. Further Cooperation. Each Party hereto agrees to execute any and all documents and writings which may be necessary or expedient and do such other acts as will further the purposes hereof.

16. Successors and Assigns. This Agreement is binding upon and shall inure to the benefit of the respective successors, heirs, and assigns of the Parties.

17. No Third-Party Beneficiaries. This Agreement is made and entered into for the sole protection and benefit of the signatory Parties and their successors and assigns. No other person shall have any right of action based upon any provision in this Agreement.

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the day and year first written above.

CITY:

OWNER:

CITY OF CUPERTINO, a California
municipal corporation

Karen K. Ouyang-Shwe, an unmarried
woman

By: _____
David Brandt, City Manager
[Notary Acknowledgment Required]

By: Karen K. Ouyang-Shwe
Name: Karen K. Ouyang-Shwe

[Notary Acknowledgment Required]

APPROVED AS TO FORM:

By: _____
Randolph S. Hom, City
Attorney

By: _____
Name: _____

[Notary Acknowledgment Required]

ATTEST:

By: _____
Grace Schmidt, City Clerk

ACKNOWLEDGMENTS

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

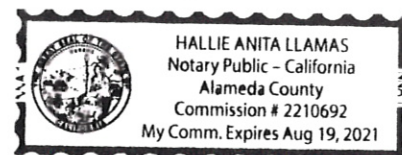
STATE OF CALIFORNIA)
COUNTY OF Santa Clara)

On Dec. 7, 2017 before me, Hallie Anita Llamas, Notary Public, personally appeared Karen Ouyang-Shwe, 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 and official seal.

Signature: Hallie Anita Llamas (seal)



A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

STATE OF CALIFORNIA)
COUNTY OF _____)

On _____, 20__ before me, _____, Notary Public, 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 and official seal.

Signature: _____ (seal)

EXHIBIT A

Legal Description of Site

THE LAND REFERRED TO HEREIN BELOW IS SITUATED IN THE CITY OF CUPERTINO, COUNTY OF SANTA CLARA, STATE OF CALIFORNIA AND IS DESCRIBED AS FOLLOWS:

ALL OF LOT 84, AS SHOWN UPON THAT CERTAIN MAP ENTITLED, "MAP OF LAS PALMAS MONTE VISTA", WHICH MAP WAS FILED FOR RECORD IN THE OFFICE OF THE RECORDER OF THE COUNTY OF SANTA CLARA, STATE OF CALIFORNIA, ON APRIL 11, 1917 IN BOOK P OF MAPS, AT PAGE 17.

DOC 22339413
APN 357-05-007

N18°34'38"E 100.12'
RIGHT OF WAY
(±1,001 SQ FT)
S18°34'38"W 100.12'

S71°25'22"E
10.00'

10'

20'

22'

30'

POB

N71°25'22"W
10.00'

30'

30'

McCLELLAN ROAD

McCLELLAN ROAD



1 IN. = 30 FT.

LEGEND

POB

POINT OF BEGINNING

SHEET 1 OF 1

Date: 2017-11-14
Designed: JC
Drawn: RF
Checked: TG
Proj. Engr.: JC
489301PLOB



1570 Oakland Road (408) 487-2200
San Jose, CA 95131 HMMca.com

EXHIBIT "B"
PLAT TO ACCOMPANY DESCRIPTION:
RIGHT OF WAY

CUPERTINO

CALIFORNIA



November 14, 2017
HMH 4893.01.450
Page 1 of 1

EXHIBIT "C"
RIGHT OF WAY

REAL PROPERTY in the City of Cupertino, County of Santa Clara, State of California, being a portion of that certain parcel of land described in the grant deed recorded August 8, 2013, in Document No. 22339413 of Official Records, Santa Clara County Records, described as follows:

BEGINNING at southeasterly corner of said parcel of land being on the general westerly line of McClellan Road;

Thence along said general westerly line, North $71^{\circ}25'22''$ West, 10.00 feet, to a line parallel with and 30 feet westerly of the centerline of McClellan Road;

Thence along said parallel line, North $18^{\circ}34'38''$ East, 100.12 feet, to the general westerly line of McClellan Road;

Thence along said general westerly line, the following two courses:

1. Thence South $71^{\circ}25'22''$ East, 10.00 feet;
2. Thence South $18^{\circ}34'38''$ West, 100.12 feet, to the POINT OF BEGINNING.

Containing 1,001 square feet, more or less.

