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Code § 6103 and § 27383

RECORDING REQUESTED BY AND
WHEN RECORDED MAIL TO:

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

SPACE ABOVE THIS LINE FOR RECORDING USE

**AGREEMENT REGARDING OFFER OF DEDICATION & WAIVER OF FUTURE
REIMBURSEMENT, RIGHT OF ENTRY, AND LICENSE TO USE PROPERTY**

This Agreement Regarding Right of Entry, License, Offer of Dedication and Waiver of Future Reimbursement ("Agreement") is made and effective this _____ day of _____, 20__, by the John & Rose Carlotto 1973 Trust ("Owner") and the City of Cupertino, a municipal corporation ("City"). Owner and City may each be referred to as a "Party," or collectively as the "Parties."

RECITALS

A. Owner is the owner in fee of real property with a street address of 20860 McClellan Road in the City of Cupertino, County of Santa Clara, designated as Assessor's Parcel No. 359-20-030, more particularly described in Exhibit A (the "Site").

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

C. City is in the process of improving bicycle facilities along designated bike routes. The McClellan Road Separated Bikeways-Phase 2 project (the "Project") will construct those improvements. A portion of the Site is among those areas the City desires to improve. Owner agrees to extend a right of entry to City and a license to use the Dedication Area to construct improvements and allow public use of those improvements until the City owns the Dedication Area.

D. Owner has agreed to dedicate to City that certain approximately 1400 square foot portion of the Site as depicted in the diagram attached hereto and incorporated herein as Exhibit B and more particularly described in the legal description attached hereto and incorporated herein as Exhibit C (the

“Dedication Area”), in consideration of the City’s limited waiver of future reimbursement requirements, and to grant City a right-of-entry to the Dedication Area.

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

1. Right of Entry. Subject to the terms and conditions of this Agreement, Owner hereby grants to City, its contractors, subcontractors, employees, agents, invitees and the public a non-exclusive right to enter the Dedication Area for the purpose of constructing the Project on the Property and the right to remove any improvements presently within the Property to allow for construction of the Project, as well as to allow the public use of the Dedication Area upon completion of the Project on the Property. This Right of Entry shall expire and terminate upon the recordation of the City’s acceptance of the Offer, as set forth in section 4.3 below.

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

3. Condition of Title; Removal of Liens. Owner shall work in good faith with City to remove any and all encumbrances or liens (other than the lien for current taxes not yet due and payable), including any deed of trust securing the obligation to pay a mortgage loan, encumbering all or any portion of the Dedication Area. With respect to deed(s) of trust, City, at its cost, shall prepare and provide to Owner the forms of partial reconveyance instrument(s) required to remove the Dedication Area from the lien(s) of such deed(s) of trust. The removal of all such liens, including lien(s) of deed(s) of trust, shall be a condition precedent to the effectiveness of City’s waiver of the right to future reimbursement as set forth in Section 6 below.

4. Time and Manner of Acceptance.

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

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

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

5. Use of Property Prior to Acceptance of Offer. Owner agrees that it will not use the Dedication Area in any way that will interfere with the use of the Dedication Area for public right-of-way.

6. Limited Waiver of Reimbursement Requirement. Subject to satisfaction of the lien removal condition set forth in Section 3 above and the limitations of this Section 6, upon City's acceptance of the Offer, City hereby agrees to waive any and all future reimbursements for the costs of any improvements installed by City or its contractors on the Dedication Area ("City Work"), including reimbursements required by Sections 14.04.100 and 18.56.040 of the Cupertino Municipal Code, which may be charged to Owner at such time as Owner obtains a future land use entitlement with respect to the Site. This waiver of right to future reimbursement shall include only the costs of the City Work and shall remain in effect for twenty-five (25) years following City's acceptance of the Offer. Notwithstanding any other provision hereof to the contrary, Owner shall remain obligated to pay any development impact fees, including roadway impact fees, and the costs of any other improvements required in connection with the applicable land use entitlement. Further, in recognition of the fact that the City Work improvements will have a limited useful life, following expiration of the 25-year period, City shall have the right to require Owner to fund the cost of reconstructing any public improvements within the Dedication Area that City could then lawfully require Owner to fund in the absence of this Agreement.

7. No Liens. The City will not permit to be filed or enforced against the Property, or any part thereof, any statutory lien for labor or materials (including without limitation any mechanics or materialmen's lien) or any claim for damages arising from City's use of, or activities on the Property with respect to the Project.

8. Indemnity. City shall indemnify, defend, and hold harmless Owner and Owner's officers, agents and employees against any and all liability, claims, actions, causes of action or demands arising out of, connected with, or caused by City or City's employees, agents, independent contractors, companies, or subcontractors use of the Property, except to the extent of Owner's negligence or willful misconduct.

9. Insurance. City shall maintain, or require its contractor to maintain, commercial general liability and comprehensive automobile policies that include, cover and insure the work performed on the Project and the terms and conditions of this Agreement, including the activities or operations of any contractor and its employees, agents, representatives and subcontractors under this Agreement.

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

To City:

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

With a copy to:

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

To Owner:

Robert Carlotto-Trustee
~~22076~~ 22065 Lippencott Ct
Burney, CA 96013

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

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

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

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

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

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

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

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

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

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

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

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

CITY:

CITY OF CUPERTINO, a California
municipal corporation

OWNER:

By: _____

Deborah Feng, City Manager
[Notary Acknowledgment Required]

By: _____

Name: _____

Title: [if
applicable] _____

Robert Carlott Robert Carlott
Trustee

[Notary Acknowledgment Required]

APPROVED AS TO FORM:

By: _____

Heather Minner, City Attorney

By: _____

Name: _____

Title: [if
applicable] _____

[Notary Acknowledgment Required]

ATTEST:

By: _____

Kirsten Squarcia, City Clerk

ACKNOWLEDGMENTS

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

STATE OF CALIFORNIA)
COUNTY OF Shasta)

On March 16, 2020 before me, Jessica Strobel, Notary Public, personally appeared Robert Marion Carletto, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature: _____

Jessica Strobel

(seal)



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

STATE OF CALIFORNIA)
COUNTY OF _____)

On _____, 20__ before me, _____, Notary Public, personally appeared _____, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature: _____ (seal)

EXHIBIT A

LEGAL DESCRIPTION

20860 McClellan Road
Cupertino, CA 95014

Beginning at a point in the center line of McClellan Road, distant thereon South 89 deg. 57' West 300 feet from an iron pipe at the Northeast corner of that certain 10.56 acre tract of land conveyed by Thomas Kerwin, et ux, to Karl A. Friedrich, by Deed dated January 25, 1909 and recorded January 27, 1909 in Book 337 of Deeds, Page 460, Santa Clara County Records; thence along the center line of McClellan Road, South 89 deg. 57' West 140 feet to a railroad spike; then South 419.80 feet to an iron pipe on the Northerly line of that certain 14 acre tract of land conveyed by Thomas Kerwin, et ux, to Mario Galdassini by Deed dated November 8, 1905 and recorded November 8, 1905, in Book 300 of Deeds, Page 84, Santa Clara County Records, said Northerly line of said 14 acre tract of land also being the Southerly line of said 10.56 acre tract of land thence along the Southerly line of said 10.56 acre tract of land North 89 deg. 56' East 140 feet; thence North 419.75 feet to the point of beginning, and being a portion of said 10.56 acre tract of land in the Northwest one-quarter of Section 24, Township 7, South, Range 2, West M.D.B. & M.

APN: 359-20-030

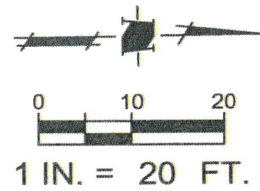
RIGHT OF WAY
(±1,400 SQ FT)

DOC 20328957
APN 359-20-030



CHERRYLAND DRIVE
(PRIVATE STREET)

McCLELLAN ROAD



LEGEND

POC POINT OF COMMENCEMENT
TPOB TRUE POINT OF BEGINNING

SHEET 1 OF 1

Date: 2020-02-28
Designed: -
Drawn: RF
Checked: TG
Proj. Engr.: JC
528300PL09



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

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

CUPERTINO

CALIFORNIA



February 28, 2020
HMH 5283.00.000
Page 1 of 1

EXHIBIT "C"
RIGHT OF WAY

REAL PROPERTY in the City of Cupertino, County of Santa Clara, State of California, being a portion of that parcel of land described in the Grant Deed filed for record on July 8, 2009, in Document No. 20328957 of Official Records, Santa Clara County Records, described as follows:

COMMENCING at the northwesterly corner of said parcel of land, being on the centerline of McClellan Road;
Thence along the westerly line of said parcel of land, South 00°48'01" West, 20.00 feet, to a line parallel with and 20 feet southerly of the centerline of McClellan Road, being the TRUE POINT OF BEGINNING;

Thence along said parallel line, South 89°13'49" East, 139.96 feet, to the easterly line of said parcel of land;
Thence along said easterly line, South 00°46'11" West, 10.00 feet, to a line parallel with and 30 feet southerly of the centerline of McClellan Road;
Thence along said parallel line, North 89°13'49" West, 139.96 feet, to the westerly line of said parcel of land;
Thence along said westerly line, North 00°48'01" East, 10.00 feet, to the TRUE POINT OF BEGINNING.

Containing 1,400 square feet, more or less.

As shown on Exhibit "B" attached hereto and made a part hereof.

This legal description was prepared by me or under my direction in accordance with the Professional Land Surveyors Act.

Date: 2-28-2020

Tracy L. Giorgetti
Tracy L. Giorgetti, LS 8720

