

## RESOLUTION NO. \_\_\_\_\_

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY  
OF SUNNYVALE AUTHORIZING THE CITY MANAGER  
TO EXECUTE AGREEMENTS WITH HERITAGE  
APARTMENTS FOR PURCHASE OF CERTAIN  
PROPERTY RIGHTS AND ACCEPTANCE OF TWO AND  
TWO AERIAL EASEMENT DEEDS AND TWO  
TEMPORARY CONSTRUCTION EASEMENTS, IN  
RELATION TO THE FAIR OAKS AVENUE OVERHEAD  
BRIDGE REHABILITATION PROJECT**

WHEREAS, the City of Sunnyvale ("City") is undertaking the Fair Oaks Avenue Overhead Bridge Rehabilitation Project ("Project") to address several identified structural deficiencies in the overhead bridge and to expand bicycle and pedestrian amenities; and

WHEREAS, as part of the construction of the Project, the City is required to purchase a permanent Aerial Easement Deed ("AE") and a Temporary Construction Easement ("TCE") from the owners Monument 3: Realty Fund VII, LTD, and a AE and TCE from the owners Monument 3: Realty Fund VIII, LTD (collectively "Heritage Apartments"), for access, construction, reconstruction, inspection, maintenance, repair, operation and removal of an overhead freeway bridge, supporting columns and footings, including any and all appurtenant structures; and

WHEREAS, the Project is a federally-funded project and funds used for acquisition of the required AEs and TCEs are from the Federal Highway Bridge Program revenues; and

WHEREAS, the City ordered an appraisal of the required easements that was prepared by Integra Realty Resources, a California general certified appraiser in November 2015, in the amount of \$281,000.00, and the City made an offer to Heritage Apartments in said amount; and

WHEREAS, Heritage Apartments ordered an independent appraisal that was prepared by Enright & Company, Inc., in June 2016, in the amount of \$437,535.00, and Heritage Apartments presented the City with a counteroffer in said amount; and

WHEREAS, the City Council originally approved the purchase of the AEs and TCEs on January 24, 2017, in the amount of \$382,275.00; and

WHEREAS, after City Council approval the City presented Heritage Apartments with a new offer of \$407,000.00 in September 2017 based on an updated appraisal memo and a longer TCE duration of 27 months, and Heritage Apartments counteroffered in the amount \$673,918.00 based on their revised independent appraisal; and

WHEREAS, the City has reviewed the appraisers' determination of the fair market value

of the land and its reports thereon; and

WHEREAS, the City and Heritage Apartments have renegotiated the final amount of \$600,000.00 as the purchase price of all the AEs and TCEs; and

WHEREAS, the City desires to enter into new necessary documentation for the Project, including Agreements for Purchase of Property, new AEs and TCEs as described above.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF SUNNYVALE THAT:

1. The portions of property owned by Heritage Apartments, as described above, are hereby determined to have a fair market value of \$600,000.00 based on the report by independent appraiser, Enright & Company, Inc., and as further negotiated by the City and Heritage Apartments.

2. The purchase of said Aerial Easements and Temporary Construction Easements, as described herein, in the amount of \$600,000.00, plus all related closing costs, is hereby approved.

3. The City Manager, or his designee, is hereby authorized:

- a) To execute the Agreement for Purchase of Property with Heritage Apartments, attached in substantial form hereto as Exhibit "A"; and
- b) To accept on behalf of the City the Aerial Easement Deeds attached in substantial form hereto as Exhibits "B" and "C", and the Temporary Construction Easements attached in substantial form hereto as Exhibits "D" and "E", and any other documents to implement the purchase of property for the Project by the City.

///

///

Adopted by the City Council at a regular meeting held on \_\_\_\_\_, by the following  
vote:

AYES:

NOES:

ABSTAIN:

ABSENT:

RECUSAL:

ATTEST:

APPROVED:

\_\_\_\_\_  
City Clerk  
(SEAL)

\_\_\_\_\_  
Mayor

APPROVED AS TO FORM:

\_\_\_\_\_  
City Attorney

## **EXHIBIT A**

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 \_\_\_\_\_, 2018, 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 1, 2019.

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.

## **EXHIBIT A**

### **Agreement for Purchase Page 2 of 5**

#### **3. PURCHASE PRICE AND TITLE.**

The just compensation for the Property is in the amount of \$600,000.00 (Six Hundred Thousand 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 \$600,000.00.

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 twenty-seven (27) months, provided that in no event shall the term of the easement extend beyond December 31, 2020. Said twenty-seven (27) month period shall begin upon thirty (30) days written notice to Grantor by the Grantee. In case of unpredictable delays in construction, upon written notification, and provided Grantor and Grantee agree to such an extension in a writing recorded against the Easement Property, the terms of this Easement may be extended. Grantor shall be compensated based on the fair market value of the Easement Property at the time of the extension. Payment shall be made to Grantor for the extension prior to the expiration of the term.
- (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.

## **EXHIBIT A**

**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

## **EXHIBIT A**

### **Agreement for Purchase**

**Page 4 of 5**

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]*

**EXHIBIT A**

Agreement for Purchase  
Page 5 of 5

**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**

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

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

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:

## **EXHIBIT B**

**RECORD WITHOUT FEE UNDER  
GOVERNMENT CODE SECTION 6103**

**RECORDING REQUESTED BY:**

City of Sunnyvale  
Public Works Department

**WHEN RECORDED MAIL TO:**

City of Sunnyvale  
Public Works Department  
PO Box 3707  
Sunnyvale, CA 94088-3707

Project: Fair Oaks Avenue Overhead  
Bridge Widening Project  
Owner: Monument 3: Realty Fund VIII, LTD., A California Limited Partnership  
APN: 209-03-021  
Federal Aid #: BHLS 5213 (039)

### **TEMPORARY CONSTRUCTION EASEMENT**

For value received, receipt of which is hereby acknowledged, Monument 3: Realty Fund VIII, LTD., A California Limited Partnership, hereinafter referred to as "Grantor", grants to the CITY OF SUNNYVALE, a municipal corporation, hereinafter referred to as "Grantee", a Temporary Construction Easement over, upon and across a portion of that real property of the City of Sunnyvale, County of Santa Clara, State of California, described as:

See **Exhibit "A"** attached hereto and made a part hereof (the "Easement Property").

This temporary construction easement is granted under the express conditions listed below:

1. The Grantor represents and warrants that it is the owner of the Easement Property and that the Grantor has the expressed right to grant the easement.
2. This easement is for the purpose of constructing public improvements as part of the City of Sunnyvale's Fair Oaks Avenue Overhead Bridge Widening Project and to tie in Grantor's property to the new public improvements, as necessary. Said temporary construction easement shall begin upon Grantee's issuance of a thirty (30) day written notice to Grantor and continue in full force and effect for a duration of 27 months or until such time the construction of public improvements has been completed as determined by the Grantee, whichever comes first; provided, however, that in no event will the term of the easement granted herein extend beyond December 31, 2020.
3. The Easement Property shall not be used to stage or deposit tools, implements, and other materials for work being done on property other than the Easement Property or Grantee-owned property that is immediately adjacent to the Easement Property.
4. By accepting this easement, and undertaking work within the Easement Property, the Grantee agrees: (a) to perform all work undertaken by Grantee in a good and workmanlike manner and to promptly complete its work within the Easement Property; (b) to restore any of Grantor's land disturbed by work undertaken by Grantee for purposes of construction, removal, demolition and/or maintenance to its condition that existed prior to the commencement of such work, including repairing Grantor's landscape irrigation sprinkler system, if necessary; (c) to not unreasonably interfere with the use of Grantor's property by Grantor or any of Grantor's tenants,

## **EXHIBIT B**

invitees or guests; and (d) that no cost or expense (excluding loss of business revenue) shall be incurred by Grantor in connection with any of the Grantee's construction, removal, demolition and/or maintenance pursuant to this easement.

5. Grantee is self-insured. Grantee shall require its contractor(s) to maintain, adequate liability insurance during its activities on the Easement Property and to be responsible for any damage or injury incurred as a result of its activities on the Easement Property and to name the Grantor as an additional insured.
6. By accepting this easement, and undertaking work within the Easement Property, Grantee agrees to indemnify and hold harmless Grantor from and against any and all claims, damages, liabilities, costs or expenses whatsoever, arising from or caused, directly or indirectly by the negligent conduct associated with entry onto the Easement Property by the Grantee or by its agents, employees, invitees, contractors and subcontractors.

Executed on this date: \_\_\_\_\_, 2016.

**GRANTOR:**

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

By: \_\_\_\_\_  
Name  
Title

By: \_\_\_\_\_  
Name  
Title

**EXHIBIT B**

**ACKNOWLEDGEMENT OF GRANTOR(S):**

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 \_\_\_\_\_ } S.S.

On \_\_\_\_\_ 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 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.

\_\_\_\_\_  
Signature

(Seal)

**EXHIBIT B**

**CITY OF SUNNYVALE  
CERTIFICATE OF ACCEPTANCE**

*- INSERT HERE -*

## EXHIBIT B



ENGINEERS  
SURVEYORS  
PLANNERS

100+  
YEARS

June 14, 2018  
BKF Job No: 20107166

### EXHIBIT "A" Legal Description TEMPORARY CONSTRUCTION EASEMENT

Real property situate in the City of Sunnyvale, County of Santa Clara, State of California, being a portion of Parcel 1 of the lands shown on that certain Parcel Map filed for record on June 27, 1985 in Book 545 of Maps at Pages 41-43 of Official Records of said county, more particularly described as follows:

**Beginning** at the northeasterly corner of said Parcel 1, being a point on the westerly line of Fair Oaks Ave. as shown on said Parcel Map (545 M 41-43);

Thence along said westerly line, South 14°52'00" West, 198.12 feet.

Thence North 75°08'00" West, 2.50 feet;

Thence South 14°52'00" East, 22.00 feet;

Thence South 75°08'00" East, 2.50 feet to the beginning of a non-tangent curve to the right, having a radius of 10.00 feet, from the center of said curve a radial line bears South 75°08'00" East;

Thence along said non-tangent curve, through a central angle of 76°16'24", for an arc length of 13.31 feet to a point of reverse curvature;

Thence along said reverse curve, having a radius of 108.00 feet, through a central angle of 19°02'01", for an arc length of 35.88 feet;

Thence North 14°52'00" East, 249.31 feet;

Thence South 67°33'09" East, 40.80 feet to the **Point of Beginning**.

Containing an area of 9,525 square feet or 0.219 acres more or less.

### END OF DESCRIPTION

**A plat showing the above-described parcel is attached herein and made a part hereof as Exhibit "B".**

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

For: BKF Engineers

Davis Thresh, P.L.S. No. 6868

6.14.2018

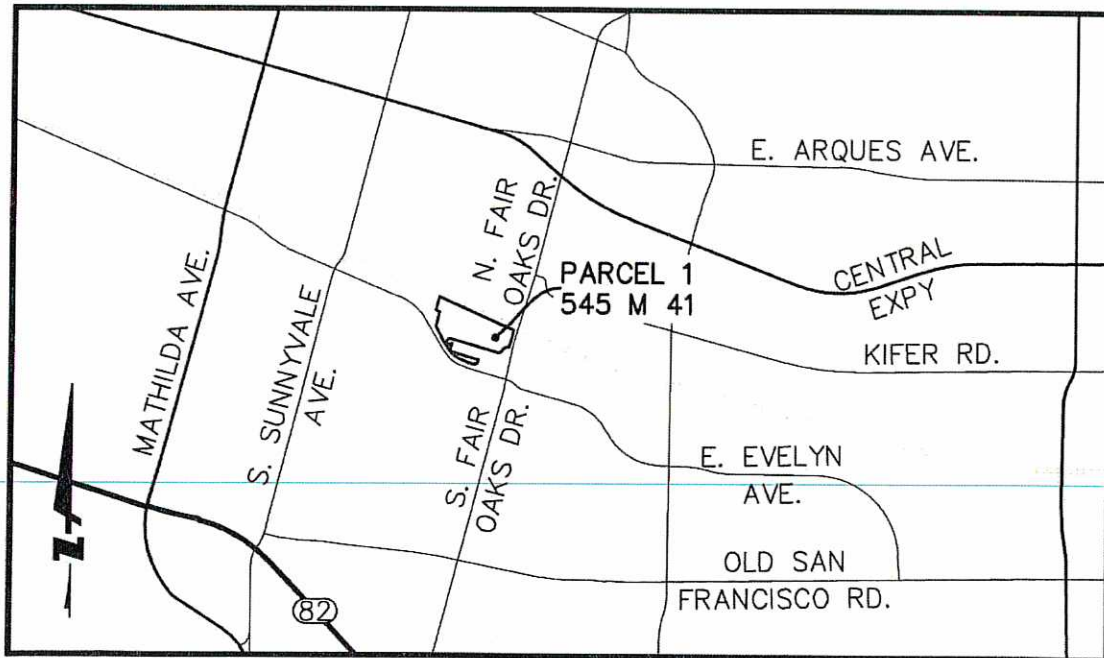
Dated



4670 Willow Road  
Suite 250  
Pleasanton  
California 94588  
phone 925.396.7700  
fax 925.396.7799  
www.bkf.com

# TEMPORARY CONSTRUCTION EASEMENT

BEING A PORTION OF PARCEL 1 AS SHOWN ON A CERTAIN PARCEL MAP  
RECORDED IN BOOK 545 PAGES 41-43, SANTA CLARA COUNTY RECORDS



LINE TABLE		
	DIRECTION	LENGTH
L1	N75°08'00"W	2.50
L2	S75°08'00"E	2.50

CURVE TABLE			
	LENGTH	RADIUS	DELTA
C1	35.88	108.00	19°02'01"

## BASIS OF BEARINGS

THE BEARING N14°52'00"E BEING THE CENTERLINE OF FAIR OAKS AVE., AS SHOWN ON THAT CERTAIN PARCEL MAP FILED FOR RECORD ON JUNE 27, 1985, IN BOOK 545 OF PARCEL MAPS AT PAGES 41-43

## LEGEND

(R) = RADIAL BEARING  
POB = POINT OF BEGINNING  
M = BOOK AND PAGE OF MAPS  
T.C.E. = TEMPORARY CONSTRUCTION EASEMENT



4670 WILLOW RD  
SUITE 250  
PLEASANTON, CA 94588  
925-396-7700  
925-396-7799 (FAX)

**B-6**

Subject EXHIBIT B  
TEMPORARY CONSTRUCTION EASEMENT

Job No. 20107166

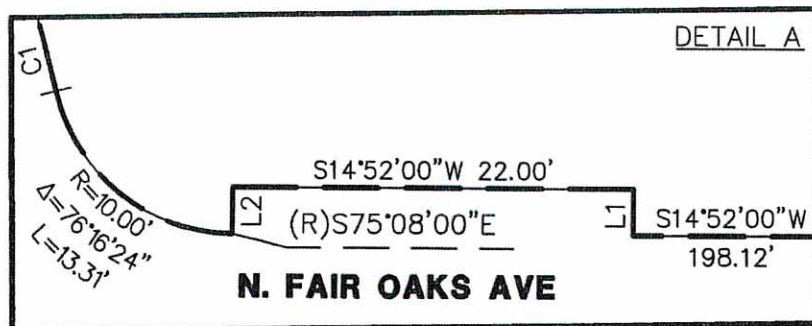
By MR Date 6/14/18 Chkd.WS

SHEET 1 OF 2

# EXHIBIT B

DEODAR  
WAY

WASHINGTON  
STREET



LANDS OF MONUMENT 3:  
REALTY FUND  
DOC. NO. 9084533

PARCEL 1  
545 M 41

T.C.E.  
9,525 SQ. FT.±  
0.219 ACRES±

N14°52'00"E 249.31'

SEE DETAIL A

S14°52'00"W 198.12'

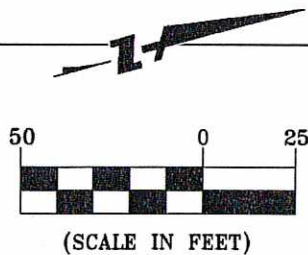
40.80'  
S67°33'09"E

CALTRAIN

POB

N. FAIR OAKS  
AVE.

N14°52'00"E  
BASIS OF BEARINGS



4670 WILLOW RD  
SUITE 250  
PLEASANTON, CA 94588  
925-396-7700  
925-396-7799 (FAX)

**B-7**

Subject EXHIBIT B  
TEMPORARY CONSTRUCTION EASEMENT

Job No. 20107166

By MR Date 6/14/18 Chkd.WS

SHEET 2 OF 2

## **EXHIBIT C**

**RECORD WITHOUT FEE UNDER  
GOVERNMENT CODE SECTION 6103**

**RECORDING REQUESTED BY:**

City of Sunnyvale  
Public Works Department

**WHEN RECORDED MAIL TO:**

City of Sunnyvale  
Public Works Department  
PO Box 3707  
Sunnyvale, CA 94088-3707

Project: Fair Oaks Avenue Overhead  
Bridge Widening Project  
Owner: Monument 3: Realty Fund VII, LTD., A California Limited Partnership  
APN: 209-02-003  
Federal Aid #: BHLS 5213 (039)

### **TEMPORARY CONSTRUCTION EASEMENT**

For value received, receipt of which is hereby acknowledged, Monument 3: Realty Fund VII, LTD., A California Limited Partnership, hereinafter referred to as "Grantor", grants to the CITY OF SUNNYVALE, a municipal corporation, hereinafter referred to as "Grantee", a Temporary Construction Easement over, upon and across a portion of that real property of the City of Sunnyvale, County of Santa Clara, State of California, described as:

See **Exhibit "A"** attached hereto and made a part hereof (the "Easement Property").

This temporary construction easement is granted under the express conditions listed below:

1. The Grantor represents and warrants that it is the owner of the Easement Property and that the Grantor has the expressed right to grant the easement.
2. This easement is for the purpose of constructing public improvements as part of the City of Sunnyvale's Fair Oaks Avenue Overhead Bridge Widening Project and to tie in Grantor's property to the new public improvements, as necessary. Said temporary construction easement shall begin upon Grantee's issuance of a thirty (30) day written notice to Grantor and continue in full force and effect for a duration of 27 months or until such time the construction of public improvements has been completed as determined by the Grantee, whichever comes first; provided, however, that in no event will the term of the easement granted herein extend beyond December 31, 2020.
3. The Easement Property shall not be used to stage or deposit tools, implements, and other materials for work being done on property other than the Easement Property or Grantee-owned property that is immediately adjacent to the Easement Property.
4. By accepting this easement, and undertaking work within the Easement Property, the Grantee agrees: (a) to perform all work undertaken by Grantee in a good and workmanlike manner and to promptly complete its work within the Easement Property; (b) to restore any of Grantor's land disturbed by work undertaken by Grantee for purposes of construction, removal, demolition and/or maintenance to its condition that existed prior to the commencement of such work, including repairing Grantor's landscape irrigation sprinkler system, if necessary; (c) to not unreasonably interfere with the use of Grantor's property by Grantor or any of Grantor's tenants,

## **EXHIBIT C**

invitees or guests; and (d) that no cost or expense (excluding loss of business revenue) shall be incurred by Grantor in connection with any of the Grantee's construction, removal, demolition and/or maintenance pursuant to this easement.

5. Grantee is self-insured. Grantee shall require its contractor(s) to maintain, adequate liability insurance during its activities on the Easement Property and to be responsible for any damage or injury incurred as a result of its activities on the Easement Property and to name the Grantor as an additional insured.
6. By accepting this easement, and undertaking work within the Easement Property, Grantee agrees to indemnify and hold harmless Grantor from and against any and all claims, damages, liabilities, costs or expenses whatsoever, arising from or caused, directly or indirectly by the negligent conduct associated with entry onto the Easement Property by the Grantee or by its agents, employees, invitees, contractors and subcontractors.

Executed on this date: \_\_\_\_\_, 2018.

**GRANTOR:**

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

By: \_\_\_\_\_  
Name  
Title

By: \_\_\_\_\_  
Name  
Title

**EXHIBIT C**

**ACKNOWLEDGEMENT OF GRANTOR(S):**

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 \_\_\_\_\_ }S.S.

On \_\_\_\_\_ 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 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.

\_\_\_\_\_  
Signature

(Seal)

**EXHIBIT C**

**CITY OF SUNNYVALE  
CERTIFICATE OF ACCEPTANCE**

*- INSERT HERE -*

## EXHIBIT C



ENGINEERS  
SURVEYORS  
PLANNERS

100+  
YEARS

June 14, 2018  
BKF Job No: 20107166

### EXHIBIT "A" Legal Description

#### TEMPORARY CONSTRUCTION EASEMENT

Real property situate in the City of Sunnyvale, County of Santa Clara, State of California, being a portion of Parcel 3 of the lands shown on that certain Parcel Map filed for record on June 27, 1985 in Book 545 of Maps at Pages 41-43 of Official Records of said county, more particularly described as follows:

**Beginning** at the northwesterly corner of said Parcel 3, being a point on the easterly line of Fair Oaks Ave. as shown on said Parcel Map (545 M 41-43);

Thence leaving said easterly line the following eight (8) courses:

- 1) South 67°33'09" East, 76.75 feet;
- 2) North 22°26'51" 24.00 feet;
- 3) South 67°33'09" East, 50.00 feet;
- 4) South 22°26'42" West, 36.00 feet;
- 5) North 67°33'18" West, 90.91 feet;
- 6) South 25°46'32" West, 20.83 feet;
- 7) South 14°52'00" West, 399.03 feet;
- 8) North 74°08'02" West, 28.56 feet to the easterly line of Fair Oaks Ave.;

Thence along said easterly line, North 00°39'55" East, 26.27 feet;

Thence North 14°52'00" East 376.91 feet;

Thence North 25°46'32" East, 26.42 feet;

Thence North 14°51'59" East, 7.79 feet to the **Point of Beginning**.

Containing an area of 17,408 square feet or 0.400 acres more or less.

#### **END OF DESCRIPTION**

**A plat showing the above-described parcel is attached herein and made a part hereof as Exhibit "B".**

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

For: BKF Engineers

Davis Thresh, P.L.S. No. 6868

6.14.2018

Dated

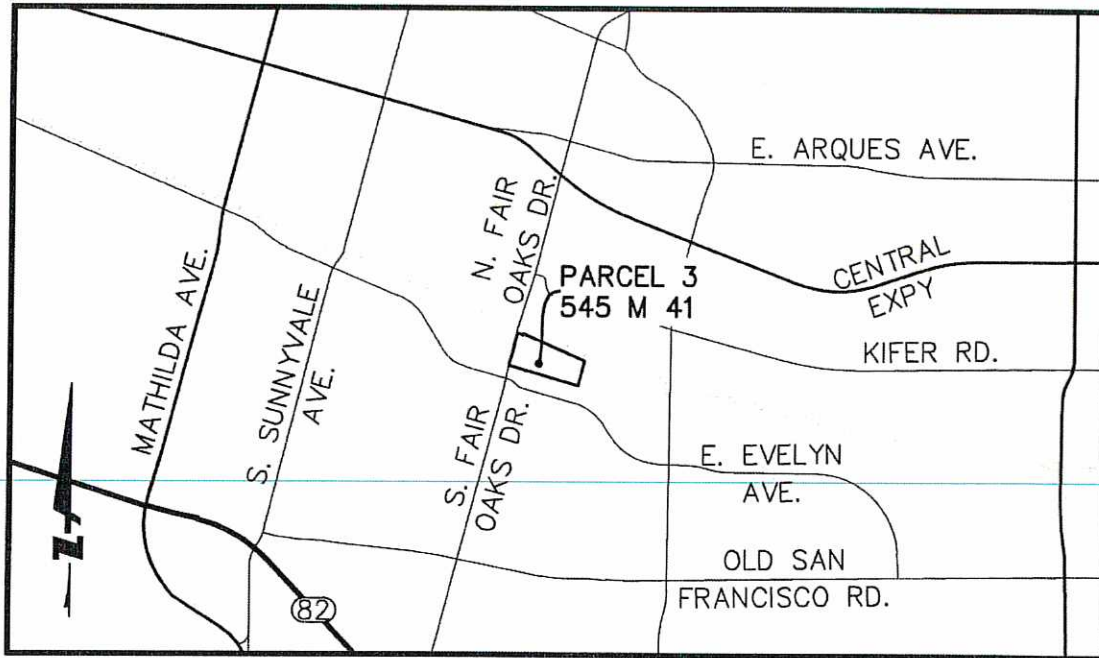


4670 Willow Road  
Suite 250  
Pleasanton  
California 94588  
phone 925.396.7700  
fax 925.396.7799  
www.bkf.com

# EXHIBIT C

## TEMPORARY CONSTRUCTION EASEMENT

BEING A PORTION OF PARCEL 3 AS SHOWN ON A CERTAIN PARCEL MAP  
RECORDED IN BOOK 545 PAGES 41-43, SANTA CLARA COUNTY RECORDS



LINE TABLE		
	DIRECTION	LENGTH
L1	S67°33'09"E	76.75
L2	N22°26'51"E	24.00
L3	S22°26'42"W	36.00
L4	S25°46'32"W	20.83
L5	N75°08'02"W	28.56
L6	N00°39'55"E	26.27
L7	N25°46'32"E	26.42
L8	N14°51'59"E	7.79

### BASIS OF BEARINGS

THE BEARING N14°52'00"E BEING THE CENTERLINE OF FAIR OAKS AVE., AS SHOWN ON THAT CERTAIN PARCEL MAP FILED FOR RECORD ON JUNE 27, 1985, IN BOOK 545 OF PARCEL MAPS AT PAGES 41-43

### LEGEND

(R) = RADIAL BEARING  
 POB = POINT OF BEGINNING  
 M = BOOK AND PAGE OF MAPS  
 T.C.E. = TEMPORARY CONSTRUCTION EASEMENT



4670 WILLOW RD  
 SUITE 250  
 PLEASANTON, CA 94588  
 925-396-7700  
 925-396-7799 (FAX)

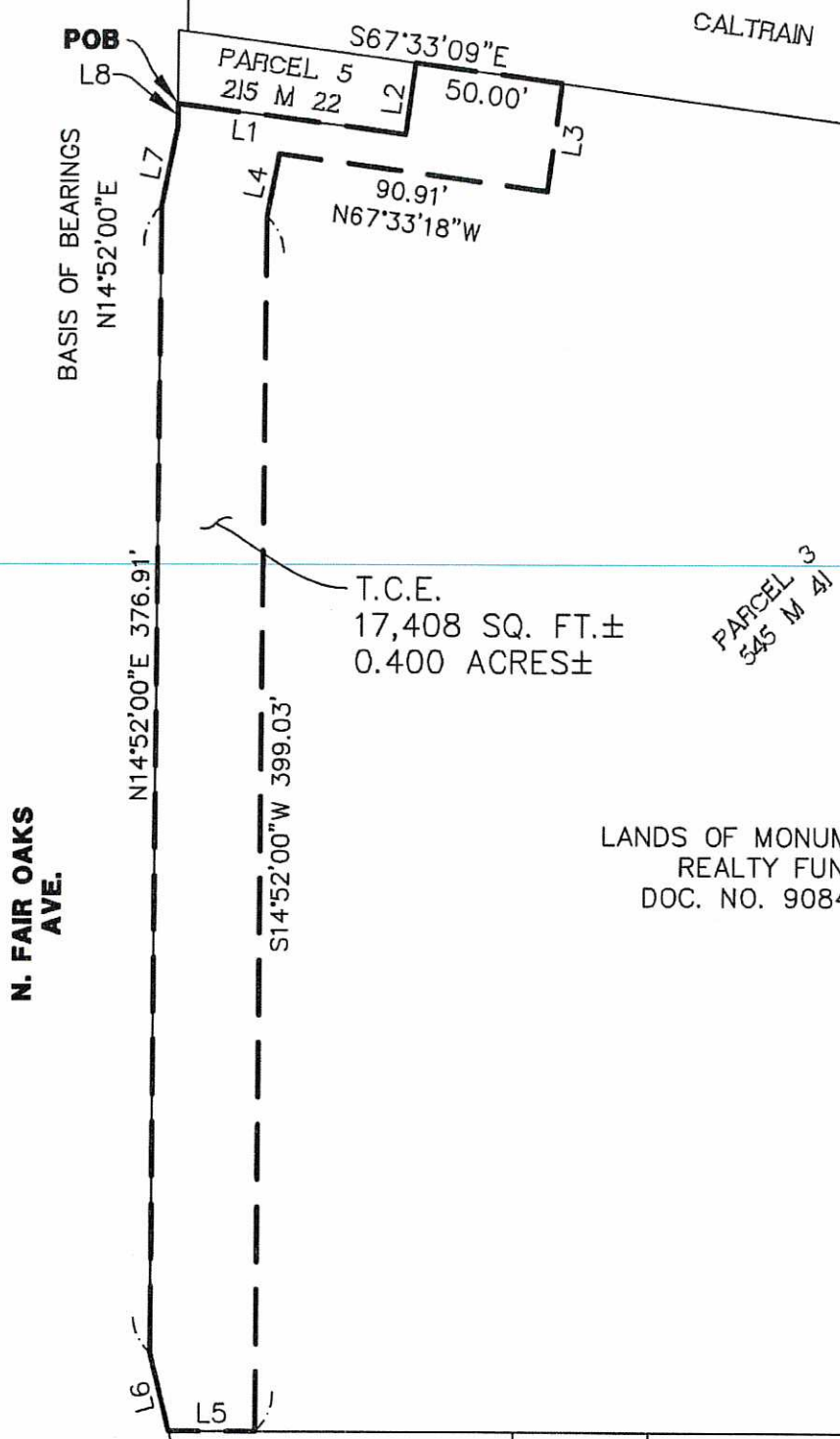
Subject EXHIBIT B  
 TEMPORARY CONSTRUCTION EASEMENT

Job No. 20107166

By MR \_\_\_\_\_ Date 6/14/18 Chkd.WS \_\_\_\_\_

SHEET 1 OF 2

# EXHIBIT C



PLANNED BY: FORN



4670 WILLOW RD  
SUITE 250  
PLEASANTON, CA 94588  
925-396-7700  
925-396-7799 (FAX)

Subject EXHIBIT B  
TEMPORARY CONSTRUCTION EASEMENT  
Job No. 20107166  
By MR Date 6/14/18 Chkd.WS  
SHEET 2 OF 2

**EXHIBIT D**

Recording Requested by:  
City of Sunnyvale  
Public Works Department

When recorded, mail to:

City of Sunnyvale  
Public Works Department  
PO Box 3707  
Sunnyvale, CA 94088-3707

(This space for Recorders use only.)

No recording fee required; this document is exempt from fee pursuant to Sections 6103 and 27383 of the California Government Code. This deed is exempt from tax pursuant to Section 11922 of the California Revenue and Taxation Code.

APN: 209-03-021  
Project: Fair Oaks Avenue Overhead Bridge Widening Project  
Federal Aid #: BHLS 5213 (039)

**AERIAL EASEMENT DEED**

FOR A VALUABLE CONSIDERATION, receipt of which is hereby acknowledged, **Monument 3: Realty Fund VIII, LTD., A California Limited Partnership** hereby GRANT(s) to the **City of Sunnyvale, a municipal corporation**, an Aerial Easement for freeway purposes to construct, replace, inspect, maintain, repair, operate or remove an overhead freeway bridge, supporting columns and footings, including any and all appurtenances thereto, over, under, upon, and across that certain real property situated in City of Sunnyvale, County of Santa Clara, State of California described as:

Exhibit "A" and Exhibit "B" attached hereto and made a part hereof.

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_

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

By: \_\_\_\_\_  
Name:  
Title:

By: \_\_\_\_\_  
Name:  
Title:

**EXHIBIT D**

**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 \_\_\_\_\_ } S.S.

On \_\_\_\_\_ 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 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.

\_\_\_\_\_  
Signature

(Seal)

**EXHIBIT D**

CITY OF SUNNYVALE  
CERTIFICATE OF ACCEPTANCE

*- INSERT HERE -*

## EXHIBIT D



ENGINEERS  
SURVEYORS  
PLANNERS

100+  
YEARS

June 14, 2018  
BKF Job No: 20107166

### EXHIBIT "A" Legal Description AERIAL EASEMENT

Real property situate in the City of Sunnyvale, County of Santa Clara, State of California, being a portion of Parcel 3 of the lands shown on that certain Parcel Map filed for record on June 27, 1985 in Book 545 of Maps at Pages 41-43 of Official Records of said county, more particularly described as follows:

**Beginning** at the northwesterly corner of said Parcel 3, being a point on the easterly line of Fair Oaks Ave. as shown on said Parcel Map (545 M 41-43);

Thence along the northerly line of said Parcel 3, South  $67^{\circ}33'09''$  East, 2.96 feet to the beginning of a non-tangent curve to the left, having a radius of 1460.17 feet, from the center of said curve a radial line bears North  $68^{\circ}35'11''$  West;

Thence along said non-tangent curve, through a central angle of  $2^{\circ}57'28''$ , for an arc length of 75.38 feet;

Thence South  $71^{\circ}43'53''$  East, 1.50 feet;

Thence South  $18^{\circ}10'53''$  West, 14.00 feet;

Thence North  $71^{\circ}43'53''$  West, 1.96 feet to the easterly line of said Parcel 3;

Thence along said easterly line North  $14^{\circ}52'00''$  East, 55.68 feet;

Thence North  $25^{\circ}46'32''$  East, 26.42 feet;

Thence North  $14^{\circ}51'59''$  East, 7.79 feet to the **Point of Beginning** of this description.

Containing 253 square feet or 0.006 acres more or less.

### END OF DESCRIPTION

**A plat showing the above-described parcel is attached herein and made a part hereof as Exhibit "B".**

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

For: BKF Engineers

Davis Thresh, P.L.S. No. 6868

6.14.2018

Dated

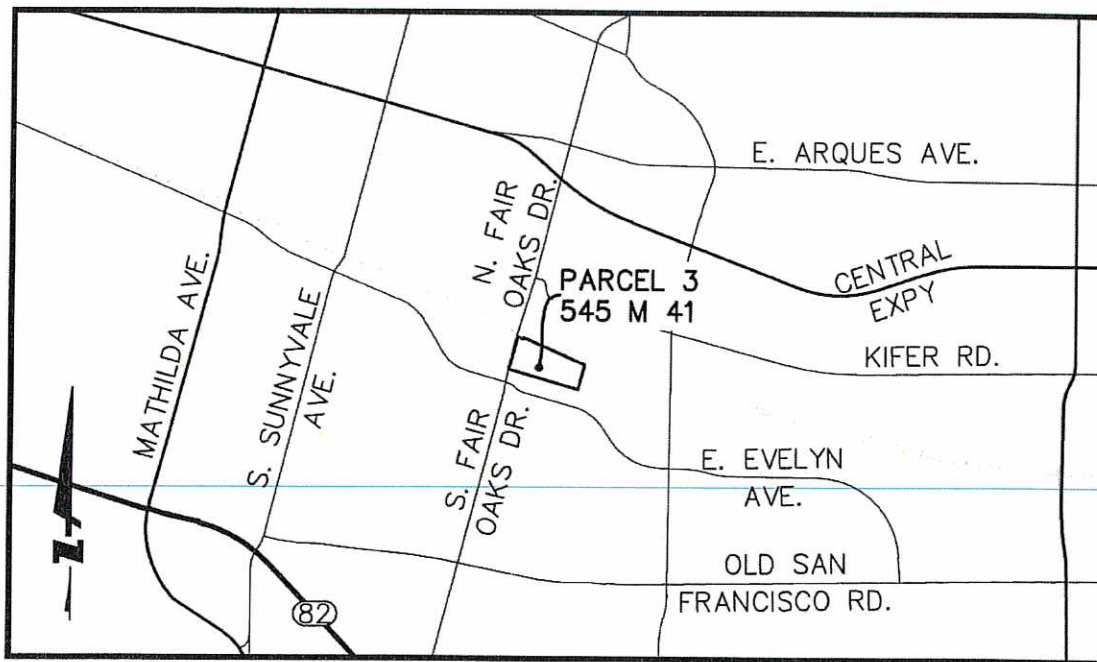


4670 Willow Road  
Suite 250  
Pleasanton  
California 94588  
phone 925.396.7700  
fax 925.396.7799  
www.bkf.com

Sheet 1 of 1

# AERIAL EASEMENT

BEING A PORTION OF PARCEL 3 AS SHOWN ON A CERTAIN PARCEL MAP  
RECORDED IN BOOK 545 PAGES 41-43, SANTA CLARA COUNTY RECORDS



## BASIS OF BEARINGS

THE BEARING N14°52'00"E BEING THE CENTERLINE OF FAIR OAKS AVE., AS SHOWN ON THAT CERTAIN PARCEL MAP FILED FOR RECORD ON JUNE 27, 1985, IN BOOK 545 OF PARCEL MAPS AT PAGES 41-43

## LEGEND

(R) = RADIAL BEARING  
POB = POINT OF BEGINNING  
M = BOOK AND PAGE OF MAPS

LINE TABLE		
	DIRECTION	LENGTH
L1	S67°33'09"E	2.96
L2	S71°43'53"E	1.50
L3	N71°43'53"W	1.96
L4	N14°51'59"E	7.79



4670 WILLOW RD  
SUITE 250  
PLEASANTON, CA 94588  
925-396-7700  
925-396-7799 (FAX)

**D-5**

Subject EXHIBIT B

AERIAL EASEMENT

Job No. 20107166

By MR Date 6/14/18 Chkd. WS

SHEET 1 OF 2

# EXHIBIT D

PARCEL 1  
545 M 41

CALTRAIN

N. FAIR OAKS  
AVE.

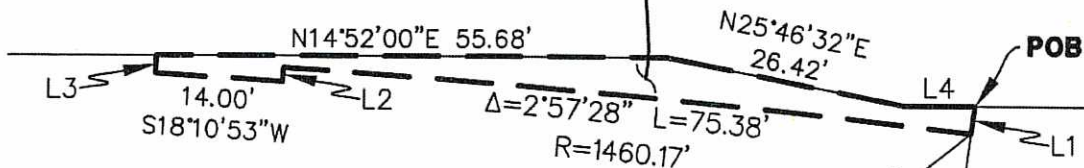
N14°52'00"E

BASIS OF BEARINGS

AERIAL EASEMENT

253 SQ. FT.±

0.006 ACRES±



LANDS OF MONUMENT 3:  
REALTY FUND  
DOC. NO. 9084533

PARCEL 3  
545 M 41

(R)N68°35'11"W

PARCEL 5  
215 M 22

CALTRAIN



(SCALE IN FEET)



4670 WILLOW RD  
SUITE 250  
PLEASANTON, CA 94588  
925-396-7700  
925-396-7799 (FAX)

D-6

Subject EXHIBIT B

AERIAL EASEMENT

Job No. 20107166

By MR Date 6/14/18 Chkd. WS

SHEET 2 OF 2

## **EXHIBIT E**

Recording Requested by:  
City of Sunnyvale  
Public Works Department

When recorded, mail to:

**City of Sunnyvale**  
**Public Works Department**  
**PO Box 3707**  
**Sunnyvale, CA 94088-3707**

(This space for Recorders use only.)

No recording fee required; this document is exempt from fee pursuant to Sections 6103 and 27383 of the California Government Code. This deed is exempt from tax pursuant to Section 11922 of the California Revenue and Taxation Code.

APN: 209-02-003  
Project: Fair Oaks Avenue Overhead Bridge Widening Project  
Federal Aid #: BHLS 5213 (039)

### **AERIAL EASEMENT DEED**

FOR A VALUABLE CONSIDERATION, receipt of which is hereby acknowledged, **Monument 3: Realty Fund VII, LTD., A California Limited Partnership** hereby GRANT(s) to the **City of Sunnyvale, a municipal corporation**, an Aerial Easement for freeway purposes to construct, replace, inspect, maintain, repair, operate or remove an overhead freeway bridge, supporting columns and footings, including any and all appurtenances thereto, over, under, upon, and across that certain real property situated in City of Sunnyvale, County of Santa Clara, State of California described as:

Exhibit "A" and Exhibit "B" attached hereto and made a part hereof.

Dated this \_\_\_\_\_, 2018

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

By: \_\_\_\_\_  
Name: C. Gemma Hwang  
Title: Managing Member

**EXHIBIT E**

**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 \_\_\_\_\_ } S.S.

On \_\_\_\_\_ 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 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.

\_\_\_\_\_  
Signature

(Seal)

**EXHIBIT E**

CITY OF SUNNYVALE  
CERTIFICATE OF ACCEPTANCE

*- INSERT HERE -*

## **EXHIBIT E**

June 14, 2018  
BKF Job No: 20107166



ENGINEERS  
SURVEYORS  
PLANNERS

100+  
YEARS

### **EXHIBIT "A"** **Legal Description**

#### **AERIAL EASEMENT**

Real property situate in the City of Sunnyvale, County of Santa Clara, State of California, being a portion of Parcel 1 of the lands shown on that certain Parcel Map filed for record on June 27, 1985 in Book 545 of Maps at Pages 41-43 of Official Records of said county, more particularly described as follows:

#### **PARCEL A**

**Commencing** at the northeasterly corner of said Parcel 1, being a point on the westerly line of Fair Oaks Ave. as shown on said Parcel Map (545 M 41-43);

Thence along said westerly line, South  $14^{\circ}52'00''$  West, 26.26 feet to the beginning of a non-tangent curve to the left, having a radius of 1533.50 feet, from the center of said curve a radial line bears North  $68^{\circ}36'39''$  West, said point being also the **Point of Beginning** of this description;

Thence along said non-tangent curve, through a central angle of  $2^{\circ}56'32''$ , for an arc length of 78.74 feet;

Thence North  $71^{\circ}43'53''$  West, 1.50 feet;

Thence South  $18^{\circ}11'08''$  West, 14.00 feet;

Thence South  $71^{\circ}43'53''$  East, 1.50 feet to the beginning of a non-tangent curve to the left, having a radius of 1533.50 feet, from the center of said curve a radial line bears North  $72^{\circ}04'34''$  West;

Thence along said non-tangent curve, through a central angle of  $3^{\circ}00'43''$ , for an arc length of 80.61 feet;

Thence South  $14^{\circ}54'43''$  West, 2.30 feet;

Thence North  $74^{\circ}48'02''$  West, 1.50 feet;

Thence South  $14^{\circ}54'43''$  West, 14.00 feet;

Thence South  $74^{\circ}58'02''$  East, 1.50 feet;

Thence South  $14^{\circ}54'43''$  West, 14.89 feet to the general easterly line of said Parcel 1, being also the beginning of a non-tangent curve to the right, having a radius of 108.00 feet, from the center of said curve a radial line bears North  $00^{\circ}07'56''$  West;

Thence along said non-tangent curve, through a central angle of  $6^{\circ}12'45''$ , for an arc length of 0.98 feet to the point of intersection of the southerly line of said Parcel 1 (545 M 41-43) and the westerly line of an existing Aerial Easement described as Parcel X by that certain document recorded on September 22, 1966 recorded in Book 7512 at Page 714, Official Records of Santa Clara County;

## EXHIBIT E



ENGINEERS  
SURVEYORS  
PLANNERS

100+  
YEARS

June 14, 2018  
BKF Job No: 20107166

Thence along said westerly line the following two (2) courses:

- 1) North  $14^{\circ}51'59''$  East, 27.69 feet to the beginning of a tangent curve to the right, having a radius of 1,532.50 feet;
- 2) Along said curve through a central angle of  $6^{\circ}12'45''$ , an arc length of 166.17 feet to the westerly line of Fair Oaks Ave. as shown on said Parcel Map (545 M 41-43).

Thence along said easterly line, North  $14^{\circ}52'15''$  East, 10.39 feet to the **Point of Beginning**.

Parcel A contains 246 square feet more or less.

### PARCEL B

**Commencing** at the northeasterly corner of said Parcel 1, being a point on the westerly line of Fair Oaks Ave. as shown on said Parcel Map (545 M 41-43);

Thence along said westerly line, South  $14^{\circ}52'00''$  West, 13.60 feet to the **Point of Beginning** of this description;

Thence continuing along said westerly line, South  $14^{\circ}52'00''$  West, 8.33 feet;

Thence leaving said westerly line, North  $68^{\circ}18'12''$  West, 1.01 feet;

Thence North  $21^{\circ}48'38''$  East, 8.27 feet to the **Point of Beginning**.

Parcel B contains 4.16 square feet more or less.

Cumulative area of Parcel A and Parcel B is 250 square feet more or less.

### END OF DESCRIPTION

**A plat showing the above-described parcel is attached herein and made a part hereof as Exhibit "B".**

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

For: BKF Engineers

Davis Thresh, P.L.S. No. 6868

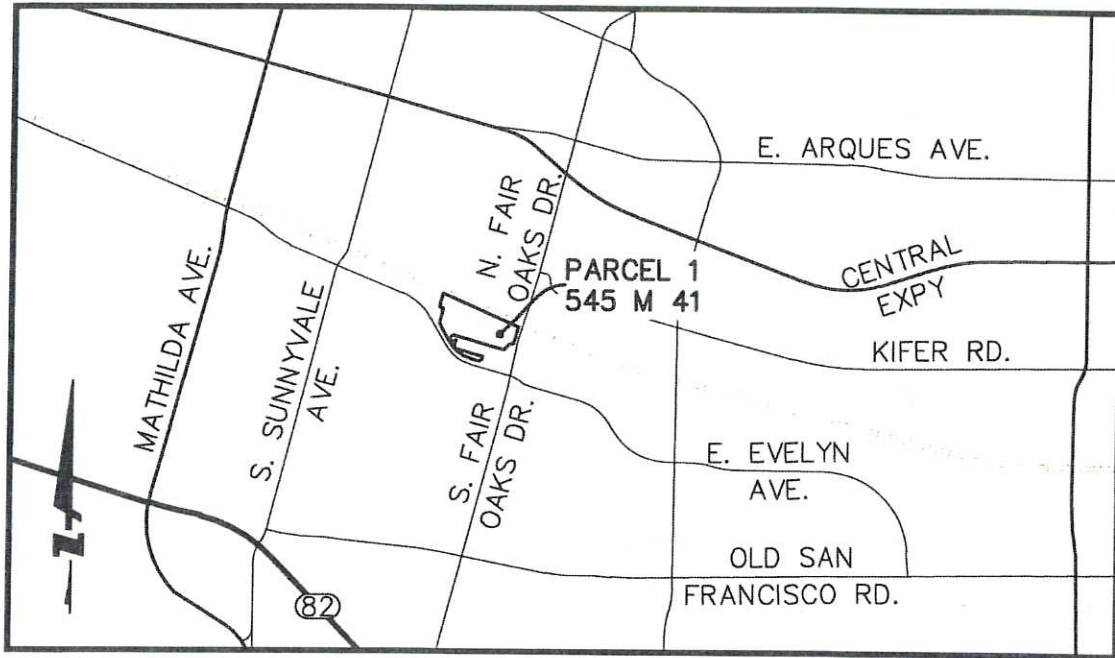
6.14.2018

Dated



**EXHIBIT E****AERIAL EASEMENT**

BEING A PORTION OF PARCEL 1 AS SHOWN ON A CERTAIN PARCEL MAP  
RECORDED IN BOOK 545 PAGES 41-43, SANTA CLARA COUNTY RECORDS

**LINE TABLE**

	DIRECTION	LENGTH
L1	N71°43'53"W	1.50
L2	S71°43'53"E	1.50
L3	S14°54'43"W	2.30
L4	N74°58'02"W	1.50
L5	S74°58'02"E	1.50
L6	N75°08'00"W	2.50
L7	S75°08'00"E	2.50
L8	N68°18'12"W	1.01

**BASIS OF BEARINGS**

THE BEARING N14°52'00"E BEING THE CENTERLINE OF FAIR OAKS AVE., AS SHOWN ON THAT CERTAIN PARCEL MAP FILED FOR RECORD ON JUNE 27, 1985, IN BOOK 545 OF PARCEL MAPS AT PAGES 41-43

**LEGEND**

(R) = RADIAL BEARING  
 A.E. = AERIAL EASEMENT  
 POB = POINT OF BEGINNING  
 POC = POINT OF COMMENCEMENT  
 M = BOOK AND PAGE OF MAPS

**CURVE TABLE**

	LENGTH	RADIUS	DELTA
C1	2.40	94.64	1°27'06"



4670 WILLOW RD  
 SUITE 250  
 PLEASANTON, CA 94588  
 925-396-7700  
 925-396-7799 (FAX)

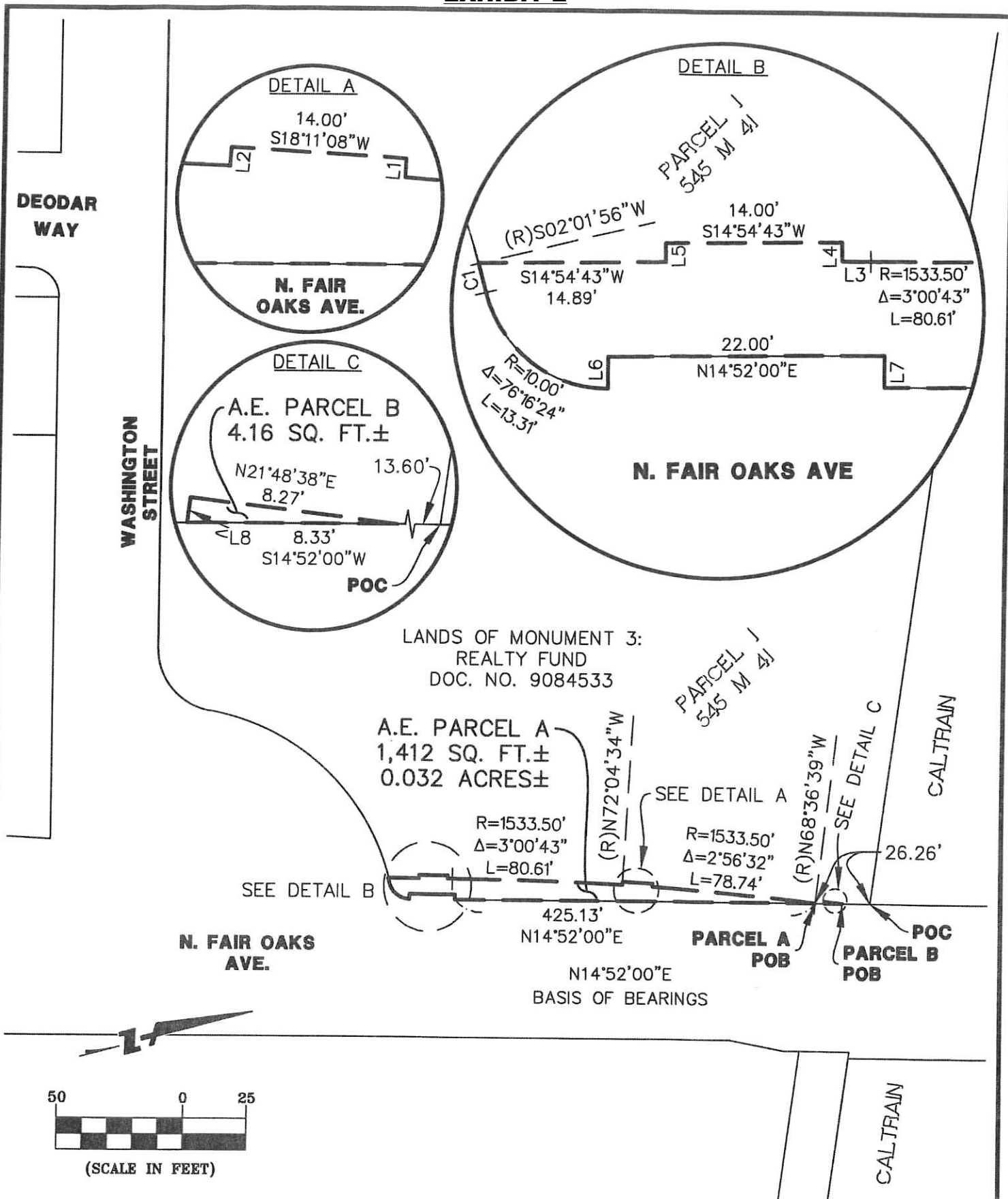
Subject EXHIBIT B  
AERIAL EASEMENT

Job No. 20107166

By MR Date 6/14/18 Chkd. WS

SHEET 1 OF 2

# EXHIBIT E



4670 WILLOW RD  
 SUITE 250  
 PLEASANTON, CA 94588  
 925-396-7700  
 925-396-7799 (FAX)

**E-7**

Subject EXHIBIT B  
AERIAL EASEMENT  
 Job No. 20107166  
 By MR Date 6/14/18 Chkd. WS  
 SHEET 2 OF 2