

Project: Fair Oaks Avenue Overhead
Bridge Widening Project
Grantor: Monument 3: Realty Fund
VII, LTD., A California
Limited Partnership and
Monument 3: Realty Fund
VIII, LTD., A California
Limited Partnership
Parcel Nos.: 209-02-003 & 209-03-021
Federal Aid #: BHLS 5213 (039)

AGREEMENT FOR PURCHASE OF CERTAIN REAL PROPERTY RIGHTS

This Agreement for Purchase of Certain Real Property Rights ("Agreement") dated November __, 2016, is executed by and between the **City of Sunnyvale**, a municipal corporation ("Grantee"), and **Monument 3: Realty Fund VII, LTD., A California Limited Partnership and Monument 3: Realty Fund VIII, LTD., A California Limited Partnership** (collectively, "Grantor").

The parties hereby agree as follows:

1. PROPERTY.

The property rights being purchased and sold pursuant to this Agreement are intended for the use by Grantee in connection with the Fair Oaks Avenue Overhead Bridge Widening Project ("Project") as set forth in the terms and conditions of this Agreement, the Aerial Easement Deed between Grantor and Grantee of even date herewith, and the Temporary Construction Easement between Grantor and Grantee of even date herewith, together with such other property interests as may be specified herein ("Property").

2. DELIVERY OF DOCUMENTS.

The Aerial Easement Deed and Temporary Construction Easement executed and delivered simultaneously herewith shall not be deemed to have been accepted by Grantee until such time as the Aerial Easement Deed and Temporary Construction Easement are (i) delivered to Escrow Holder by Grantee together with written authorization for Escrow Holder to pay the Purchase Price (defined herein) to Grantor, and (ii) recorded in the Official Records of Santa Clara County, California in accordance with written escrow instructions delivered to escrow by Grantee and Grantor. However, in no event shall Acceptance of the Aerial Easement Deed and Temporary Construction Easement occur later than January 15, 2016.

This transaction shall be handled through an escrow with Chicago Title Company, 375 N. First Street, Suite 400, San Jose, CA, 95112, Order No. 13-42207298-AK. Within five (5) days after this Agreement is executed by Grantee and Grantor, Grantor shall complete, execute and deliver to Escrow Holder (i) an affidavit executed by Grantor certifying that Grantor is not a "foreign person" within the meaning of Internal Revenue Code Section 1445(t)(3), and meeting the requirements of Internal Revenue Code Section 1445(b)(2), and (ii) an original Withholding Exemption Certificate (California Form 590 or 590-RE, as applicable), fully executed by Grantor as required by the California Taxation and Revenue Code, certifying that Grantor is not subject to tax withholding under applicable California law.

3. PURCHASE PRICE AND TITLE.

The just compensation for the Property is in the amount of \$382,275.00 (Three Hundred Eighty-Two Thousand Two Hundred Seventy-Five Dollars, exactly, the "Purchase Price"), which represents the total amount of compensation to the Grantor. Grantor and Grantee hereby acknowledge that the fair market value of the Aerial Easement and Temporary Construction Easement is \$382,275.00.

Grantee shall pay all costs of escrow and recording fees incurred in this transaction.

4. TEMPORARY CONSTRUCTION EASEMENT.

Permission is hereby granted to the Grantee and its authorized agents and contractors to enter on Grantor's land, within the temporary construction easement areas described in the Temporary Construction Easement, for construction of new surface and underground improvements within the road right-of-way depicted in the Temporary Construction Easement

- (a) Where necessary, existing improvements in the temporary easement area may be removed by the Grantee. Any such improvements will be reconstructed at Grantee's sole expense upon the termination of the temporary easement, or, if reconstruction is not feasible, Grantee will pay Grantor the value of such improvements, which payment shall be in addition to the Purchase Price set forth above.
- (b) All work performed by the Grantee in the temporary easement area shall conform to applicable building, fire, and sanitary codes, laws, ordinances and regulations relating to such work and shall be done in a good and workmanlike manner.
- (c) The temporary construction easement is for a period of eighteen (18) months. Said eighteen (18) month period shall begin upon thirty (30) days written notice to Grantor by the Grantee. In the event Grantee occupies the Property for more than eighteen (18) months, the Grantee shall make payment to Grantor for the additional time. Compensation for the additional time shall be calculated by multiplying the total square footage of the temporary construction easement area by \$125 per square foot, then multiplied by .005625, then multiplied by the number of months beyond the initial eighteen (18) month period that the Grantee occupies the Property. If additional time is needed, an amendment to this agreement shall be executed by both parties before the expiration of the initial eighteen (18) month period.
- (d) Any work performed in, on or under the Temporary Easement area shall be done in such a manner as to not interfere to the greatest extent practicable with the use and occupancy of the Grantor's Property by Grantor and its tenants, employees and invitees.

5. AERIAL EASEMENT DEED

Grantee hereby agrees that the Aerial Easement shall not interfere with, or in any way impact Grantor's right or ability to construct, replace, inspect, maintain, repair, operate or remove carports at the Property after the completion of the Project in a manner consistent with Grantor's current uses, including any such carports within the aerial easement area.

6. LEASE WARRANTY.

Grantor warrants that there are no oral or written leases on any portion of the real property being encumbered by the Temporary Construction Easement or the Aerial Easement and Grantor further agrees to hold harmless and reimburse Grantee for any and all losses or expenses resulting or arising from any lease on such property.

7. DISMISSAL OF ACTION IN EMINENT DOMAIN; SATISFACTION OF ALL CLAIMS.

Grantor consents to the dismissal of any eminent domain action involving the Property and waives any and all claims to any monies that may now be on deposit in such action. The purchase price for the Property and the other consideration set forth herein constitutes a complete settlement of all rights of Grantor to just compensation and to claim, assess or receive severance, inverse condemnation or other eminent domain damages arising from or related to the acquisition of the Property by Grantee.

8. POSSESSION.

Grantee shall have the right of possession and use of the Property including the right to remove and dispose of improvements, subject to the obligation to reconstruct any such improvements upon the termination of the Temporary Construction Easement, as set forth in paragraph 5(a), above. Such possession shall commence on acceptance of this contract by the City of Sunnyvale and deposit of the Purchase Price into escrow and the disbursement of the Purchase Price to Grantor.

9. DAMAGES

It is understood and agreed by and between the parties hereto that payment as provided in Section 3 above, includes, but is not limited to, any and all damages which may accrue to the Grantor's remaining property by reason of its severance from the property conveyed herein and the construction of the proposed project, including, but not limited to, any expenses which may be entailed by the Grantor in restoring the utility of the remaining property, which includes payment for concrete, asphalt, and landscaping.

10. HAZARDOUS WASTE MATERIAL.

The Grantor hereby represents and warrants that, during the period of Grantor's ownership of the Property, there have been no disposals, releases or threatened releases of hazardous substances on, from, or under the Property. Grantor further represents and warrants that Grantor has no knowledge of any disposal, release, or threatened release of hazardous substances, on, from, or under the Property which may have occurred prior to Grantor taking title to the Property.

The acquisition price of the Property being acquired in this transaction reflects the fair market value of the Property without the presence of contamination. If the Property being acquired is found to be contaminated by the presence of hazardous substances which requires mitigation under Federal or State law, the Grantee reserves the right to recover its clean-up costs from any party who caused or contributed to the contamination.

Grantor shall indemnify, defend with counsel acceptable to Grantee and hold harmless Grantee and Grantee's officers, representatives, agents and employees from and against any and all suits,

damages, costs, fees, claims, demands, causes of action, losses, liabilities and expenses, including without limitation attorneys' fees, arising in conjunction with or as a result of Grantor's breach of any of its representations or warranties set forth in this Section 10, which representations and warranties shall survive close of escrow and recordation of the Easement Deed. As used in this Agreement the term "hazardous substances" means any and all chemicals, substances, wastes or materials which have been or are hereafter determined by any federal, state or local governmental Grantee to be capable of posing risk of injury to health or safety, including, without limitation, petroleum, asbestos, polychlorinated biphenyls, radioactive materials and radon gas. Grantors obligations pursuant to this Section 10 shall survive the close of escrow and recordation of the Aerial Easement Deeds and Temporary Construction Easement Deeds.

11. SEVERABILITY.

If any provision in this Agreement is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remaining provisions shall continue in full force without being impaired or invalidated in any way.

12. GOVERNING LAW.

This Agreement shall be governed by and construed in accordance with the laws of the State of California.

13. PUBLIC PURPOSE.

Grantee requires the Property, which is not now appropriated to a public use, for the Project, and Grantee can acquire the Property through the exercise of the power of eminent domain. Granter is compelled to sell, and Grantee is compelled to acquire the Property.

Both Granter and Grantee recognize the expense, time, effort and risk to both Grantor and Grantee in resolving a dispute over compensation for the Property by eminent domain litigation; and, the compensation set forth herein is in compromise and settlement, in lieu of such litigation.

14. GRANTEE AND EXECUTION.

Each person executing this Agreement on behalf of a party represents and warrants that such person is duly and validly authorized to do so on behalf of the entity it purports to bind and if such party is a partnership, corporation or trustee, that such partnership, corporation or trustee has full right and Grantee to enter into this Agreement and perform all of its obligations hereunder.

15. ENTIRE AGREEMENT.

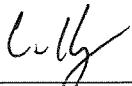
This Agreement represents the full and complete understanding of the parties with respect to the Property and the Project. Any prior or contemporaneous oral or written agreements by and between the parties or their agents and representatives with respect to the Property or the Project are revoked and extinguished by this Agreement.

[Signatures on following page]

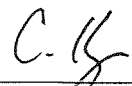
ALL AGREEMENTS FOR PURCHASE OF PROPERTY ARE CONTINGENT UPON
THE APPROVAL OF THE CITY OF SUNNYVALE.

GRANTOR:

**Monument 3: Realty Fund VII, LTD., A
California Limited Partnership**

BY: 
Name: C. Gemma Hwang
Title: Managing Member

**Monument 3: Realty Fund VIII, LTD., A
California Limited Partnership**

BY: 
Name: C. Gemma Hwang
Title: Managing Member

GRANTEE:

CITY OF SUNNYVALE,
a municipal corporation

BY: _____
Name:
Title:

ATTEST:
CITY CLERK
CITY OF SUNNYVALE

BY: _____
Name:
Title:

APPROVED AS TO FORM:
OFFICE OF THE CITY ATTORNEY
CITY OF SUNNYVALE

BY: _____
Name:
Title:

ACKNOWLEDGEMENT

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

STATE OF CALIFORNIA
COUNTY OF SANTA CLARA } S.S.

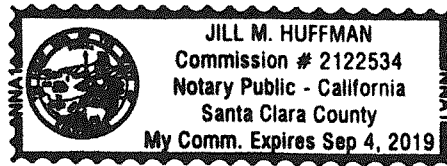
On October 21, 2016 before me, Jill M. Huffman Notary Public,
personally appeared C. Gemma Hwang

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 on behalf of which the person(~~s~~) acted, executed the instrument.

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

WITNESS my hand and official seal.

Jill M. Huffman
Signature



(Seal)