

AGREEMENT FOR DONATION OF REAL ESTATE

by and between

RICHARD LOWENTHAL AND ELLEN LOWENTHAL,  
as Donors

and

CITY OF CUPERTINO,  
as Recipient

For the donation of

APN 356-05-005  
Cupertino, California

## AGREEMENT FOR DONATION OF REAL ESTATE

(APN 356-05-005, Cupertino, California)

THIS AGREEMENT FOR DONATION OF REAL ESTATE (this “**Agreement**”), dated for reference purposes only as \_\_\_\_\_, 2019, is by and between RICHARD LOWENTHAL AND ELLEN LOWENTHAL, husband and wife (“**Lowenthal**”), and the CITY OF CUPERTINO, a California municipal corporation (“**City**”). Lowenthal and the City shall each be a “**Party**” and collectively “**Parties**.” Lowenthal and City agree as follows:

### 1. DONATION OF PROPERTY

Lowenthal agrees to donate certain real property owned by Lowenthal to the City, and the City agrees to receive the property from Lowenthal, subject to the following terms, covenants and conditions:

#### 1.1 The Property

Lowenthal donates the real property to the City identified in Subsections [a], [b], and [c] below, collectively referred to as the “**Property**”:

[a] the strip of real property located east of 10700 Club House Lane (Deep Cliff Golf Course – APN 356-05-003), Cupertino, California, between McClellan Road and Linda Vista Park, and more particularly described in the attached Exhibit A and shown as “Property” on the plat map attached as Exhibit B and the aerial photograph attached as Exhibit C (the “**Land**”);

[b] all improvements and fixtures located on the Land (the “**Improvements**”);  
and

[c] any and all rights, privileges, and easements incidental or appurtenant to the Land or Improvements, including, without limitation, any and all minerals, oil, gas and other hydrocarbon substances (but with no surface extraction rights for oil, gas and hydrocarbons), on and under the Land under ownership and control of Lowenthal as of the Effective Date of this Agreement, as well as any and all water rights and development rights, air rights relating to the Land, and, any and all easements, rights-of-way or other appurtenances used in connection with the beneficial use and enjoyment of the Land or Improvements, and any and all of Lowenthal’s right, title, and interest in and to all roads and alleys adjoining or servicing the Land or Improvements (collectively, the “**Appurtenances**”);

#### 1.2 City’s Covenant to Maintain and Use the Property for a Public Trail

By this Agreement, Lowenthal donates the Property to the City on the condition that the City and its successors and assigns covenant to improve and maintain the Property exclusively for public use for recreation, walking, and cycling in perpetuity. The City accepts the donation of the Property on the condition that the City shall have sole discretion to (a) adopt and enforce rules and regulations regarding public access to and use of the Property; (b) adopt and enforce

rules and regulations to protect the public health, safety, and enjoyment of the Property; (c) design, fund, construct, and install improvements and fixtures on the Property consistent with a public trail (“**Trail Improvements**”); (d) maintain, repair, and demolish improvements and fixtures on the Property; and (e) use motorized vehicles and other construction equipment for construction, maintenance, repair, security, or demolition of improvements and fixtures on the Property.

### **1.3 Successor to City**

If the City is dissolved or its respective designation changed by or under law, such agency’s powers, duties, rights, and functions under this Agreement shall be transferred under any applicable provisions of such laws.

## **2. ACQUISITION OF THE PROPERTY “AS-IS, WHERE-IS” CONDITION**

Except as set forth in paragraphs 3 and 9 herein, City agrees that City shall receive the Property in an “as-is, where-is” condition, with all faults, without any express or implied representations, covenants, or warranties relating to merchantability, marketability, profitability, or fitness of the Property for any purpose whatsoever or compliance with any laws, rules, ordinances, or regulations of any applicable governmental authority or body. City fully and irrevocably releases Lowenthal from any and all claims that it may have or hereafter acquire against Lowenthal arising from or related to any construction defects, errors, omissions, or other conditions, latent or otherwise, including environmental, geotechnical, and seismic matters, affecting the Property from and after the transfer of ownership of the Property to City.

## **3. LOWENTHAL DONATION OF THE PROPERTY**

### **3.1 Conveyance of Title to the Property**

At the Property Closing (as defined in Section 7.2), Lowenthal shall convey fee simple title to the Property to the City by duly executed and acknowledged Grant Deed in the form attached as Exhibit D (“**Deed**”) without consideration of any nature, type, or kind from the City.

### **3.2 No Representation Regarding Tax Treatment**

Lowenthal and the City agree that the City has not and will not provide any advice or make any representation to Lowenthal with respect to the tax impacts on Lowenthal resulting from their donation of the Property to the City. In addition, Lowenthal releases and waives all claims against the City for any losses, costs, damages, or expenses that may arise directly or indirectly from any tax impacts on Lowenthal as a result of the donation. This release shall survive the Property Closing.

### **3.3 Title Insurance**

Delivery of title in accordance with Section 3.1 shall be accompanied by the commitment of Chicago Title Insurance Company (the “**Title Company**”) to issue to City a CLTA owner’s policy of title insurance or an ALTA extended coverage policy if the City obtains a survey of the Property (“**Survey**”) in the amount of Seventy Five Thousand Dollars (\$75,000) (the “**Title**

**Policy**”), insuring fee simple title to the Land, the Appurtenances, and the Improvements in the City, free of the liens of any and all deeds of trust, mortgages, assignments of rents, financing statements, creditors’ claims, rights of tenants, or other occupants, and all other exceptions, liens, and encumbrances except solely for the following exceptions, which include, but are not limited to, certain title exceptions listed as Exceptions Nos. 1 – 17 and 19 in the preliminary title report from the Title Company dated August 1, 2019, for Title No. 15606696-156-TJK-MC1 attached as Exhibit E (such exceptions approved by City are collectively referred to herein as the “**Accepted Conditions of Title**”):

#### **4. CITY’S DUE DILIGENCE INVESTIGATIONS AND TIME FOR SATISFACTION OF CONDITIONS**

City has been given or will be given before the end of the Due Diligence Period (as defined below), a full opportunity to investigate the Property, either independently or through its contractors and agents of City’s own choosing (collectively, “**Agents**”), including, without limitation, the opportunity to conduct such inspections, non-invasive tests, audits, verifications, inventories, investigations, and other due diligence regarding the economic, physical, environmental, title, and legal conditions of the Property as City deems fit, as well as the suitability of the Property for City’s intended uses. City and its Agents may commence due diligence investigations on the Property on or after the Effective Date (as defined in Section 11.11). The period for completion of all such investigations shall expire forty-five (45) calendar days following the Effective Date (the “**Due Diligence Period**”), subject to the terms and conditions provided hereinbelow. Lowenthal agrees to deliver to City all of the Documents (as defined in Section 6.1[d]) and other items to be delivered by Lowenthal under Section 6.1 upon the Effective Date, provided that if Lowenthal fails to do so, then the expiration of the Due Diligence Period shall be extended by the number of days Lowenthal fails to deliver all such items to City.

#### **5. ENTRY**

During the Due Diligence Period and at all times prior to the Property Closing Date, City and its Agents may have reasonable access to the Property for the purposes of satisfying CITY with respect to the physical and environmental condition of the Property and the satisfaction of City’s Conditions Precedent (as defined in Section 6.1). City shall take all reasonable precautions to ensure that its activities undertaken pursuant to this Section 5 shall not disturb or damage any irrigation or other water conveyance facilities or waste water septic lines or other utilities located on the Property, and City shall be solely responsible, at its cost, to repair any damage to the Property or any of such facilities or water lines caused by City or its Agents as a result of its activities under this Section 5. City will indemnify, defend with counsel reasonably acceptable to Lowenthal, and hold Lowenthal harmless from all claims (including claims of lien for work or labor performed or materials or supplies furnished), demands, liabilities, losses, damages, costs, fees, and expenses, including Lowenthal’s reasonable attorney fees, costs, and expenses, arising from the acts or activities of City or City’s Agents or representatives in, on, or about the Property during or arising in connection with City’s inspections of the Property. In the event this Agreement is terminated for any reason, City shall restore the Property to substantially the condition it was found. This indemnity shall survive the termination of this Agreement or the Property Closing, as applicable, provided that Lowenthal must give City notice of any claim it

may have against City under such indemnity within eighteen (18) months after such termination or the Property Closing Date, as applicable.

## **6. CONDITIONS TO CLOSING**

### **6.1 CITY's Conditions to Closing**

The following are conditions precedent to City's obligation to purchase the Property (collectively, "**City's Conditions Precedent**"):

[a] City's review and approval, within the Due Diligence Period, of the condition of title to the Property.

[b] City's review and approval, within the Due Diligence Period, of the physical and environmental conditions of the Property.

[c] City's review and approval, within the Due Diligence Period, of the compliance of the Property with all applicable laws, regulations, permits and approvals.

[d] City's review and approval, within the Due Diligence Period, of (i) the following documents, to the extent such documents exist and are in the possession or control of Lowenthal (collectively, the "**Documents**") 1) Phase I Environmental Site Assessment reports, 2) City of Cupertino, California building permits; and (ii) such other information relating to the Property that is specifically requested by City of Lowenthal in writing during the Due Diligence Period (collectively, the "**Other Information**"). City acknowledges that all Documents and Other Information are being provided to City solely as an accommodation and Lowenthal makes no guarantee or warranty as to the adequacy or completeness of the Documents or Other Information for City's intended use of the Property.

[e] Title Company shall be committed at the Property Closing to issue to City the Title Policy (or Title Policies) subject to only the Accepted Conditions of Title as provided in Section 3.4 [Title Insurance].

[f] Lowenthal shall have delivered the items described in Section 7.3 below [Lowenthal's Delivery of Documents] on or before the Property Closing.

[g] Approval of this Agreement and the purchase of the Property by City's City Council.

[h] City has inspected the Property and determined that the Property is vacant and unoccupied.

If any of City's Conditions Precedent are not satisfied within the time periods set forth above, then City shall have the right in its sole discretion either to waive in writing the City's Condition Precedent in question and proceed with the purchase or, in the alternative, terminate this Agreement.

## **6.2 Lowenthal's Conditions to Closing**

The following are conditions precedent to Lowenthal's obligation to convey title to the Property (collectively, "**Lowenthal's Conditions Precedent**"):

[a] City shall have delivered the items described in Section 7.4 below [City's Delivery of Documents and Funds] on or before the Property Closing.

[b] City shall have authorized the award of a contract to a general contractor to construct the Trail Improvements.

If any of Lowenthal's Conditions Precedent are not satisfied, Lowenthal shall have the right in its sole discretion either to waive in writing the Lowenthal's Condition Precedent in question and proceed with the sale or, in the alternative, terminate this Agreement.

## **6.3 Cooperation with City**

Lowenthal shall cooperate with City and do all commercially reasonable acts as may be reasonably requested by City regarding the fulfillment of any City's Conditions Precedent, at no cost to Lowenthal. Lowenthal hereby irrevocably authorizes City and its Agents to make all inquiries with or to any person or entity, including, without limitation, any regulatory authority with jurisdiction as City may reasonably require to complete its due diligence investigations. City may make application to any regulatory authority with Lowenthal's prior written approval.

## **6.4 Waiver**

No waiver by either party at any time of any breach of any provision of this Agreement shall be deemed a waiver or a breach of any other provision herein or a consent to any subsequent breach of the same or another provision. If any action by any party shall require the consent or approval of another party, such consent or approval of such action on any one occasion shall not be deemed a consent to or approval of such action on any subsequent occasion or a consent to or approval of any other action.

# **7. ESCROW AND CLOSING**

## **7.1 Opening of Escrow**

On or before the Effective Date (as defined in Section 11.11), the parties shall open escrow by depositing an executed counterpart of this Agreement with Title Company, and this Agreement shall serve as instructions to Title Company as the escrow holder for consummation of the purchase and sale contemplated hereby. Lowenthal and City agree to execute such additional or supplementary instructions as may be appropriate to enable the escrow holder to comply with the terms of this Agreement and close the transaction; provided, however, that in the event of any conflict between the provisions of this Agreement and any additional supplementary instructions not executed by both parties, the terms of this Agreement shall control.

## **7.2 Closing Dates**

The consummation of the purchase and sale of the Property contemplated hereby (the “**Property Closing**”) shall be held and delivery of all items to be made at the Property Closing under the terms of this Agreement shall be made at the offices of Title Company located at 20100 Stevens Creek Blvd, Suite 100, Cupertino, California 95014, on or before the fifteenth (15th) calendar day following the City’s authorization to award a contract to a general contractor for construction of the Trail Improvements on the Property, or on such earlier date as City and Lowenthal may mutually agree (the “**Property Closing Date**”), subject to the provisions of Section 6.1 [City’s Conditions to Closing] and Section 6.2 [Lowenthal’s Conditions to Closing]. The Property Closing Date may not be extended without the prior written approval of both Lowenthal and City, except as otherwise expressly provided in this Agreement.

## **7.3 Lowenthal’s Delivery of Documents**

At or before the Property Closing, Lowenthal shall deliver into escrow, the following:

- [a] duly executed and acknowledged Deed;
- [b] properly executed affidavit pursuant to section 1445(b)(2) of the Federal Tax Code in the form attached hereto as Exhibit F, and on which City is entitled to rely, that Lowenthal is not a “foreign person” within the meaning of section 1445(f)(3) of the Federal Tax Code;
- [c] properly executed California Franchise Tax Board Form 590 certifying that Lowenthal is a California resident if Lowenthal is an individual, or Lowenthal has a permanent place of business in California or is qualified to do business in California if Lowenthal is a corporation, or other evidence satisfactory to City that Lowenthal is exempt from the withholding requirements of sections 18662 and 26131 of the State Tax Code;
- [d] assignments, deeds, grants, resolutions, authorizations, or other documents or agreements relating to Lowenthal as the Title Company may reasonably require to demonstrate the authority of Lowenthal to enter into this Agreement and consummate the transactions contemplated hereby, and such proof of the power and authority of the individuals executing any documents or other instruments on behalf of Lowenthal to act for and bind Lowenthal; and
- [e] closing statement in form and content satisfactory to City and Lowenthal.

## **7.4 City’s Delivery of Documents and Funds**

At or before the Property Closing, City shall deliver into escrow the following:

- [a] acceptance of the Deed executed by the City Manager, or her designee; and
- [b] closing statement in form and content satisfactory to City and Lowenthal.

## **8. EXPENSES AND TAXES**

### **8.1 Apportionments**

Amounts payable under any contracts assumed pursuant hereto, annual or periodic permit or inspection fees (calculated based on the period covered), and liability for other normal property operation and maintenance expenses and other recurring costs shall be apportioned as of the Property Closing Date. All utilities shall be prorated as of the Closing Date.

### **8.2 Closing Costs**

City shall pay the cost of the Survey, if any, the premium for the Title Policy and the cost of the endorsements thereto, any escrow and recording fees, and any transfer taxes. Lowenthal shall be responsible for all costs incurred in connection with the prepayment or satisfaction of any loan, bond, or other indebtedness secured by the Property. Any other costs and charges of the escrow for the sale not otherwise provided for in this Section or elsewhere in this Agreement shall be paid by City.

### **8.3 Real Estate Taxes and Special Assessments**

General real estate taxes payable for the tax year prior to the year of the Property Closing and all prior years shall be paid by Lowenthal at or before the Property Closing. General real estate taxes payable for the tax year of the Property Closing shall be prorated through escrow between Lowenthal and City as of the Property Closing Date. At or before the Property Closing, any special assessments against the Property shall be prorated through escrow.

### **8.4 Preliminary Closing Adjustment**

The Title Company shall prepare a preliminary Property Closing adjustment based on any apportionments or adjustments to be made based on payments or expenses and shall deliver such computation to Lowenthal and City prior to the Property Closing.

### **8.5 Post-Closing Reconciliation**

If any of the foregoing prorations cannot be calculated accurately on the Property Closing Date, then they shall be calculated as soon after the Property Closing Date as feasible. Either party owing the other party a sum of money based on such subsequent prorations shall promptly pay such sum to the other party within 10 days of receipt of invoice and proper documentation for such proration.

### **8.6 Survival**

The provisions of this Section shall survive the Property Closing.

## **9. REPRESENTATIONS AND WARRANTIES**

Lowenthal represents and warrants to and covenants with City as follows:



[a] To Lowenthal's Knowledge, as of the Effective Date, and as of the Property Closing Date, Lowenthal has received no formal written notice of any currently outstanding violations of any federal, state, county, or municipal law, ordinance, order, regulation, or requirement affecting the Property.

[b] To Lowenthal's Knowledge, Lowenthal has received no formal written notice of any condemnation, either instituted or planned to be instituted by any governmental or quasi-governmental agency other than City.

[c] To Lowenthal's Knowledge, Lowenthal has received no formal written notice of any litigation pending against Lowenthal or that affect the use or operation of the Property.

[d] Lowenthal has not granted any option or right of first refusal or first opportunity to any third party to acquire any interest in any of the Property.

[e] This Agreement and all documents executed by Lowenthal which are to be delivered to City at the Property Closing are, or at the Property Closing will be, duly authorized, executed and delivered by Lowenthal, are, or at the Property Closing will be, legal, valid and binding obligations of Lowenthal, enforceable against Lowenthal in accordance with their respective terms, and to Lowenthal's Knowledge, do not, and at the Property Closing will not, violate any provision of any agreement or judicial order to which Lowenthal is a party or to which Lowenthal or the Property is subject.

[f] Except as otherwise disclosed in writing by Lowenthal to City prior to the end of the Due Diligence Period, and except as expressly set forth in any Documents or Other Information delivered to City under Section 6.1[d], Lowenthal has received no written notice, and to Lowenthal Knowledge, that the Property is in violation of any federal, state and local laws, ordinances, and regulations applicable to the Property with respect to hazardous or toxic substances or industrial hygiene (collectively, "**Environmental Laws**").

[g] At the time of Property Closing, to the best of Lowenthal's Knowledge, there will be no leases or other occupancy agreements affecting any of the Property that survive the Property Closing. At the time of Property Closing, to Lowenthal's Knowledge, there will be no outstanding written or oral contracts made by Lowenthal for any of the Improvements that have not been fully paid for and Lowenthal shall cause to be discharged all mechanics' or materialmen's liens arising from any labor or materials furnished to the Property prior to the time of Property Closing.

[h] Lowenthal is not a "foreign person" within the meaning of section 1445(f)(3) of the Federal Tax Code.

As used in this Section 9, the term "to Lowenthal's Knowledge" means the actual present knowledge of Richard Lowenthal and Ellen Lowenthal, without any duty of inquiry or investigation either express or implied. As stated in paragraph 1.1 above, except for the representations and warranties provided herein, the Property shall be sold "as is" with all faults, whether known or unknown.

## **10. POSSESSION**

Possession of the Property shall be delivered to City at the Closing.

## **11. GENERAL PROVISIONS**

### **11.1 Notices**

Any notice, consent or approval required or permitted to be given under this Agreement shall be in writing and shall be addressed as follows:

City:

City Manager  
City of Cupertino  
Cupertino City Hall  
10300 Torre Avenue  
Cupertino, CA 95014

Lowenthal:

Richard Lowenthal and Ellen Lowenthal  
21602 Villa Maria Ct  
Cupertino, CA 95014

or to such other address as either party may from time to time specify in writing to the other upon five (5) days' prior written notice in the manner provided above. Any notice given by personal delivery or delivery service will be deemed effective on the date of receipted delivery, upon refusal to accept delivery or when delivery is first attempted but cannot be made due to a change of address for which no notice was given. Any notice sent by facsimile shall be deemed given by the date reflected by the facsimile confirmation receipt. Any notice that may be given by any party in connection with this Agreement may be given by such party's attorney.

### **11.2 Brokers and Finders**

Neither party has had any contact or dealings regarding the Property, or any communication in connection with the subject matter of this transaction, through any licensed real estate broker or other person who could claim a right to a commission or finder's fee in connection with the purchase and sale contemplated herein.

### **11.3 Successors and Assigns**

This Agreement shall be binding upon, and inure to the benefit of, the parties hereto and their respective successors, heirs, administrators, and assigns.

### **11.4 Amendments**

Except as otherwise provided herein, this Agreement may be amended or modified only by a written instrument executed by City and Lowenthal.

### **11.5 Continuation and Survival of Representations and Warranties**

All representations and warranties by the respective parties contained herein or made in writing pursuant to this Agreement are intended to be, and shall remain, true and correct as of the

Property Closing, shall be deemed to be material, and, together with all conditions, covenants and indemnities made by the respective parties contained herein or made in writing pursuant to this Agreement (except as otherwise expressly limited or expanded by the terms of this Agreement), shall survive the execution and delivery of this Agreement and the Property Closing, or, to the extent the context requires, beyond any termination of this Agreement, provided all representations and warranties set forth in Section 9.1 shall survive for a period of eighteen (18) months following the Property Closing Date. All statements contained in any certificate or other instrument delivered at any time by or on behalf of Lowenthal in conjunction with the transaction contemplated hereby shall constitute representations and warranties hereunder.

#### **11.6 Governing Law**

This Agreement shall be governed by and construed in accordance with the laws of the State of California. Any action to enforce the terms of this Agreement shall be filed in a court of competent jurisdiction in Santa Clara County, California.

#### **11.7 Merger of Prior Agreements**

The parties intend that this Agreement (including all of the attached exhibits and schedules, which are incorporated into this Agreement by reference) shall be the final expression of their agreement with respect to the subject matter hereof and may not be contradicted by evidence of any prior or contemporaneous oral or written agreements or understandings. The parties further intend that this Agreement shall constitute the complete and exclusive statement of its terms and that no extrinsic evidence whatsoever (including, without limitation, prior drafts or changes therefrom) may be introduced in any judicial, administrative or other legal proceeding involving this Agreement.

#### **11.8 Non-Liability of City Officials, Employees and Agents**

Notwithstanding anything to the contrary in this Agreement, no Board member, officer, employee or agent of City shall be personally liable to Lowenthal, its successors and assigns, in the event of any default or breach by City or for any amount which may become due to Lowenthal, its successors and assigns, or for any obligation of City under this Agreement.

#### **11.9 Counterparts**

This Agreement may be executed in two (2) or more counterparts, each of which shall be deemed an original, but all of which taken together shall constitute one and the same instrument.

#### **11.11 Effective Date**

As used herein, the term “**Effective Date**” shall mean the date this Agreement is executed by both parties hereto.

**[THE REMAINDER OF THIS PAGE HAS BEEN INTENTIONALLY LEFT BLANK]**

The parties have duly executed this Agreement as of the respective dates written below.

RICHARD LOWENTHAL AND ELLEN  
LOWENTHAL, husband and wife

By: 

Richard Lowenthal

Date: 10/1/2019

By: 

Ellen Lowenthal

Date: 10/1/2019

CITY OF CUPERTINO, a California  
municipal corporation

By: \_\_\_\_\_

Deborah Feng, City Manager

Date: \_\_\_\_\_

APPROVED AS TO FORM:

By: 

Andrew Schwartz, City's Counsel

Title Company agrees to act as escrow holder in accordance with the terms of this Agreement and act as the Reporting Person under section 6045(e) of the United States Internal Revenue Code of 1986 and the regulations promulgated thereunder, which require an information return to be made to the United States Internal Revenue Service, and a statement to be furnished to Lowenthal, in connection with this transaction. Title Company's failure to execute below shall not invalidate this Agreement between the City and Lowenthal.

CHICAGO TITLE INSURANCE COMPANY

By: \_\_\_\_\_

Its: \_\_\_\_\_

Date: \_\_\_\_\_

## **EXHIBIT A**

### **LEGAL DESCRIPTION OF THE PROPERTY**

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

PARCEL ONE:

A PORTION OF THE NORTHEAST 1/4 OF SECTION 22, TOWNSHIP 7 SOUTH, RANGE 2 WEST, MOUNT DIABLO MERIDIAN.

BEGINNING AT A POINT IN THE SOUTHWESTERLY LINE OF MCCLELLAN ROAD AT THE APPROXIMATE CENTER OF STEVENS CREEK, SAID POINT OF BEGINNING BEING DISTANT NORTH 47° 35' WEST 131.34 FEET FROM A STAKE MARKED M-6, SAID STAKE BEING MENTIONED IN THAT CERTAIN DECREE OF DISTRIBUTION ENTERED IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA, IN AND FOR THE COUNTY OF SANTA CLARA, ON APRIL 19, 1938 IN THE MATTER OF THE ESTATE OF KAY SPENCE, DECEASED, CASE NO. 21640, A CERTIFIED COPY OF WHICH DECREE WAS RECORDED NOVEMBER 29, 1939 IN BOOK 956 OF OFFICIAL RECORDS, PAGE 379, SANTA CLARA COUNTY RECORDS, SAID STAKE M-6 BEING ALSO SHOWN UPON THAT CERTAIN MAP ENTITLED, "RECORD OF SURVEY OF 53 ACRE PARCEL PROPERTY OF KAY SPENCE," WHICH MAP WAS FILED FOR RECORD IN THE OFFICE OF THE RECORDER OF THE COUNTY OF SANTA CLARA, STATE OF CALIFORNIA ON OCTOBER 18, 1945 IN BOOK 9 OF MAPS, AT PAGE 6; THENCE FROM SAID POINT OF BEGINNING ALONG THE NORTHEASTERLY LINE OF THE 53 ACRE PARCEL SHOWN UPON SAID RECORD OF SURVEY THE FOLLOWING COURSES AND DISTANCES: SOUTH 30° 06' 20" EAST 131.94 FEET, SOUTH 39° 41' 30" EAST 73.56 FEET, SOUTH 32° 05' 40" EAST 220.36 FEET, SOUTH 43° 15' 40" EAST 110.33 FEET, SOUTH 52° 55' EAST 72.32 FEET, SOUTH 61° 20' EAST 100.34 FEET, SOUTH 56° 45' EAST 255.29 FEET, SOUTH 44° 00' EAST 62.69 FEET, SOUTH 28° 29' 50" EAST 81.35 FEET, SOUTH 25° 30' EAST 86.94 FEET, SOUTH 5° 30' EAST 90.69 FEET, SOUTH 3° 45' WEST 359.62 FEET AND SOUTH 32° 24' EAST 174.98 FEET TO THE MOST EASTERLY CORNER OF SAID 53 ACRE PARCEL; THENCE NORTH 80° 42' 50" EAST ALONG THE EASTERLY PROLONGATION OF THE SOUTHERLY LINE OF SAID 53 ACRE PARCEL FOR A DISTANCE OF 43.49 FEET TO A POINT IN THE EASTERLY LINE OF LAND SO DESCRIBED IN SAID DECREE OF DISTRIBUTION ABOVE REFERRED TO; THENCE ALONG THE EASTERLY LINE OF LAND SO DESCRIBED IN THE DECREE OF DISTRIBUTION FOR THE FOLLOWING COURSES AND DISTANCES: NORTH 33° 00' WEST 179.00 FEET TO A STAKE MARKED MB-8; THENCE NORTH 3° 45' EAST 349.80 FEET TO A STAKE MARKED MB-9; THENCE NORTH 5° 30' WEST 100.98 FEET TO A STAKE MARKED MB-10; THENCE NORTH 25° 30' WEST 95.04 FEET TO A STAKE MARKED MB-11; THENCE NORTH 33° 30' WEST 83.82 FEET TO A STAKE MARKED MB-12; THENCE NORTH 44° WEST 72.60 FEET TO A STAKE MARKED MB-1 AT THE WESTERNMOST CORNER OF THAT CERTAIN 14.40 ACRE PARCEL OF LAND DESCRIBED IN BOOK 105 OF DEEDS, PAGE 23, SANTA CLARA COUNTY RECORDS;

THENCE NORTH 56° 45' WEST 261.36 FEET; THENCE NORTH 61° 45' WEST 99.00 FEET; THENCE NORTH 52° 55' WEST 66.00 FEET; THENCE NORTH 43° 40' WEST 104.28 FEET; THENCE NORTH 32° 05' WEST 219.12 FEET; THENCE NORTH 39° 45' WEST 75.90 FEET TO A STAKE MARKED M-6 AT AN ANGLE CORNER IN THE SOUTHERLY LINE OF MCCLELLAN ROAD; THENCE ALONG SAID SOUTHERLY LINE OF MCCLELLAN ROAD NORTH 47° 35' WEST 131.34 FEET TO THE POINT OF BEGINNING.

PARCEL TWO:

A NON-EXCLUSIVE EASEMENT FOR INGRESS AND EGRESS AND FOR THE INSTALLATION AND MAINTENANCE OF PUBLIC UTILITIES, OVER THE FOLLOWING DESCRIBED PARCEL OF LAND: BEGINNING AT THE POINT OF INTERSECTION OF THE SOUTHERLY LINE OF THAT CERTAIN TRACT OF LAND DESCRIBED IN THE DEED FROM VALLEY TITLE COMPANY OF SANTA CLARA COUNTY, A CORPORATION, TO ESTEN H. BAKER, ET UX, DATED NOVEMBER 15, 1963, RECORDED NOVEMBER 18, 1963 IN BOOK 6275 OFFICIAL RECORDS, PAGE 520, SANTA CLARA COUNTY RECORDS, WITH THE CURVED WESTERLY LINE OF LINDA VISTA DRIVE (60.00 FEET IN WIDTH); THENCE FROM SAID POINT OF BEGINNING NORTH 80° 26' 07" WEST ALONG THE SOUTHERLY LINE OF LAND SO DESCRIBED IN THE DEED TO SAID BAKER AND ITS WESTERLY PROLONGATION FOR A DISTANCE OF 373.97 FEET TO A 3/4 INCH IRON PIPE; THENCE SOUTH 9° 33' 53" WEST 60.00 FEET; THENCE SOUTH 80° 26' 07" EAST 393.38 FEET TO THE POINT OF INTERSECTION THEREOF WITH THE WESTERLY LINE OF TRACT NO. 3492 BAYWOOD TERRACE UNIT NO. 3, A MAP OF WHICH WAS FILED FOR RECORD IN THE OFFICE OF THE RECORDER OF THE COUNTY OF SANTA CLARA, STATE OF CALIFORNIA, ON AUGUST 27, 1963 IN BOOK 165 OF MAPS, AT PAGES 44 AND 45; THENCE NORTH 0° 14' 21" EAST ALONG THE SAID WESTERLY LINE OF TRACT NO. 3492 FOR A DISTANCE OF 41.38 FEET TO THE POINT OF INTERSECTION THEREOF WITH THE SAID CURVED WESTERLY LINE OF LINDA VISTA DRIVE; THENCE NORTHWESTERLY ALONG SAID CURVED WESTERLY LINE OF LINDA VISTA DRIVE, ALONG AN ARC OF A CURVE TO THE RIGHT, FROM A TANGENT BEARING NORTH 27° 50' 01" WEST, WITH A RADIUS OF 170.00 FEET THROUGH A CENTRAL ANGLE OF 7° 45' 19" FOR AN ARC DISTANCE OF 23.01 FEET TO THE POINT OF BEGINNING.

SAID EASEMENT TO BE RELINQUISHED AT SUCH TIME SAID EASEMENT IS DEDICATED FOR PUBLIC ROADWAY.

PARCEL THREE:

A NON-EXCLUSIVE EASEMENT FOR INGRESS AND EGRESS AND FOR THE INSTALLATION AND MAINTENANCE OF PUBLIC UTILITIES, APPURTENANT TO THE ABOVE DESCRIBED PARCELS, OVER A STRIP OF LAND 40.00 FEET IN WIDTH WHICH IS DESCRIBED AS FOLLOWS:

BEGINNING AT THE POINT OF INTERSECTION OF THE SOUTHERLY LINE OF THAT CERTAIN TRACT OF LAND DESCRIBED IN THE DEED FROM VALLEY TITLE

COMPANY OF SANTA CLARA COUNTY, A CORPORATION, TO ESTEN H. BAKER, ET UX, DATED NOVEMBER 15, 1963, RECORDED NOVEMBER 18, 1963 IN BOOK 6275 OFFICIAL RECORDS, PAGE 520, SANTA CLARA COUNTY RECORDS, WITH THE CURVED WESTERLY LINE OF LINDA VISTA (60.00 FEET IN WIDTH); THENCE FROM SAID POINT OF BEGINNING NORTH 30° 26' 07" WEST ALONG SAID SOUTHERLY LINE OF LAND SO DESCRIBED IN THE DEED TO SAID BAKER FOR A DISTANCE OF 203.97 FEET TO A 3/4 INCH IRON PIPE SET AT THE SOUTHWESTERLY CORNER THEREOF, SAID POINT ALSO BEING AN ANGLE CORNER IN THE EASTERLY LINE OF THAT CERTAIN TRACT OF LAND DESCRIBED IN THAT CERTAIN DECREE OF DISTRIBUTION ENTERED IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA, IN AND FOR THE COUNTY OF SANTA CLARA, ON APRIL 19, 1938 IN THE MATTER OF THE ESTATE OF KAY SPENCE, DECEASED, CASE NO. 21640, A CERTIFIED COPY OF WHICH DECREE WAS RECORDED NOVEMBER 29, 1939 IN BOOK 956 OF OFFICIAL RECORDS, PAGE 379, SANTA CLARA COUNTY RECORDS AND THE TRUE POINT OF BEGINNING OF THE EASEMENT TO BE DESCRIBED; THENCE FROM SAID TRUE POINT OF BEGINNING ALONG SAID EASTERLY LINE OF LAND SO DESCRIBED IN SAID DECREE OF DISTRIBUTION FOR THE FOLLOWING COURSES AND DISTANCES; NORTH 7° 51' 17" EAST 151.75 FEET TO A 3/4 INCH IRON PIPE; THENCE NORTH 12° 36' 27" EAST 125.37 FEET TO A 3/4 INCH IRON PIPE; THENCE NORTH 1° 23' 53" WEST 163.62 FEET TO A 3/4 INCH IRON PIPE AND NORTH 32° 23' 23" WEST 364.25 FEET TO THE POINT OF INTERSECTION THEREOF WITH THE EASTERLY PROLONGATION OF THE SOUTHERLY LINE OF THAT CERTAIN 53 ACRE TRACT OF LAND AS SHOWN UPON THAT CERTAIN MAP ENTITLED, "RECORD OF SURVEY OF 53 ACRE PARCEL PROPERTY OF KAY SPENCE" WHICH MAP WAS FILED FOR RECORD IN THE OFFICE OF THE RECORDER OF THE COUNTY OF SANTA CLARA, STATE OF CALIFORNIA, ON OCTOBER 18, 1945 IN BOOK 9 OF MAPS, AT PAGE 6 AND THE TERMINUS OF SAID EASEMENT.

THE NORTHERLY TERMINUS OF SAID EASEMENT HAVING A BEARING OF SOUTH 80° 42' 50" WEST AND THE SOUTHERLY TERMINUS OF SAID EASEMENT HAVING A BEARING OF NORTH 80° 26' 07" WEST.

APN: 356-05-005

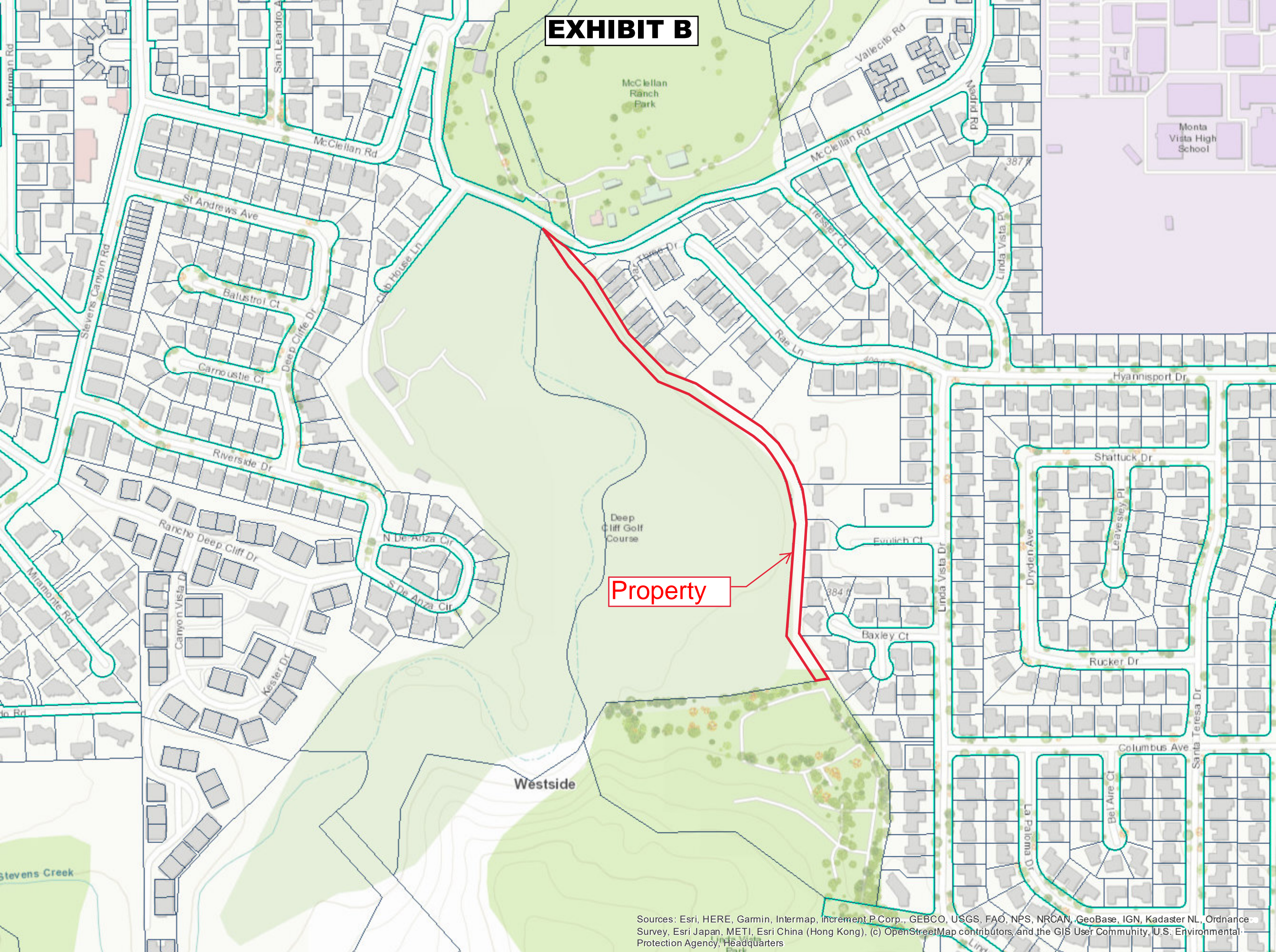


**EXHIBIT B**

**PLAT OF THE PROPERTY**



# EXHIBIT B



Property

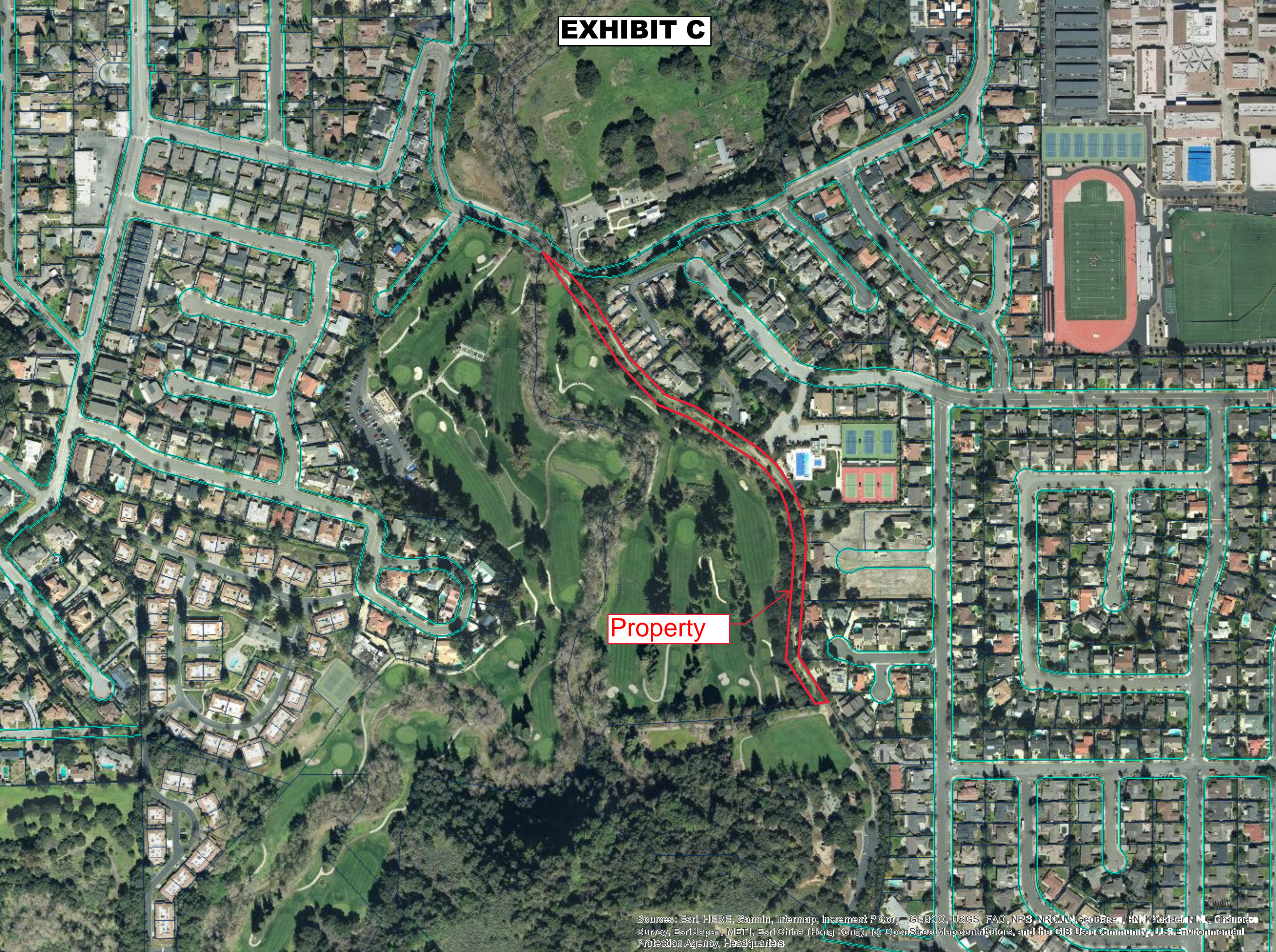


**EXHIBIT C**

**AERIAL PHOTO OF THE PROPERTY**



# EXHIBIT C



Property



**EXHIBIT D**  
**GRANT DEED**

RECORDING REQUESTED BY  
AND WHEN RECORDED RETURN TO:

Deborah Feng, City Manager  
City of Cupertino  
City Hall  
10300 Torre Avenue  
Cupertino, CA 95014

**No Recording Fee Per  
Government Code 6103**

**No Document Transfer Tax  
Per R & T Code 11922**

Santa Clara County, California  
APN 356-05-005

(Space above this line reserved for Recorder's use only)

**GRANT DEED**

FOR VALUABLE CONSIDERATION, receipt of which is hereby acknowledged, RICHARD LOWENTHAL AND ELLEN LOWENTHAL, husband and wife ("Grantors"), hereby grants to the CITY OF CUPERTINO, a California municipal corporation ("Grantee"), the real property located in the City of Cupertino, County of Santa Clara, State of California, described on Exhibit A and shown as "Property" on Exhibit B, both attached hereto and made a part hereof (the "Property").

TOGETHER WITH any and all rights, privileges, and easements incidental or appurtenant to the Property, including, without limitation, any and all minerals, oil, gas and other hydrocarbon substances on and under the Property, but with no right of surface extraction of oil, gas and other hydrocarbon substances on the Property, as well as any and all development rights, air rights relating to the Property, any water, water rights, riparian rights and water stock relating to the Property and any and all easements, rights-of-way or other appurtenances used in connection with the beneficial use and enjoyment of the Property and all of Grantor's right, title, and interest in and to any and all roads and alleys adjoining or servicing the Property.

SUBJECT TO GRANTEE'S COVENANT that Grantee and its successors and assigns shall maintain the Property exclusively for public use for recreation and non-motorized transportation in perpetuity. Grantee shall have sole discretion to (a) adopt and enforce rules and regulations regarding public access to and use of the Property; (b) adopt and enforce rules and regulations to protect the public health, safety, and enjoyment of the Property; and (c) design, fund, construct, install, maintain, repair, and demolish improvements and fixtures on the Property.

If Grantee is dissolved or its respective designation changed by or under law, such agency's powers, duties, rights, and functions under this Deed shall be transferred under any applicable provisions of such laws.

Executed as of this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

Richard Lowenthal and Ellen Lowenthal,  
husband and wife

By: \_\_\_\_\_  
Richard Lowenthal

Date: \_\_\_\_\_

By: \_\_\_\_\_  
Ellen Lowenthal

Date: \_\_\_\_\_

Exhibit A

LEGAL DESCRIPTION OF THE PROPERTY

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

PARCEL ONE:

A PORTION OF THE NORTHEAST 1/4 OF SECTION 22, TOWNSHIP 7 SOUTH, RANGE 2 WEST, MOUNT DIABLO MERIDIAN.

BEGINNING AT A POINT IN THE SOUTHWESTERLY LINE OF MCCLELLAN ROAD AT THE APPROXIMATE CENTER OF STEVENS CREEK, SAID POINT OF BEGINNING BEING DISTANT NORTH 47° 35' WEST 131.34 FEET FROM A STAKE MARKED M-6, SAID STAKE BEING MENTIONED IN THAT CERTAIN DECREE OF DISTRIBUTION ENTERED IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA, IN AND FOR THE COUNTY OF SANTA CLARA, ON APRIL 19, 1938 IN THE MATTER OF THE ESTATE OF KAY SPENCE, DECEASED, CASE NO. 21640, A CERTIFIED COPY OF WHICH DECREE WAS RECORDED NOVEMBER 29, 1939 IN BOOK 956 OF OFFICIAL RECORDS, PAGE 379, SANTA CLARA COUNTY RECORDS, SAID STAKE M-6 BEING ALSO SHOWN UPON THAT CERTAIN MAP ENTITLED, "RECORD OF SURVEY OF 53 ACRE PARCEL PROPERTY OF KAY SPENCE," WHICH MAP WAS FILED FOR RECORD IN THE OFFICE OF THE RECORDER OF THE COUNTY OF SANTA CLARA, STATE OF CALIFORNIA ON OCTOBER 18, 1945 IN BOOK 9 OF MAPS, AT PAGE 6; THENCE FROM SAID POINT OF BEGINNING ALONG THE NORTHEASTERLY LINE OF THE 53 ACRE PARCEL SHOWN UPON SAID RECORD OF SURVEY THE FOLLOWING COURSES AND DISTANCES: SOUTH 30° 06' 20" EAST 131.94 FEET, SOUTH 39° 41' 30" EAST 73.56 FEET, SOUTH 32° 05' 40" EAST 220.36 FEET, SOUTH 43° 15' 40" EAST 110.33 FEET, SOUTH 52° 55' EAST 72.32 FEET, SOUTH 61° 20' EAST 100.34 FEET, SOUTH 56° 45' EAST 255.29 FEET, SOUTH 44° 00' EAST 62.69 FEET, SOUTH 28° 29' 50" EAST 81.35 FEET, SOUTH 25° 30' EAST 86.94 FEET, SOUTH 5° 30' EAST 90.69 FEET, SOUTH 3° 45' WEST 359.62 FEET AND SOUTH 32° 24' EAST 174.98 FEET TO THE MOST EASTERLY CORNER OF SAID 53 ACRE PARCEL; THENCE NORTH 80° 42' 50" EAST ALONG THE EASTERLY PROLONGATION OF THE SOUTHERLY LINE OF SAID 53 ACRE PARCEL FOR A DISTANCE OF 43.49 FEET TO A POINT IN THE EASTERLY LINE OF LAND SO DESCRIBED IN SAID DECREE OF DISTRIBUTION ABOVE REFERRED TO; THENCE ALONG THE EASTERLY LINE OF LAND SO DESCRIBED IN THE DECREE OF DISTRIBUTION FOR THE FOLLOWING COURSES AND DISTANCES: NORTH 33° 00' WEST 179.00 FEET TO A STAKE MARKED MB-8; THENCE NORTH 3° 45' EAST 349.80 FEET TO A STAKE MARKED MB-9; THENCE NORTH 5° 30' WEST 100.98 FEET TO A STAKE MARKED MB-10; THENCE NORTH 25° 30' WEST 95.04 FEET TO A STAKE MARKED MB-11; THENCE NORTH 33° 30' WEST 83.82 FEET TO A STAKE MARKED

MB-12; THENCE NORTH 44° WEST 72.60 FEET TO A STAKE MARKED MB-1 AT THE WESTERNMOST CORNER OF THAT CERTAIN 14.40 ACRE PARCEL OF LAND DESCRIBED IN BOOK 105 OF DEEDS, PAGE 23, SANTA CLARA COUNTY RECORDS; THENCE NORTH 56° 45' WEST 261.36 FEET; THENCE NORTH 61° 45' WEST 99.00 FEET; THENCE NORTH 52° 55' WEST 66.00 FEET; THENCE NORTH 43° 40' WEST 104.28 FEET; THENCE NORTH 32° 05' WEST 219.12 FEET; THENCE NORTH 39° 45' WEST 75.90 FEET TO A STAKE MARKED M-6 AT AN ANGLE CORNER IN THE SOUTHERLY LINE OF MCCLELLAN ROAD; THENCE ALONG SAID SOUTHERLY LINE OF MCCLELLAN ROAD NORTH 47° 35' WEST 131.34 FEET TO THE POINT OF BEGINNING.

PARCEL TWO:

A NON-EXCLUSIVE EASEMENT FOR INGRESS AND EGRESS AND FOR THE INSTALLATION AND MAINTENANCE OF PUBLIC UTILITIES, OVER THE FOLLOWING DESCRIBED PARCEL OF LAND: BEGINNING AT THE POINT OF INTERSECTION OF THE SOUTHERLY LINE OF THAT CERTAIN TRACT OF LAND DESCRIBED IN THE DEED FROM VALLEY TITLE COMPANY OF SANTA CLARA COUNTY, A CORPORATION, TO ESTEN H. BAKER, ET UX, DATED NOVEMBER 15, 1963, RECORDED NOVEMBER 18, 1963 IN BOOK 6275 OFFICIAL RECORDS, PAGE 520, SANTA CLARA COUNTY RECORDS, WITH THE CURVED WESTERLY LINE OF LINDA VISTA DRIVE (60.00 FEET IN WIDTH); THENCE FROM SAID POINT OF BEGINNING NORTH 80° 26' 07" WEST ALONG THE SOUTHERLY LINE OF LAND SO DESCRIBED IN THE DEED TO SAID BAKER AND ITS WESTERLY PROLONGATION FOR A DISTANCE OF 373.97 FEET TO A 3/4 INCH IRON PIPE; THENCE SOUTH 9° 33' 53" WEST 60.00 FEET; THENCE SOUTH 80° 26' 07" EAST 393.38 FEET TO THE POINT OF INTERSECTION THEREOF WITH THE WESTERLY LINE OF TRACT NO. 3492 BAYWOOD TERRACE UNIT NO. 3, A MAP OF WHICH WAS FILED FOR RECORD IN THE OFFICE OF THE RECORDER OF THE COUNTY OF SANTA CLARA, STATE OF CALIFORNIA, ON AUGUST 27, 1963 IN BOOK 165 OF MAPS, AT PAGES 44 AND 45; THENCE NORTH 0° 14' 21" EAST ALONG THE SAID WESTERLY LINE OF TRACT NO. 3492 FOR A DISTANCE OF 41.38 FEET TO THE POINT OF INTERSECTION THEREOF WITH THE SAID CURVED WESTERLY LINE OF LINDA VISTA DRIVE; THENCE NORTHWESTERLY ALONG SAID CURVED WESTERLY LINE OF LINDA VISTA DRIVE, ALONG AN ARC OF A CURVE TO THE RIGHT, FROM A TANGENT BEARING NORTH 27° 50' 01" WEST, WITH A RADIUS OF 170.00 FEET THROUGH A CENTRAL ANGLE OF 7° 45' 19" FOR AN ARC DISTANCE OF 23.01 FEET TO THE POINT OF BEGINNING.

SAID EASEMENT TO BE RELINQUISHED AT SUCH TIME SAID EASEMENT IS DEDICATED FOR PUBLIC ROADWAY.



PARCEL THREE:

A NON-EXCLUSIVE EASEMENT FOR INGRESS AND EGRESS AND FOR THE INSTALLATION AND MAINTENANCE OF PUBLIC UTILITIES, APPURTENANT TO THE ABOVE DESCRIBED PARCELS, OVER A STRIP OF LAND 40.00 FEET IN WIDTH WHICH IS DESCRIBED AS FOLLOWS:

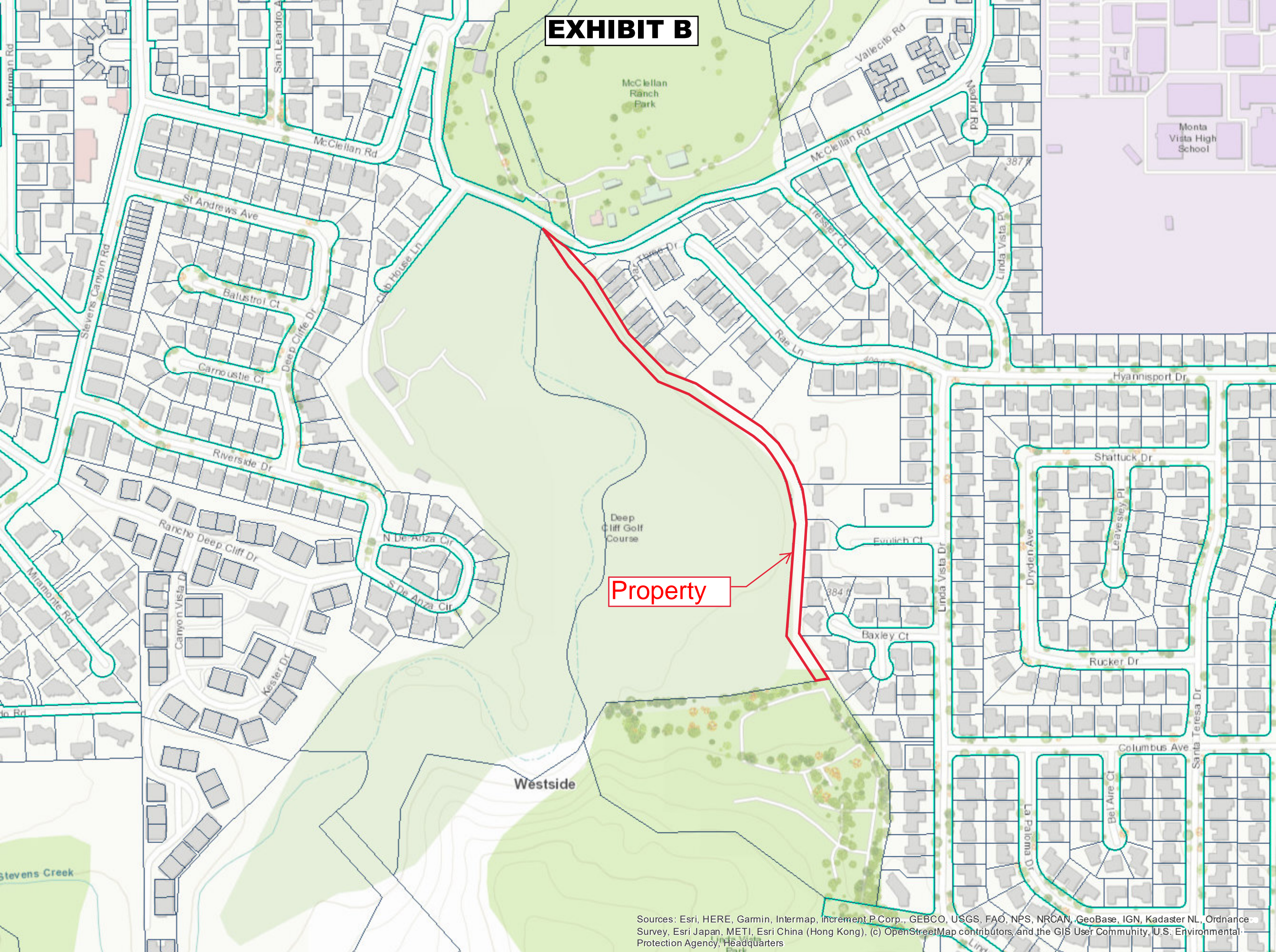
BEGINNING AT THE POINT OF INTERSECTION OF THE SOUTHERLY LINE OF THAT CERTAIN TRACT OF LAND DESCRIBED IN THE DEED FROM VALLEY TITLE COMPANY OF SANTA CLARA COUNTY, A CORPORATION, TO ESTEN H. BAKER, ET UX, DATED NOVEMBER 15, 1963, RECORDED NOVEMBER 18, 1963 IN BOOK 6275 OFFICIAL RECORDS, PAGE 520, SANTA CLARA COUNTY RECORDS, WITH THE CURVED WESTERLY LINE OF LINDA VISTA (60.00 FEET IN WIDTH); THENCE FROM SAID POINT OF BEGINNING NORTH 30° 26' 07" WEST ALONG SAID SOUTHERLY LINE OF LAND SO DESCRIBED IN THE DEED TO SAID BAKER FOR A DISTANCE OF 203.97 FEET TO A 3/4 INCH IRON PIPE SET AT THE SOUTHWESTERLY CORNER THEREOF, SAID POINT ALSO BEING AN ANGLE CORNER IN THE EASTERLY LINE OF THAT CERTAIN TRACT OF LAND DESCRIBED IN THAT CERTAIN DECREE OF DISTRIBUTION ENTERED IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA, IN AND FOR THE COUNTY OF SANTA CLARA, ON APRIL 19, 1938 IN THE MATTER OF THE ESTATE OF KAY SPENCE, DECEASED, CASE NO. 21640, A CERTIFIED COPY OF WHICH DECREE WAS RECORDED NOVEMBER 29, 1939 IN BOOK 956 OF OFFICIAL RECORDS, PAGE 379, SANTA CLARA COUNTY RECORDS AND THE TRUE POINT OF BEGINNING OF THE EASEMENT TO BE DESCRIBED; THENCE FROM SAID TRUE POINT OF BEGINNING ALONG SAID EASTERLY LINE OF LAND SO DESCRIBED IN SAID DECREE OF DISTRIBUTION FOR THE FOLLOWING COURSES AND DISTANCES; NORTH 7° 51' 17" EAST 151.75 FEET TO A 3/4 INCH IRON PIPE; THENCE NORTH 12° 36' 27" EAST 125.37 FEET TO A 3/4 INCH IRON PIPE; THENCE NORTH 1° 23' 53" WEST 163.62 FEET TO A 3/4 INCH IRON PIPE AND NORTH 32° 23' 23" WEST 364.25 FEET TO THE POINT OF INTERSECTION THEREOF WITH THE EASTERLY PROLONGATION OF THE SOUTHERLY LINE OF THAT CERTAIN 53 ACRE TRACT OF LAND AS SHOWN UPON THAT CERTAIN MAP ENTITLED, "RECORD OF SURVEY OF 53 ACRE PARCEL PROPERTY OF KAY SPENCE" WHICH MAP WAS FILED FOR RECORD IN THE OFFICE OF THE RECORDER OF THE COUNTY OF SANTA CLARA, STATE OF CALIFORNIA, ON OCTOBER 18, 1945 IN BOOK 9 OF MAPS, AT PAGE 6 AND THE TERMINUS OF SAID EASEMENT.

THE NORTHERLY TERMINUS OF SAID EASEMENT HAVING A BEARING OF SOUTH 80° 42' 50" WEST AND THE SOUTHERLY TERMINUS OF SAID EASEMENT HAVING A BEARING OF NORTH 80° 26' 07" WEST.

APN: 356-05-005



# EXHIBIT B



Property



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 \_\_\_\_\_, before me, \_\_\_\_\_,

Notary Public, personally appeared (insert name and title of the officer) \_\_\_\_\_, 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.

\_\_\_\_\_  
Notary Public

(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 \_\_\_\_\_, before me, \_\_\_\_\_,  
Notary Public, personally appeared (insert name and title of the officer) \_\_\_\_\_, 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.

\_\_\_\_\_  
Notary Public

(seal)

CERTIFICATE OF ACCEPTANCE

Sacramento County, California  
APN 356-05-005

This is to certify that the interest in real property conveyed by this deed dated \_\_\_\_\_  
from Richard Lowenthal and Ellen Lowenthal to the City of Cupertino ("City"), is hereby  
accepted pursuant to City Council Resolution No. \_\_\_\_\_ adopted on  
\_\_\_\_\_, 2019, and the City consents to recordation thereof by its duly authorized  
officer.

Dated: \_\_\_\_\_

By: \_\_\_\_\_

Deborah Feng  
City Manager

**EXHIBIT E**  
**PRELIMINARY TITLE REPORT**



Issuing Policies of **Chicago Title Insurance Company**

Order No.: 15606696-156-TJK-MC1

Title Officer: Mark Clayton

TO:

Escrow Officer: Terina J. Kung  
455 Market Street, Suite 2100  
San Francisco, CA 94105  
(415) 788-0871

**Chicago Title Company**  
**455 Market Street, Suite 2100**  
**San Francisco, CA 94105**  
Phone: (415) 788-0871  
ATTN: Terina J. Kung

**PROPERTY ADDRESS: Linda Vista Trail, Cupertino, CA**

**PRELIMINARY REPORT**

*In response to the application for a policy of title insurance referenced herein, **Chicago Title Company** hereby reports that it is prepared to issue, or cause to be issued, as of the date hereof, a policy or policies of title insurance describing the land and the estate or interest therein hereinafter set forth, insuring against loss which may be sustained by reason of any defect, lien or encumbrance not shown or referred to as an exception herein or not excluded from coverage pursuant to the printed Schedules, Conditions and Stipulations or Conditions of said policy forms.*

*The printed Exceptions and Exclusions from the coverage and Limitations on Covered Risks of said policy or policies are set forth in Attachment One. The policy to be issued may contain an arbitration clause. When the Amount of Insurance is less than that set forth in the arbitration clause, all arbitrable matters shall be arbitrated at the option of either the Company or the Insured as the exclusive remedy of the parties. Limitations on Covered Risks applicable to the CLTA and ALTA Homeowner's Policies of Title Insurance which establish a Deductible Amount and a Maximum Dollar Limit of Liability for certain coverages are also set forth in Attachment One. Copies of the policy forms should be read. They are available from the office which issued this report.*

*This report (and any supplements or amendments hereto) is issued solely for the purpose of facilitating the issuance of a policy of title insurance and no liability is assumed hereby. If it is desired that liability be assumed prior to the issuance of a policy of title insurance, a Binder or Commitment should be requested.*

*The policy(s) of title insurance to be issued hereunder will be policy(s) of **Chicago Title Insurance Company**, a **Florida** corporation.*

***Please read the exceptions shown or referred to herein and the exceptions and exclusions set forth in Attachment One of this report carefully. The exceptions and exclusions are meant to provide you with notice of matters which are not covered under the terms of the title insurance policy and should be carefully considered.***

***It is important to note that this preliminary report is not a written representation as to the condition of title and may not list all liens, defects and encumbrances affecting title to the land.***

**Chicago Title Company**

By:   
Authorized Signature



By:

ATTEST

President

Secretary



## PRELIMINARY REPORT

**EFFECTIVE DATE:** **August 1, 2019** at 7:30 a.m.

**ORDER NO.:** **15606696-156-TJK-MC1**

The form of policy or policies of title insurance contemplated by this report is:

**ALTA Extended Owners Policy (6-17-06)**

1. THE ESTATE OR INTEREST IN THE LAND HEREINAFTER DESCRIBED OR REFERRED TO COVERED BY THIS REPORT IS:

**A Fee as to Parcel One and Easement as to Parcels Two and Three**

2. TITLE TO SAID ESTATE OR INTEREST AT THE DATE HEREOF IS [VESTED IN:](#)

**Richard Lowenthal and Ellen Lowenthal, husband and wife as community property**

3. THE LAND REFERRED TO IN THIS REPORT IS DESCRIBED AS FOLLOWS:

**See Exhibit A attached hereto and made a part hereof.**



## EXHIBIT A

### LEGAL DESCRIPTION

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

PARCEL ONE:

A PORTION OF THE NORTHEAST 1/4 OF SECTION 22, TOWNSHIP 7 SOUTH, RANGE 2 WEST, MOUNT DIABLO MERIDIAN.

BEGINNING AT A POINT IN THE SOUTHWESTERLY LINE OF MCCLELLAN ROAD AT THE APPROXIMATE CENTER OF STEVENS CREEK, SAID POINT OF BEGINNING BEING DISTANT NORTH 47° 35' WEST 131.34 FEET FROM A STAKE MARKED M-6, SAID STAKE BEING MENTIONED IN THAT CERTAIN DECREE OF DISTRIBUTION ENTERED IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA, IN AND FOR THE COUNTY OF SANTA CLARA, ON APRIL 19, 1938 IN THE MATTER OF THE ESTATE OF KAY SPENCE, DECEASED, CASE NO. 21640, A CERTIFIED COPY OF WHICH DECREE WAS RECORDED NOVEMBER 29, 1939 IN [BOOK 956 OF OFFICIAL RECORDS, PAGE 379](#), SANTA CLARA COUNTY RECORDS, SAID STAKE M-6 BEING ALSO SHOWN UPON THAT CERTAIN MAP ENTITLED, "RECORD OF SURVEY OF 53 ACRE PARCEL PROPERTY OF KAY SPENCE," WHICH MAP WAS FILED FOR RECORD IN THE OFFICE OF THE RECORDER OF THE COUNTY OF SANTA CLARA, STATE OF CALIFORNIA ON OCTOBER 18, 1945 IN [BOOK 9 OF MAPS, AT PAGE 6](#); THENCE FROM SAID POINT OF BEGINNING ALONG THE NORTHEASTERLY LINE OF THE 53 ACRE PARCEL SHOWN UPON SAID RECORD OF SURVEY THE FOLLOWING COURSES AND DISTANCES: SOUTH 30° 06' 20" EAST 131.94 FEET, SOUTH 39° 41' 30" EAST 73.56 FEET, SOUTH 32° 05' 40" EAST 220.36 FEET, SOUTH 43° 15' 40" EAST 110.33 FEET, SOUTH 52° 55' EAST 72.32 FEET, SOUTH 61° 20' EAST 100.34 FEET, SOUTH 56° 45' EAST 255.29 FEET, SOUTH 44° 00' EAST 62.69 FEET, SOUTH 28° 29' 50" EAST 81.35 FEET, SOUTH 25° 30' EAST 86.94 FEET, SOUTH 5° 30' EAST 90.69 FEET, SOUTH 3° 45' WEST 359.62 FEET AND SOUTH 32° 24' EAST 174.98 FEET TO THE MOST EASTERLY CORNER OF SAID 53 ACRE PARCEL; THENCE NORTH 80° 42' 50" EAST ALONG THE EASTERLY PROLONGATION OF THE SOUTHERLY LINE OF SAID 53 ACRE PARCEL FOR A DISTANCE OF 43.49 FEET TO A POINT IN THE EASTERLY LINE OF LAND SO DESCRIBED IN SAID DECREE OF DISTRIBUTION ABOVE REFERRED TO; THENCE ALONG THE EASTERLY LINE OF LAND SO DESCRIBED IN THE DECREE OF DISTRIBUTION FOR THE FOLLOWING COURSES AND DISTANCES: NORTH 33° 00' WEST 179.00 FEET TO A STAKE MARKED MB-8; THENCE NORTH 3° 45' EAST 349.80 FEET TO A STAKE MARKED MB-9; THENCE NORTH 5° 30' WEST 100.98 FEET TO A STAKE MARKED MB-10; THENCE NORTH 25° 30' WEST 95.04 FEET TO A STAKE MARKED MB-11; THENCE NORTH 33° 30' WEST 83.82 FEET TO A STAKE MARKED MB-12; THENCE NORTH 44° WEST 72.60 FEET TO A STAKE MARKED MB-1 AT THE WESTERNMOST CORNER OF THAT CERTAIN 14.40 ACRE PARCEL OF LAND DESCRIBED IN [BOOK 105 OF DEEDS, PAGE 23](#), SANTA CLARA COUNTY RECORDS; THENCE NORTH 56° 45' WEST 261.36 FEET; THENCE NORTH 61° 45' WEST 99.00 FEET; THENCE NORTH 52° 55' WEST 66.00 FEET; THENCE NORTH 43° 40' WEST 104.28 FEET; THENCE NORTH 32° 05' WEST 219.12 FEET; THENCE NORTH 39° 45' WEST 75.90 FEET TO A STAKE MARKED M-6 AT AN ANGLE CORNER IN THE SOUTHERLY LINE OF MCCLELLAN ROAD; THENCE ALONG SAID SOUTHERLY LINE OF MCCLELLAN ROAD NORTH 47° 35' WEST 131.34 FEET TO THE POINT OF BEGINNING.

## EXHIBIT A (Continued)

### PARCEL TWO:

A NON-EXCLUSIVE EASEMENT FOR INGRESS AND EGRESS AND FOR THE INSTALLATION AND MAINTENANCE OF PUBLIC UTILITIES, OVER THE FOLLOWING DESCRIBED PARCEL OF LAND: BEGINNING AT THE POINT OF INTERSECTION OF THE SOUTHERLY LINE OF THAT CERTAIN TRACT OF OF LAND DESCRIBED IN THE DEED FROM VALLEY TITLE COMPANY OF SANTA CLARA COUNTY, A CORPORATION, TO ESTEN H. BAKER, ET UX, DATED NOVEMBER 15, 1963, RECORDED NOVEMBER 18, 1963 IN [BOOK 6275 OFFICIAL RECORDS, PAGE 520](#), SANTA CLARA COUNTY RECORDS, WITH THE CURVED WESTERLY LINE OF LINDA VISTA DRIVE (60.00 FEET IN WIDTH); THENCE FROM SAID POINT OF BEGINNING NORTH 80° 26' 07" WEST ALONG THE SOUTHERLY LINE OF LAND SO DESCRIBED IN THE DEED TO SAID BAKER AND ITS WESTERLY PROLONGATION FOR A DISTANCE OF 373.97 FEET TO A 3/4 INCH IRON PIPE; THENCE SOUTH 9° 33' 53" WEST 60.00 FEET; THENCE SOUTH 80° 26' 07" EAST 393.38 FEET TO THE POINT OF INTERSECTION THEREOF WITH THE WESTERLY LINE OF TRACT NO. 3492 BAYWOOD TERRACE UNIT NO. 3, A MAP OF WHICH WAS FILED FOR RECORD IN THE OFFICE OF THE RECORDER OF THE COUNTY OF SANTA CLARA, STATE OF CALIFORNIA, ON AUGUST 27, 1963 IN [BOOK 165 OF MAPS, AT PAGES 44](#) AND 45; THENCE NORTH 0° 14' 21" EAST ALONG THE SAID WESTERLY LINE OF TRACT NO. 3492 FOR A DISTANCE OF 41.38 FEET TO THE POINT OF INTERSECTION THEREOF WITH THE SAID CURVED WESTERLY LINE OF LINDA VISTA DRIVE; THENCE NORTHWESTERLY ALONG SAID CURVED WESTERLY LINE OF LINDA VISTA DRIVE, ALONG AN ARC OF A CURVE TO THE RIGHT, FROM A TANGENT BEARING NORTH 27° 50' 01" WEST, WITH A RADIUS OF 170.00 FEET THROUGH A CENTRAL ANGLE OF 7° 45' 19" FOR AN ARC DISTANCE OF 23.01 FEET TO THE POINT OF BEGINNING.

SAID EASEMENT TO BE RELINQUISHED AT SUCH TIME SAID EASEMENT IS DEDICATED FOR PUBLIC ROADWAY.

### PARCEL THREE:

A NON-EXCLUSIVE EASEMENT FOR INGRESS AND EGRESS AND FOR THE INSTALLATION AND MAINTENANCE OF PUBLIC UTILITIES, APPURTENANT TO THE ABOVE DESCRIBED PARCELS, OVER A STRIP OF LAND 40.00 FEET IN WIDTH WHICH IS DESCRIBED AS FOLLOWS:

BEGINNING AT THE POINT OF INTERSECTION OF THE SOUTHERLY LINE OF THAT CERTAIN TRACT OF LAND DESCRIBED IN THE DEED FROM VALLEY TITLE COMPANY OF SANTA CLARA COUNTY, A CORPORATION, TO ESTEN H. BAKER, ET UX, DATED NOVEMBER 15, 1963, RECORDED NOVEMBER 18, 1963 IN [BOOK 6275 OFFICIAL RECORDS, PAGE 520](#), SANTA CLARA COUNTY RECORDS, WITH THE CURVED WESTERLY LINE OF LINDA VISTA (60.00 FEET IN WIDTH); THENCE FROM SAID POINT OF BEGINNING NORTH 30° 26' 07" WEST ALONG SAID SOUTHERLY LINE OF LAND SO DESCRIBED IN THE DEED TO SAID BAKER FOR A DISTANCE OF 203.97 FEET TO A 3/4 INCH IRON PIPE SET AT THE SOUTHWESTERLY CORNER THEREOF, SAID POINT ALSO BEING AN ANGLE CORNER IN THE EASTERLY LINE OF THAT CERTAIN TRACT OF LAND DESCRIBED IN THAT CERTAIN DECREE OF DISTRIBUTION ENTERED IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA, IN AND FOR THE COUNTY OF SANTA CLARA, ON APRIL 19, 1938 IN THE MATTER OF THE ESTATE OF KAY SPENCE, DECEASED, CASE NO. 21640, A CERTIFIED COPY OF WHICH DECREE WAS RECORDED NOVEMBER 29, 1939 IN [BOOK 956 OF OFFICIAL RECORDS, PAGE 379](#), SANTA CLARA COUNTY RECORDS AND THE TRUE POINT OF BEGINNING OF THE EASEMENT TO BE DESCRIBED; THENCE FROM SAID TRUE POINT OF BEGINNING ALONG SAID EASTERLY LINE OF LAND SO DESCRIBED IN SAID DECREE OF DISTRIBUTION FOR THE FOLLOWING COURSES AND DISTANCES; NORTH 7° 51' 17" EAST 151.75 FEET TO A 3/4 INCH IRON PIPE; THENCE NORTH 12° 36' 27" EAST 125.37 FEET TO A 3/4 INCH IRON PIPE; THENCE NORTH 1° 23' 53" WEST 163.62 FEET TO A 3/4 INCH IRON PIPE AND

**EXHIBIT A  
(Continued)**

NORTH 32° 23' 23" WEST 364.25 FEET TO THE POINT OF INTERSECTION THEREOF WITH THE EASTERLY PROLONGATION OF THE SOUTHERLY LINE OF THAT CERTAIN 53 ACRE TRACT OF LAND AS SHOWN UPON THAT CERTAIN MAP ENTITLED, "RECORD OF SURVEY OF 53 ACRE PARCEL PROPERTY OF KAY SPENCE" WHICH MAP WAS FILED FOR RECORD IN THE OFFICE OF THE RECORDER OF THE COUNTY OF SANTA CLARA, STATE OF CALIFORNIA, ON OCTOBER 18, 1945 IN [BOOK 9 OF MAPS, AT PAGE 6](#) AND THE TERMINUS OF SAID EASEMENT.

THE NORTHERLY TERMINUS OF SAID EASEMENT HAVING A BEARING OF SOUTH 80° 42' 50" WEST AND THE SOUTHERLY TERMINUS OF SAID EASEMENT HAVING A BEARING OF NORTH 80° 26' 07" WEST.  
CHICAGO

[APN: 356-05-005](#)

## EXCEPTIONS

**AT THE DATE HEREOF, ITEMS TO BE CONSIDERED AND EXCEPTIONS TO COVERAGE IN ADDITION TO THE PRINTED EXCEPTIONS AND EXCLUSIONS IN SAID POLICY FORM WOULD BE AS FOLLOWS:**

1. Property taxes, which are a lien not yet due and payable, including any assessments collected with taxes to be levied for the fiscal year 2019-2020.
2. Prior to close of escrow, please contact the Tax Collector's Office to confirm all amounts owing, including current fiscal year taxes, supplemental taxes, escaped assessments and any delinquencies.
3. The herein described property lies within the boundaries of a Mello-Roos Community Facilities District (CFD) as follows:

CFD No:	2013-1
For:	Library Services
Disclosed by:	Notice of Special Tax Lien
Recording Date:	January 22, 2014
Recording No.:	22502535, of Official Records

This property, along with all other parcels in the CFD, is liable for an annual special tax. This special tax is included with and payable with the general property taxes of the City of City of Cupertino, County of Santa Clara. The tax may not be prepaid.

4. The lien of supplemental or escaped assessments of property taxes, if any, made pursuant to the provisions of Chapter 3.5 (commencing with Section 75) or Part 2, Chapter 3, Articles 3 and 4, respectively, of the Revenue and Taxation Code of the State of California as a result of the transfer of title to the vestee named in Schedule A or as a result of changes in ownership or new construction occurring prior to Date of Policy.
5. Water rights, claims or title to water, whether or not disclosed by the public records.
6. Any adverse claim based upon the assertion that:
  - a) Some portion of said Land has been created by artificial means, or has accreted to such portion so created.
  - b) Some portion of said Land has been brought within the boundaries thereof by an avulsive movement of Stevens Creek or has been formed by accretion to any such portion.

**EXCEPTIONS  
(Continued)**

7. Rights and easements for navigation and fishery which may exist over that portion of said Land lying beneath the waters of Stevens Creek.
8. Any rights in favor of the public which may exist on said Land if said Land or portions thereof are or were at any time used by the public.
9. Easement(s) for the purpose(s) shown below and rights incidental thereto, as granted in a document:
- Granted to: Pacific Gas and Electric Company  
Purpose: Electrical facilities  
Recording Date: October 28, 1933  
Recording No.: [Book 664, Page 268, of Official Records](#)  
Affects: As described in said document herein referred to
- Affects: Parcel Three of legal herein
10. Easement(s) for the purpose(s) shown below and rights incidental thereto, as granted in a document:
- Granted to: Tarrant Putnam  
Purpose: Tunnels and pipe lines  
Recording Date: December 18, 1935  
Recording No.: 64671, [Book 749, Page 500, of Official Records](#)
- Affects: As described in said document herein referred to
11. Easement(s) for the purpose(s) shown below and rights incidental thereto, as granted in a document:
- Granted to: G.A. Bracher, et al  
Purpose: Ingress and egress  
Recording Date: February 25, 1945  
Recording No.: 361048, [Book 1299, Page 141, of Official Records](#)
- Affects: as described in said document herein referred to
12. The effect of and matters disclosed by Record of Survey, filed October 18, 1945, [Book 9, Page 6](#), of Maps.
13. Easement(s) for the purpose(s) shown below and rights incidental thereto, as granted in a document:
- Granted to: Pacific Gas and Electric Company  
Purpose: Electrical facilities  
Recording Date: January 26, 1955  
Recording No.: 1047822, [Book 3068, Page 250, of Official Records](#)
- Affects: As described in said document herein referred to

## EXCEPTIONS (Continued)

14. Easement(s) for the purpose(s) shown below and rights incidental thereto as reserved in a document;

Reserved by: Mcdonald & Dorsa, a partnership  
 Purpose: Ingress and egress and public utilities  
 Recording Date: May 7, 1968  
 Recording No.: 3411652, [Book 8113, Page 546, of Official Records](#)  
 Affects: As described in said document herein referred to

15. Matters contained in that certain document

Entitled: Grant Deed  
 Executed by: PH Property Development Company  
 Recording Date: December 29, 1999  
[Recording No.: 15105125, of Official Records](#)

Reference is hereby made to said document for full particulars.

16. Matters contained in that certain document

Entitled: Notice of Consent to Use Land  
 Dated: October 19, 2011  
 Executed by: Pool Frog Investments, LLC  
 Recording Date: October 28, 2011  
[Recording No.: 21387863, of Official Records](#)

Reference is hereby made to said document for full particulars.

17. Any rights of the parties in possession of a portion of, or all of, said Land, which rights are not disclosed by the public records.

The Company will require, for review, a full and complete copy of any unrecorded agreement, contract, license and/or lease, together with all supplements, assignments and amendments thereto, before issuing any policy of title insurance without excepting this item from coverage.

The Company reserves the right to except additional items and/or make additional requirements after reviewing said documents.

18. The Company will require an ALTA/ACSM LAND TITLE SURVEY. If the owner of the Land the subject of this transaction is in possession of a current ALTA/ACSM LAND TITLE SURVEY, the Company will require that said survey be submitted for review and approval; otherwise, a new survey, satisfactory to the Company, must be prepared by a licensed land surveyor and supplied to the Company prior to the close of escrow.

The Company reserves the right to add additional items or make further requirements after review of the requested documentation.

19. Any lien or right to a lien for services, labor or material heretofore or hereafter furnished, imposed by law and not shown by the Public Records.

## EXCEPTIONS (Continued)

20. The Company will require that an Owner's Affidavit be completed by the party(s) named below before the issuance of any policy of title insurance.

Party(s): Richard Lowenthal and Ellen Lowenthal, husband and wife as community property

The Company reserves the right to add additional items or make further requirements after review of the requested Affidavit.

21. The search did not disclose any open mortgages or deeds of trust of record, therefore the Company reserves the right to require further evidence to confirm that the property is unencumbered, and further reserves the right to make additional requirements or add additional items or exceptions upon receipt of the requested evidence.
22. The requirement that the complete and correct name(s) of the buyer(s) in this transaction be submitted to the Title Department at least 5 days prior to the close of Escrow.
23. The transaction contemplated in connection with this Report is subject to the review and approval of the Company's Corporate Underwriting Department. The Company reserves the right to add additional items or make further requirements after such review.

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END OF EXCEPTIONS

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## NOTES

1. None of the items shown in this report will cause the Company to decline to attach CLTA Endorsement Form 100 to an Extended Coverage Loan Policy, when issued.
2. Note: The name(s) of the proposed insured(s) furnished with this application for title insurance is/are:  
  
No names were furnished with the application. Please provide the name(s) of the buyers as soon as possible.
3. Note: The only conveyance(s) affecting said Land, which recorded within 24 months of the date of this report, are as follows:  
  

Grantor:	Pool Frog Investments LLC, a California limited liability company
Grantee:	Richard Lowenthal and Ellen Lowenthal, husband and wife as community property
Recording Date:	May 25, 2018
Recording No.:	<u>23941410, of Official Records</u>
4. Note: Property taxes for the fiscal year shown below are PAID. For proration purposes the amounts were:  
  

<u>Tax Identification No.:</u>	<u>356-05-005</u>
Fiscal Year:	2018-2019
1st Installment:	\$555.70
2nd Installment:	\$555.70
Land:	\$56,297.00
Code Area:	013-010
Bill No.:	356-05-005-00
5. Note: The charge for a policy of title insurance, when issued through this application for title insurance, will be based on the Short Term Rate.
6. The application for title insurance was placed by reference to only a street address or tax identification number. The proposed Insured must confirm that the legal description in this report covers the parcel(s) of Land requested to be insured. If the legal description is incorrect, the proposed Insured must notify the Company and/or the settlement company in order to prevent errors and to be certain that the legal description for the intended parcel(s) of Land will appear on any documents to be recorded in connection with this transaction and on the policy of title insurance.
7. Note: If a county recorder, title insurance company, escrow company, real estate broker, real estate agent or association provides a copy of a declaration, governing document or deed to any person, California law requires that the document provided shall include a statement regarding any unlawful restrictions. Said statement is to be in at least 14-point bold face type and may be stamped on the first page of any document provided or included as a cover page attached to the requested document. Should a party to this transaction request a copy of any document reported herein that fits this category, the statement is to be included in the manner described.
8. Note: Any documents being executed in conjunction with this transaction must be signed in the presence of an authorized Company employee, an authorized employee of a Company agent, an authorized employee of the insured lender, or by using Bancserv or other Company-approved third-party service. If the above requirement cannot be met, please call the Company at the number provided in this report.



## NOTES (Continued)

9. Note: The policy of title insurance will include an arbitration provision. The Company or the insured may demand arbitration. Arbitrable matters may include, but are not limited to, any controversy or claim between the Company and the insured arising out of or relating to this policy, any service of the Company in connection with its issuance or the breach of a policy provision or other obligation. Please ask your escrow or title officer for a sample copy of the policy to be issued if you wish to review the arbitration provisions and any other provisions pertaining to your Title Insurance coverage.
10. Notice: Please be aware that due to the conflict between federal and state laws concerning the cultivation, distribution, manufacture or sale of marijuana, the Company is not able to close or insure any transaction involving Land that is associated with these activities.
11. Pursuant to Government Code Section 27388.1, as amended and effective as of 1-1-2018, a Documentary Transfer Tax (DTT) Affidavit may be required to be completed and submitted with each document when DTT is being paid or when an exemption is being claimed from paying the tax. If a governmental agency is a party to the document, the form will not be required. DTT Affidavits may be available at a Tax Assessor-County Clerk-Recorder.
12. Due to the special requirements of SB 50 (California Public Resources Code Section 8560 et seq.), any transaction that includes the conveyance of title by an agency of the United States must be approved in advance by the Company's State Counsel, Regional Counsel, or one of their designees.

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**END OF NOTES**

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Mark Clayton/cl

## Wire Fraud Alert

This Notice is not intended to provide legal or professional advice. If you have any questions, please consult with a lawyer.

All parties to a real estate transaction are targets for wire fraud and many have lost hundreds of thousands of dollars because they simply relied on the wire instructions received via email, without further verification. **If funds are to be wired in conjunction with this real estate transaction, we strongly recommend verbal verification of wire instructions through a known, trusted phone number prior to sending funds.**

In addition, the following non-exclusive self-protection strategies are recommended to minimize exposure to possible wire fraud.

- **NEVER RELY** on emails purporting to change wire instructions. Parties to a transaction rarely change wire instructions in the course of a transaction.
- **ALWAYS VERIFY** wire instructions, specifically the ABA routing number and account number, by calling the party who sent the instructions to you. DO NOT use the phone number provided in the email containing the instructions, use phone numbers you have called before or can otherwise verify. **Obtain the phone number of relevant parties to the transaction as soon as an escrow account is opened.** DO NOT send an email to verify as the email address may be incorrect or the email may be intercepted by the fraudster.
- **USE COMPLEX EMAIL PASSWORDS** that employ a combination of mixed case, numbers, and symbols. Make your passwords greater than eight (8) characters. Also, change your password often and do NOT reuse the same password for other online accounts.
- **USE MULTI-FACTOR AUTHENTICATION** for email accounts. Your email provider or IT staff may have specific instructions on how to implement this feature.

For more information on wire-fraud scams or to report an incident, please refer to the following links:

**Federal Bureau of Investigation:**  
<http://www.fbi.gov>

**Internet Crime Complaint Center:**  
<http://www.ic3.gov>

# FIDELITY NATIONAL FINANCIAL, INC.

## PRIVACY NOTICE

Fidelity National Financial, Inc. and its majority-owned subsidiary companies (collectively, “FNF,” “our,” or “we”) respect and are committed to protecting your privacy. This Privacy Notice explains how we collect, use, and protect personal information, when and to whom we disclose such information, and the choices you have about the use and disclosure of that information.

### Types of Information Collected

We may collect two types of information from you: Personal Information and Browsing Information.

Personal Information. FNF may collect the following categories of Personal Information:

- contact information (e.g., name, address, phone number, email address);
- demographic information (e.g., date of birth, gender, marital status);
- identity information (e.g., Social Security Number, driver's license, passport, or other government ID number);
- financial account information (e.g., loan or bank account information); and
- other personal information necessary to provide products or services to you.

Browsing Information. FNF may automatically collect the following types of Browsing Information when you access an FNF website, online service, or application (each an “FNF Website”) from your Internet browser, computer, and/or mobile device:

- Internet Protocol (IP) address and operating system;
- browser version, language, and type;
- domain name system requests; and
- browsing history on the FNF Website, such as date and time of your visit to the FNF Website and visits to the pages within the FNF Website

### How Personal Information is Collected

We may collect Personal Information about you from:

- information we receive from you on applications or other forms;
- information about your transactions with FNF, our affiliates, or others; and
- information we receive from consumer reporting agencies and/or governmental entities, either directly from these entities or through others.

### How Browsing Information is Collected

If you visit or use an FNF Website, Browsing Information may be collected during your visit. Like most websites, our servers automatically log each visitor to the FNF Website and may collect the Browsing Information described above. We use Browsing Information for system administration, troubleshooting, fraud investigation, and to improve our websites. Browsing Information generally does not reveal anything personal about you, though if you have created a user account for an FNF Website and are logged into that account, the FNF Website may be able to link certain browsing activity to your user account.

### Other Online Specifics

Cookies. When you visit an FNF Website, a “cookie” may be sent to your computer. A cookie is a small piece of data that is sent to your Internet browser from a web server and stored on your computer's hard drive. Information gathered using cookies helps us improve your user experience. For example, a cookie can help the website load properly or can customize the display page based on your browser type and user preferences. You can choose whether or not to accept cookies by changing your Internet browser settings. Be aware that doing so may impair or limit some functionality of the FNF Website.

Web Beacons. We use web beacons to determine when and how many times a page has been viewed. This information is used to improve our websites.

Do Not Track. Currently our FNF Websites do not respond to “Do Not Track” features enabled through your browser.

Links to Other Sites. FNF Websites may contain links to other websites. FNF is not responsible for the privacy practices or the content of any of those other websites. We advise you to read the privacy policy of every website you visit.

### Use of Personal Information

FNF uses Personal Information for three main purposes:

- To provide products and services to you or in connection with a transaction involving you.
- To improve our products and services.
- To communicate with you about our, our affiliates', and third parties' products and services, jointly or independently.

### When Information Is Disclosed

We may make disclosures of your Personal Information and Browsing Information in the following circumstances:

- to enable us to detect or prevent criminal activity, fraud, material misrepresentation, or nondisclosure;
- to nonaffiliated service providers who provide or perform services or functions on our behalf and who agree to use the information only to provide such services or functions;
- to nonaffiliated third party service providers with whom we perform joint marketing, pursuant to an agreement with them to jointly market financial products or services to you;

- to law enforcement or authorities in connection with an investigation, or in response to a subpoena or court order; or
- in the good-faith belief that such disclosure is necessary to comply with legal process or applicable laws, or to protect the rights, property, or safety of FNF, its customers, or the public.

The law does not require your prior authorization and does not allow you to restrict the disclosures described above. Additionally, we may disclose your information to third parties for whom you have given us authorization or consent to make such disclosure. We do not otherwise share your Personal Information or Browsing Information with nonaffiliated third parties, except as required or permitted by law.

We reserve the right to transfer your Personal Information, Browsing Information, and any other information, in connection with the sale or other disposition of all or part of the FNF business and/or assets, or in the event of bankruptcy, reorganization, insolvency, receivership, or an assignment for the benefit of creditors. By submitting Personal Information and/or Browsing Information to FNF, you expressly agree and consent to the use and/or transfer of the foregoing information in connection with any of the above described proceedings.

Please see **"Choices With Your Information"** to learn the disclosures you can restrict.

### **Security of Your Information**

We maintain physical, electronic, and procedural safeguards to guard your Personal Information. We limit access to nonpublic personal information about you to employees who need to know that information to do their job. When we provide Personal Information to others as discussed in this Privacy Notice, we expect that they process such information in compliance with our Privacy Notice and in compliance with applicable privacy laws.

### **Choices With Your Information**

If you do not want FNF to share your information with our affiliates to directly market to you, you may send an "opt out" request by email, phone, or physical mail as directed at the end of this Privacy Notice. We do not share your Personal Information with nonaffiliates for their use to direct market to you.

Whether you submit Personal Information or Browsing Information to FNF is entirely up to you. If you decide not to submit Personal Information or Browsing Information, FNF may not be able to provide certain services or products to you.

For California Residents: We will not share your Personal Information and Browsing Information with nonaffiliated third parties, except as permitted by California law.

For Nevada Residents: You may be placed on our internal Do Not Call List by calling (888) 934-3354 or by contacting us via the information set forth at the end of this Privacy Notice. Nevada law requires that we also provide you with the following contact information: Bureau of Consumer Protection, Office of the Nevada Attorney General, 555 E. Washington St., Suite 3900, Las Vegas, NV 89101; Phone number: (702) 486-3132; email: BCPINFO@ag.state.nv.us.

For Oregon Residents: We will not share your Personal Information and Browsing Information with nonaffiliated third parties for marketing purposes, except after you have been informed by us of such sharing and had an opportunity to indicate that you do not want a disclosure made for marketing purposes.

For Vermont Residents: We will not share information about your creditworthiness to our affiliates and will not disclose your personal information, financial information, credit report, or health information to nonaffiliated third parties to market to you, other than as permitted by Vermont law, unless you authorize us to make those disclosures.

### **Information From Children**

The FNF Websites are meant for adults and are not intended or designed to attract persons under the age of eighteen (18). We do not collect Personal Information from any person that we know to be under the age of thirteen (13) without permission from a parent or guardian.

### **International Users**

FNF's headquarters is located within the United States. If you reside outside the United States and choose to provide Personal Information or Browsing Information to us, please note that we may transfer that information outside of your country of residence for any of the purposes described in this Privacy Notice. By providing FNF with your Personal Information and/or Browsing Information, you consent to our collection, transfer, and use of such information in accordance with this Privacy Notice.

### **FNF Website Services for Mortgage Loans**

Certain FNF companies provide services to mortgage loan servicers, including hosting websites that collect customer information on behalf of mortgage loan servicers (the "Service Websites"). The Service Websites may contain links to both this Privacy Notice and the mortgage loan servicer or lender's privacy notice. The sections of this Privacy Notice titled When Information is Disclosed, Choices with Your Information, and Accessing and Correcting Information do not apply to the Service Websites. The mortgage loan servicer or lender's privacy notice governs use, disclosure, and access to your Personal Information. FNF does not share Personal Information collected through the Service Websites, except (1) as required or authorized by contract with the mortgage loan servicer or lender, or

(2) as required by law or in the good-faith belief that such disclosure is necessary to comply with a legal process or applicable law, to enforce this Privacy Notice, or to protect the rights, property, or safety of FNF or the public.

**Your Consent To This Privacy Notice; Notice Changes**

By submitting Personal Information and/or Browsing Information to FNF, you consent to the collection and use of the information in accordance with this Privacy Notice. We may change this Privacy Notice at any time. The revised Privacy Notice, showing the new revision date, will be posted on the FNF Website. Each time you provide information to us following any amendment of this Privacy Notice, your provision of information to us will signify your assent to and acceptance of the terms of the revised Privacy Notice for all previously collected information and information collected from you in the future. We may use comments, information or feedback that you submit to us in any manner that we may choose without notice or compensation to you.

**Accessing and Correcting Information; Contact Us**

If you have questions, would like to access or correct your Personal Information, or want to opt-out of information sharing for affiliate marketing, send your requests via email to [privacy@fnf.com](mailto:privacy@fnf.com), by phone to (888) 934-3354, or by mail to:

Fidelity National Financial, Inc.  
601 Riverside Avenue  
Jacksonville, Florida 32204  
Attn: Chief Privacy Officer

## Notice of Available Discounts

Pursuant to Section 2355.3 in Title 10 of the California Code of Regulations Fidelity National Financial, Inc. and its subsidiaries ("FNF") must deliver a notice of each discount available under our current rate filing along with the delivery of escrow instructions, a preliminary report or commitment. Please be aware that the provision of this notice does not constitute a waiver of the consumer's right to be charged the field rate. As such, your transaction may not qualify for the below discounts.

You are encouraged to discuss the applicability of one or more of the below discounts with a Company representative. These discounts are generally described below; consult the rate manual for a full description of the terms, conditions and requirements for each discount. These discounts only apply to transaction involving services rendered by the FNF Family of Companies. This notice only applies to transactions involving property improved with a one-to-four family residential dwelling.

### **FNF Underwritten Title Company**

FNTC - **Chicago Title Company**

FNTCCA –Fidelity National Title Company of California

### **FNF Underwriter**

CTIC - **Chicago Title Insurance Company**

### **Available Discounts**

#### **CREDIT FOR PRELIMINARY REPORTS AND/OR COMMITMENTS ON SUBSEQUENT POLICIES (CTIC)**

Where no major change in the title has occurred since the issuance of the original report or commitment, the order may be reopened within 12 or 36 months and all or a portion of the charge previously paid for the report or commitment may be credited on a subsequent policy charge.

#### **DISASTER LOANS (CTIC)**

The charge for a lender's Policy (Standard or Extended coverage) covering the financing or refinancing by an owner of record, within 24 months of the date of a declaration of a disaster area by the government of the United States or the State of California on any land located in said area, which was partially or totally destroyed in the disaster, will be 50% of the appropriate title insurance rate.

#### **CHURCHES OR CHARITABLE NON-PROFIT ORGANIZATIONS (CTIC)**

On properties used as a church or for charitable purposes within the scope of the normal activities of such entities, provided said charge is normally the church's obligation the charge for an owner's policy shall be 50% to 70% of the appropriate title insurance rate, depending on the type of coverage selected. The charge for a lender's policy shall be 40% to 50% of the appropriate title insurance rate, depending on the type of coverage selected.

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## **ATTACHMENT ONE**

### **CALIFORNIA LAND TITLE ASSOCIATION STANDARD COVERAGE POLICY – 1990**

#### **EXCLUSIONS FROM COVERAGE**

The following matters are expressly excluded from the coverage of this policy and the Company will not pay loss or damage, costs, attorneys' fees or expenses which arise by reason of:

1. (a) Any law, ordinance or governmental regulation (including but not limited to building or zoning laws, ordinances, or regulations) restricting, regulating, prohibiting or relating (i) the occupancy, use, or enjoyment of the land; (ii) the character, dimensions or location of any improvement now or hereafter erected on the land; (iii) a separation in ownership or a change in the dimensions or area of the land or any parcel of which the land is or was a part; or (iv) environmental protection, or the effect of any violation of these laws, ordinances or governmental regulations, except to the extent that a notice of the enforcement thereof or a notice of a defect, lien, or encumbrance resulting from a violation or alleged violation affecting the land has been recorded in the public records at Date of Policy.  
(b) Any governmental police power not excluded by (a) above, except to the extent that a notice of the exercise thereof or notice of a defect, lien or encumbrance resulting from a violation or alleged violation affecting the land has been recorded in the public records at Date of Policy.
2. Rights of eminent domain unless notice of the exercise thereof has been recorded in the public records at Date of Policy, but not excluding from coverage any taking which has occurred prior to Date of Policy which would be binding on the rights of a purchaser for value without knowledge.
3. Defects, liens, encumbrances, adverse claims or other matters:
  - (a) whether or not recorded in the public records at Date of Policy, but created, suffered, assumed or agreed to by the insured claimant;
  - (b) not known to the Company, not recorded in the public records at Date of Policy, but known to the insured claimant and not disclosed in writing to the Company by the insured claimant prior to the date the insured claimant became an insured under this policy;
  - (c) resulting in no loss or damage to the insured claimant;
  - (d) attaching or created subsequent to Date of Policy; or
  - (e) resulting in loss or damage which would not have been sustained if the insured claimant had paid value for the insured mortgage or for the estate or interest insured by this policy.
4. Unenforceability of the lien of the insured mortgage because of the inability or failure of the insured at Date of Policy, or the inability or failure of any subsequent owner of the indebtedness, to comply with the applicable doing business laws of the state in which the land is situated.
5. Invalidity or unenforceability of the lien of the insured mortgage, or claim thereof, which arises out of the transaction evidenced by the insured mortgage and is based upon usury or any consumer credit protection or truth in lending law.
6. Any claim, which arises out of the transaction vesting in the insured the estate of interest insured by this policy or the transaction creating the interest of the insured lender, by reason of the operation of federal bankruptcy, state insolvency or similar creditors' rights laws.

#### **EXCEPTIONS FROM COVERAGE - SCHEDULE B, PART I**

This policy does not insure against loss or damage (and the Company will not pay costs, attorneys' fees or expenses) which arise by reason of:

1. Taxes or assessments which are not shown as existing liens by the records of any taxing authority that levies taxes or assessments on real property or by the public records.  
Proceedings by a public agency which may result in taxes or assessments, or notices of such proceedings, whether or not shown by the records of such agency or by the public records.
2. Any facts, rights, interests, or claims which are not shown by the public records but which could be ascertained by an inspection of the land or which may be asserted by persons in possession thereof.
3. Easements, liens or encumbrances, or claims thereof, not shown by the public records.
4. Discrepancies, conflicts in boundary lines, shortage in area, encroachments, or any other facts which a correct survey would disclose, and which are not shown by the public records.
5. (a) Unpatented mining claims; (b) reservations or exceptions in patents or in Acts authorizing the issuance thereof; (c) water rights, claims or title to water, whether or not the matters excepted under (a), (b) or (c) are shown by the public records.
6. Any lien or right to a lien for services, labor or material not shown by the public records.

### **CLTA HOMEOWNER'S POLICY OF TITLE INSURANCE (12-02-13) ALTA HOMEOWNER'S POLICY OF TITLE INSURANCE**

#### **EXCLUSIONS**

In addition to the Exceptions in Schedule B, You are not insured against loss, costs, attorneys' fees, and expenses resulting from:

1. Governmental police power, and the existence or violation of those portions of any law or government regulation concerning:
  - a. building;
  - b. zoning;
  - c. land use;
  - d. improvements on the Land;
  - e. land division; and



f. environmental protection.

This Exclusion does not limit the coverage described in Covered Risk 8.a., 14, 15, 16, 18, 19, 20, 23 or 27.

2. The failure of Your existing structures, or any part of them, to be constructed in accordance with applicable building codes. This Exclusion does not limit the coverage described in Covered Risk 14 or 15.

3. The right to take the Land by condemning it. This Exclusion does not limit the coverage described in Covered Risk 17.

4. Risks:

a. that are created, allowed, or agreed to by You, whether or not they are recorded in the Public Records;

b. that are Known to You at the Policy Date, but not to Us, unless they are recorded in the Public Records at the Policy Date;

c. that result in no loss to You; or

d. that first occur after the Policy Date - this does not limit the coverage described in Covered Risk 7, 8.e., 25, 26, 27 or 28.

5. Failure to pay value for Your Title.

6. Lack of a right:

a. to any land outside the area specifically described and referred to in paragraph 3 of Schedule A; and

b. in streets, alleys, or waterways that touch the Land.

This Exclusion does not limit the coverage described in Covered Risk 11 or 21.

7. The transfer of the Title to You is invalid as a preferential transfer or as a fraudulent transfer or conveyance under federal bankruptcy, state insolvency, or similar creditors' rights laws.

8. Contamination, explosion, fire, flooding, vibration, fracturing, earthquake, or subsidence.

9. Negligence by a person or an Entity exercising a right to extract or develop minerals, water, or any other substances.

#### **LIMITATIONS ON COVERED RISKS**

Your insurance for the following Covered Risks is limited on the Owner's Coverage Statement as follows:

- For Covered Risk 16, 18, 19, and 21 Your Deductible Amount and Our Maximum Dollar Limit of Liability shown in Schedule A.

The deductible amounts and maximum dollar limits shown on Schedule A are as follows:

	Your Deductible Amount	Our Maximum Dollar Limit of Liability
Covered Risk 16:	1.00% % of Policy Amount Shown in Schedule A or \$2,500.00 (whichever is less)	\$ 10,000.00
Covered Risk 18:	1.00% % of Policy Amount Shown in Schedule A or \$5,000.00 (whichever is less)	\$ 25,000.00
Covered Risk 19:	1.00% of Policy Amount Shown in Schedule A or \$5,000.00 (whichever is less)	\$ 25,000.00
Covered Risk 21:	1.00% of Policy Amount Shown in Schedule A or \$2,500.00 (whichever is less)	\$ 5,000.00

#### **2006 ALTA LOAN POLICY (06-17-06)**

##### **EXCLUSIONS FROM COVERAGE**

The following matters are expressly excluded from the coverage of this policy, and the Company will not pay loss or damage, costs, attorneys' fees, or expenses that arise by reason of:

- (a) Any law, ordinance, permit, or governmental regulation (including those relating to building and zoning) restricting, regulating, prohibiting, or relating to
  - the occupancy, use, or enjoyment of the Land;
  - the character, dimensions, or location of any improvement erected on the Land;
  - the subdivision of land; or
  - environmental protection;or the effect of any violation of these laws, ordinances, or governmental regulations. This Exclusion 1(a) does not modify or limit the coverage provided under Covered Risk 5.
- (b) Any governmental police power. This Exclusion 1(b) does not modify or limit the coverage provided under Covered Risk 6.
- Rights of eminent domain. This Exclusion does not modify or limit the coverage provided under Covered Risk 7 or 8.
- Defects, liens, encumbrances, adverse claims, or other matters
  - created, suffered, assumed, or agreed to by the Insured Claimant;
  - not Known to the Company, not recorded in the Public Records at Date of Policy, but Known to the Insured Claimant and not disclosed in writing to the Company by the Insured Claimant prior to the date the Insured Claimant became an Insured under this policy;
  - resulting in no loss or damage to the Insured Claimant;
  - attaching or created subsequent to Date of Policy (however, this does not modify or limit the coverage provided under Covered Risk 11, 13 or 14); or
  - resulting in loss or damage that would not have been sustained if the Insured Claimant had paid value for the Insured Mortgage.
- Unenforceability of the lien of the Insured Mortgage because of the inability or failure of an Insured to comply with applicable doing-business laws of the state where the Land is situated.
- Invalidity or unenforceability in whole or in part of the lien of the Insured Mortgage that arises out of the transaction evidenced by the Insured Mortgage and is based upon usury or any consumer credit protection or truth-in-lending law.

6. Any claim, by reason of the operation of federal bankruptcy, state insolvency, or similar creditors' rights laws, that the transaction creating the lien of the Insured Mortgage, is
  - (a) a fraudulent conveyance or fraudulent transfer, or
  - (b) a preferential transfer for any reason not stated in Covered Risk 13(b) of this policy.
7. Any lien on the Title for real estate taxes or assessments imposed by governmental authority and created or attaching between Date of Policy and the date of recording of the Insured Mortgage in the Public Records. This Exclusion does not modify or limit the coverage provided under Covered Risk 11(b).

The above policy form may be issued to afford either Standard Coverage or Extended Coverage. In addition to the above Exclusions from Coverage, the Exceptions from Coverage in a Standard Coverage policy will also include the following Exceptions from Coverage:

#### **EXCEPTIONS FROM COVERAGE**

(Except as provided in Schedule B - Part II, (t or T)his policy does not insure against loss or damage, and the Company will not pay costs, attorneys' fees or expenses, that arise by reason of:

#### **(PART I**

(The above policy form may be issued to afford either Standard Coverage or Extended Coverage. In addition to the above Exclusions from Coverage, the Exceptions from Coverage in a Standard Coverage policy will also include the following Exceptions from Coverage:

1. (a) Taxes or assessments that are not shown as existing liens by the records of any taxing authority that levies taxes or assessments on real property or by the Public Records; (b) proceedings by a public agency that may result in taxes or assessments, or notices of such proceedings, whether or not shown by the records of such agency or by the Public Records.
2. Any facts, rights, interests, or claims that are not shown by the Public Records but that could be ascertained by an inspection of the Land or that may be asserted by persons in possession of the Land.
3. Easements, liens or encumbrances, or claims thereof, not shown by the Public Records.
4. Any encroachment, encumbrance, violation, variation, or adverse circumstance affecting the Title that would be disclosed by an accurate and complete land survey of the Land and not shown by the Public Records.
5. (a) Unpatented mining claims; (b) reservations or exceptions in patents or in Acts authorizing the issuance thereof; (c) water rights, claims or title to water, whether or not the matters excepted under (a), (b), or (c) are shown by the Public Records.
6. Any lien or right to a lien for services, labor or material not shown by the Public Records.

#### **PART II**

In addition to the matters set forth in Part I of this Schedule, the Title is subject to the following matters, and the Company insures against loss or damage sustained in the event that they are not subordinate to the lien of the Insured Mortgage:)

### **2006 ALTA OWNER'S POLICY (06-17-06)**

#### **EXCLUSIONS FROM COVERAGE**

The following matters are expressly excluded from the coverage of this policy, and the Company will not pay loss or damage, costs, attorneys' fees, or expenses that arise by reason of:

1. (a) Any law, ordinance, permit, or governmental regulation (including those relating to building and zoning) restricting, regulating, prohibiting, or relating to
  - (i) the occupancy, use, or enjoyment of the Land;
  - (ii) the character, dimensions, or location of any improvement erected on the Land;
  - (iii) the subdivision of land; or
  - (iv) environmental protection;or the effect of any violation of these laws, ordinances, or governmental regulations. This Exclusion 1(a) does not modify or limit the coverage provided under Covered Risk 5.
- (b) Any governmental police power. This Exclusion 1(b) does not modify or limit the coverage provided under Covered Risk 6.
2. Rights of eminent domain. This Exclusion does not modify or limit the coverage provided under Covered Risk 7 or 8.
3. Defects, liens, encumbrances, adverse claims, or other matters
  - (a) created, suffered, assumed, or agreed to by the Insured Claimant;
  - (b) not Known to the Company, not recorded in the Public Records at Date of Policy, but Known to the Insured Claimant and not disclosed in writing to the Company by the Insured Claimant prior to the date the Insured Claimant became an Insured under this policy;
  - (c) resulting in no loss or damage to the Insured Claimant;
  - (d) attaching or created subsequent to Date of Policy (however, this does not modify or limit the coverage provided under Covered Risk 9 and 10); or
  - (e) resulting in loss or damage that would not have been sustained if the Insured Claimant had paid value for the Title.
4. Any claim, by reason of the operation of federal bankruptcy, state insolvency, or similar creditors' rights laws, that the transaction vesting the Title as shown in Schedule A, is
  - (a) a fraudulent conveyance or fraudulent transfer; or
  - (b) a preferential transfer for any reason not stated in Covered Risk 9 of this policy.
5. Any lien on the Title for real estate taxes or assessments imposed by governmental authority and created or attaching between Date of Policy and the date of recording of the deed or other instrument of transfer in the Public Records that vests Title as shown in Schedule A.

The above policy form may be issued to afford either Standard Coverage or Extended Coverage. In addition to the above Exclusions from Coverage, the Exceptions from Coverage in a Standard Coverage policy will also include the following Exceptions from Coverage:

#### **EXCEPTIONS FROM COVERAGE**

This policy does not insure against loss or damage, and the Company will not pay costs, attorneys' fees or expenses, that arise by reason of:

(The above policy form may be issued to afford either Standard Coverage or Extended Coverage. In addition to the above Exclusions from Coverage, the Exceptions from Coverage in a Standard Coverage policy will also include the following Exceptions from Coverage:

1. (a) Taxes or assessments that are not shown as existing liens by the records of any taxing authority that levies taxes or assessments on real property or by the Public Records; (b) proceedings by a public agency that may result in taxes or assessments, or notices of such proceedings, whether or not shown by the records of such agency or by the Public Records.
2. Any facts, rights, interests, or claims that are not shown in the Public Records but that could be ascertained by an inspection of the Land or that may be asserted by persons in possession of the Land.
3. Easements, liens or encumbrances, or claims thereof, not shown by the Public Records.
4. Any encroachment, encumbrance, violation, variation, or adverse circumstance affecting the Title that would be disclosed by an accurate and complete land survey of the Land and that are not shown by the Public Records.
5. (a) Unpatented mining claims; (b) reservations or exceptions in patents or in Acts authorizing the issuance thereof; (c) water rights, claims or title to water, whether or not the matters excepted under (a), (b), or (c) are shown by the Public Records.
6. Any lien or right to a lien for services, labor or material not shown by the Public Records.
7. (Variable exceptions such as taxes, easements, CC&R's, etc. shown here.)

### **ALTA EXPANDED COVERAGE RESIDENTIAL LOAN POLICY (12-02-13)**

#### **EXCLUSIONS FROM COVERAGE**

The following matters are expressly excluded from the coverage of this policy and the Company will not pay loss or damage, costs, attorneys' fees or expenses which arise by reason of:

1. (a) Any law, ordinance, permit, or governmental regulation (including those relating to building and zoning) restricting, regulating, prohibiting, or relating to
  - (i) the occupancy, use, or enjoyment of the Land;
  - (ii) the character, dimensions, or location of any improvement erected on the Land;
  - (iii) the subdivision of land; or
  - (iv) environmental protection;or the effect of any violation of these laws, ordinances, or governmental regulations. This Exclusion 1(a) does not modify or limit the coverage provided under Covered Risk 5, 6, 13(c), 13(d), 14 or 16.
- (b) Any governmental police power. This Exclusion 1(b) does not modify or limit the coverage provided under Covered Risk 5, 6, 13(c), 13(d), 14 or 16.
2. Rights of eminent domain. This Exclusion does not modify or limit the coverage provided under Covered Risk 7 or 8.
3. Defects, liens, encumbrances, adverse claims, or other matters
  - (a) created, suffered, assumed, or agreed to by the Insured Claimant;
  - (b) not Known to the Company, not recorded in the Public Records at Date of Policy, but Known to the Insured Claimant and not disclosed in writing to the Company by the Insured Claimant prior to the date the Insured Claimant became an Insured under this policy;
  - (c) resulting in no loss or damage to the Insured Claimant;
  - (d) attaching or created subsequent to Date of Policy (however, this does not modify or limit the coverage provided under Covered Risk 11, 16, 17, 18, 19, 20, 21, 22, 23, 24, 27 or 28); or
  - (e) resulting in loss or damage that would not have been sustained if the Insured Claimant had paid value for the Insured Mortgage.
4. Unenforceability of the lien of the Insured Mortgage because of the inability or failure of an Insured to comply with applicable doing-business laws of the state where the Land is situated.
5. Invalidity or unenforceability in whole or in part of the lien of the Insured Mortgage that arises out of the transaction evidenced by the Insured Mortgage and is based upon usury, or any consumer credit protection or truth-in-lending law. This Exclusion does not modify or limit the coverage provided in Covered Risk 26.
6. Any claim of invalidity, unenforceability or lack of priority of the lien of the Insured Mortgage as to Advances or modifications made after the Insured has Knowledge that the vestee shown in Schedule A is no longer the owner of the estate or interest covered by this policy. This Exclusion does not modify or limit the coverage provided in Covered Risk 11.
7. Any lien on the Title for real estate taxes or assessments imposed by governmental authority and created or attaching subsequent to Date of Policy. This Exclusion does not modify or limit the coverage provided in Covered Risk 11(b) or 25.
8. The failure of the residential structure, or any portion of it, to have been constructed before, on or after Date of Policy in accordance with applicable building codes. This Exclusion does not modify or limit the coverage provided in Covered Risk 5 or 6.
9. Any claim, by reason of the operation of federal bankruptcy, state insolvency, or similar creditors' rights laws, that the transaction creating the lien of the Insured Mortgage, is
  - (a) a fraudulent conveyance or fraudulent transfer, or
  - (b) a preferential transfer for any reason not stated in Covered Risk 27(b) of this policy.
10. Contamination, explosion, fire, flooding, vibration, fracturing, earthquake, or subsidence.
11. Negligence by a person or an Entity exercising a right to extract or develop minerals, water, or any other substances.

**EXHIBIT F**

**CERTIFICATE OF TRANSFEROR  
OTHER THAN AN INDIVIDUAL  
(FIRPTA Affidavit)**

Section 1445 of the Internal Revenue Code provides that a transferee of a United States real property interest must withhold tax if the transferor is a foreign person. To inform the CITY OF CUPERTINO, a California municipal corporation, the transferee of certain real property located in the County of Santa Clara, California, that withholding of tax is not required upon the disposition of such U.S. real property interest by Richard Lowenthal and Ellen Lowenthal, husband and wife ("Transferor"), the undersigned hereby certifies that Transferor is not a foreign corporation, foreign partnership, foreign trust, or foreign estate (as those terms are defined in the Internal Revenue Code and Income Tax Regulations).

Transferor understands that this certification may be disclosed to the Internal Revenue Service by the City and that any false statement contained herein could be punished by fine, imprisonment, or both.

Under penalty of perjury, I declare that I have examined this certificate and to the best of my knowledge and belief it is true, correct and complete, and I further declare that I have authority to sign this document on behalf of Transferor.

Richard Lowenthal and Ellen Lowenthal,  
husband and wife

By: \_\_\_\_\_  
Richard Lowenthal

Date: \_\_\_\_\_

By: \_\_\_\_\_  
Ellen Lowenthal

Date: \_\_\_\_\_