

**PURCHASE AND SALE AGREEMENT
AND JOINT ESCROW INSTRUCTIONS BETWEEN
THE CITY OF SUNNYVALE
AND
TRUMARK HOMES LLC
FOR PARK LAND AT 1142 DAHLIA COURT**

This Purchase and Sale Agreement and Joint Escrow Instructions (the “**Agreement**”) dated, for reference purposes only, as of _____, 2018, is made by and between the CITY OF SUNNYVALE, a California municipal corporation (the “**Buyer**”), and TRUMARK HOMES LLC, a California limited liability company, or its assignee (the “**Seller**”), collectively referred to as the “**Parties**”.

RECITALS

A. The Seller has the legal right to acquire from the existing owner Gabriel Francia, as Successor Trustee of the Francia Family Living Trust UTD Dated August 21, 2007, as amended and restated (“**Existing Owner**”) the real property located at 1142 Dahlia Court in the City of Sunnyvale, California, commonly known as the “**Corn Palace**” (APN 213-12-001) (the “**Property**”).

B. The Seller intends to develop the Property into 58 single family homes at the R-1.5/PD zoning district density (the “**Project**”) pursuant to Planning Application File No. 2017-7451 (SDP-TM), and as a condition of approval for the Project, the Seller is required to dedicate approximately 0.725 acres of the Property to the Buyer for use as a park (the “**Dedicated Park Property**”).

C. As part of the acquisition of the Property by the Seller from the Existing Owner, the Seller desires to sell an additional 1.275 acres of the Property to the Buyer to combine with the Dedicated Park Property in order to form an approximately 2 acre park as more particularly shown in Exhibit ”A” attached hereto (the “**City Park**”).

D. The Buyer is authorized to negotiate this Agreement pursuant to the City of Sunnyvale City Council (“**City Council**”) direction and this Agreement must be formally approved by the City Council at a public hearing and is contingent upon the Property being acquired by the Seller from the Existing Owner and the Project being approved by the Buyer.

E. Pursuant to the terms and conditions contained in this Agreement, Seller hereby agrees to sell the Real Property (defined below) to Buyer and Buyer hereby agrees to purchase the Real Property from Seller.

NOW, THEREFORE, in consideration of the mutual undertakings and covenants contained in this Agreement and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties agree as follows:

Section 1. Property Included in Sale. Seller hereby agrees to sell and convey to the Buyer, and Buyer hereby agrees to purchase from Seller, subject to the terms and conditions set

forth herein, the following:

(a) Real Property. All that certain real property consisting of approximately 1.275 net acres of land located in the City of Sunnyvale, County of Santa Clara, State of California, having a property address of 1142 Dahlia Court, Sunnyvale, California, and as more particularly described in Exhibit "B" attached hereto (the "**Real Property**");

(b) Blue Top Mass Graded Lot Condition. Seller agrees to improve the Real Property to "**Blue Top Mass Graded Lot Condition**", as detailed in Exhibit "C" attached hereto.

Section 2. Effective Date; Opening Escrow, Independent Consideration.

(a) The "**Effective Date**" of this Agreement shall be the date upon which (i) the Seller and the Buyer have executed this Agreement and delivered the executed Agreement to the Escrow Holder (defined below), and Escrow Holder has (ii) acknowledged and dated the "Consent of Escrow Holder" attached hereto, and (iii) distributed a copy of the fully-executed Agreement to the Parties. Within three (3) business days after the Effective Date, Buyer shall establish an escrow (the "**Escrow**") with First American Title Insurance Company ("**Title Company**"), 1737 N. First Street, Suite 500, San Jose, CA 95112, Attn: Linda Tugade (the "**Escrow Holder**").

(b) INDEPENDENT CONSIDERATION. Notwithstanding anything in this Agreement to the contrary, concurrently with the delivery of the Deposit (as defined in Section 4 (a) below, Buyer shall deposit in Escrow One Hundred Dollars (\$100) for delivery to Seller as non-refundable independent contract consideration (the "**Independent Consideration**"), which amount has been bargained for and agreed to as consideration for Seller's execution and delivery of this Agreement and for the rights and privileges granted to Buyer herein, including, without limitation, any and all rights granted to Buyer to terminate this Agreement during certain periods hereunder. If Buyer elects to terminate this Agreement for any reason, Seller shall retain the Independent Consideration. The Independent Consideration shall not be applicable towards the Purchase Price.

Section 3. Purchase Price.

(a) The purchase price for the Real Property shall be Seven Million Three Hundred and Seven Thousand Eight Hundred Twenty-Two and 00/100ths Dollars (\$7,307,822.00) (the "**Real Property Purchase Price**").

(b) Buyer shall contribute a percentage to bring the Real Property to Blue Top Mass Graded Condition and contribution to the appraisal fees, Williamson Act cancellation fees, environmental remediation, escrow or title fees, transfer or property taxes, and a 20% cost contingency. Each line item shall have a not-to-exceed maximum amount and the Buyer's aggregate contribution for **Blue Top Condition** and Fees shall not exceed \$727,812. Collectively, the total purchase price ("Total Purchase Price") of the Real Property and the Buyer's contribution for Blue Top Condition and Fees shall not exceed Eight Million Thirty-Five Thousand Six Hundred and Thirty-Four Dollars (\$8,035,634), as more fully detailed in Exhibit "C". The Real Property Purchase Price and the Blue Top Condition Expenses shall collectively be the "**Total**

Purchase Price". The Total Purchase Price shall be calculated and paid in accordance with Sections 4 and 13 below.

Section 4. Payment of Purchase Price. The Total Purchase Price shall be paid by the Buyer as follows:

(a) **Deposit**. Within five (5) business days following the Effective Date, the Buyer shall deposit with the Escrow Holder Three Hundred Thousand and 00/100ths Dollars (\$300,000.00) as an earnest money deposit (the "**Deposit**"). The Deposit and any accrued interest shall be fully refundable to the Buyer in the event the Seller is not able to satisfy Seller's Closing Conditions (as defined in Section 14 (e)) below). The Deposit and any accrued interest shall be credited against the Total Purchase Price at Closing.

(b) **Balance of the Purchase Price**. The Buyer shall deposit into Escrow the final balance of the Total Purchase Price as more fully detailed in Section 14 below.

Section 5. Assignments/Possession. Possession of the Real Property shall be delivered to the Buyer at the Close of Escrow.

Section 6. Covenants of the Seller. The Seller hereby covenants for the benefit of the Buyer as follows:

(a) Within three (3) days following the later of either: (i) the Effective Date, or (ii) receipt by the Seller from the Existing Owner, Seller shall deliver to Buyer all disclosures, and any other written documentation regarding the Real Property, received by Seller from the Existing Owner (except for the Buyer's agreements of sale with the Existing Owner and any amendments thereto).

(b) Prior to, or as of, the Closing Date, the Seller shall have acquired the Property from the Existing Owner.

Section 7. Representations and Warranties of the Seller. The Seller hereby represents and warrants the matters set forth below to be true as of the date hereof and as of the Closing Date. If requested by the Buyer, prior to the Closing Date, the Seller shall deliver to the Buyer a certificate dated as of the Closing Date, signed by the Seller, certifying that the representations and warranty are true-as of the Closing Date. As used in this Agreement, "Seller's knowledge", and similar phrases shall mean and refer to, and shall be limited to, the actual knowledge of Brian Steele (the "**Seller Representative**") without Seller Representative either having conducted or being under any obligation or duty to conduct any independent inquiry or inspection. By way of example but not limitation, with respect to the representations and warranties set forth herein, Seller Representative's actual knowledge may be limited to those facts that have been expressly reported to Seller Representative by the Existing Owner, and Seller Representative makes no representation or warranty that they have conducted any specific inquiry or inspection to verify such matters. Seller Representative shall not have any personal liability under this Agreement. The Seller represents and warrants that the Seller Representative are the individuals employed by, or otherwise affiliated with, the Seller most knowledgeable regarding the Real Property, and the representations and warranties set forth below.

(a) The Seller has the legal power, right and authority to enter into this Agreement and the instruments and documents referenced herein, and to consummate the transaction contemplated hereby. The individuals executing this Agreement and the instruments referenced herein on behalf of the Seller hereby represents and warrants that they have the power, right and authority to bind Seller.

(b) Neither the execution of this Agreement nor the consummation of the transaction contemplated hereby shall result in a breach of or constitute a default under any agreement, instrument, or other obligation to which the Seller is a party or by which the Seller or the Property may be bound, provided that Seller takes no position as to any duties of Buyer and/or Existing Owner.

(c) The Seller has the legal right to acquire all of the Property from the Existing Owner, and to Seller's knowledge, no other person has any right to acquire the Property, or any portion thereof.

(d) There is no claim, action, litigation, arbitration or other proceeding pending or threatened against the Seller or, to Seller's knowledge, the Existing Owner which relates to the Property, or the transaction contemplated hereby or which could result in the imposition of a lien against the Property or have an adverse effect on the Property or its operation. If the Seller receives knowledge of any such claim, litigation, arbitration or proceeding prior to the Closing Date, the Seller shall promptly notify the Buyer of the same in writing.

(e) As of the Closing Date, Seller shall not have entered into any management agreements, contracts, warranties, guaranties, bonds or other agreements which will affect or will be obligations of the Buyer of the Real Property which cannot be terminated on thirty (30) days prior notice, including without limitation, maintenance contracts.

(f) As of the Closing Date, no person or entity will be occupying the Real Property, or have any lease, rental agreement, or other right to occupy the Real Property, or portion thereof.

(g) The Seller has not received any written notice of any violation of, any law, ordinance, regulation, order or requirement applicable to the Property including without limitation, requirements imposed under any recorded covenants, conditions, restrictions, easements or other rights affecting the Property. If the Seller receives such a notice, or information regarding such a notice from the Existing Owner, prior to the Closing Date, the Seller shall immediately notify the Buyer.

(h) The Seller has no knowledge, except as otherwise disclosed in writing or in any of the documents delivered to Buyer by Seller, of the existence or prior existence in, on or under the Property of any hazardous material, nor the existence of or prior existence of any above or below ground storage tank. Except as otherwise disclosed in writing or in any of the documents previously delivered to Buyer, the Seller has no knowledge that any generation, transportation, storage or discharge of any hazardous material in, on or under the Property has not been in compliance with all environmental laws. The foregoing representation is qualified by the following: The Seller has done no investigation as to the presence of hazardous materials in any of the buildings or other improvements on the Property and has done no Phase 2 investigation of

the Property. Seller's sole investigation for hazardous materials was the requisition of a Phase 1 investigation of the Property, and the results of such Phase 1 investigation have been delivered to Buyer. In the event the Seller conducts any additional investigation, following the Effective Date, then the Seller shall deliver to Buyer copies of all additional reports received by the Seller.

(i) Seller warrants that it is not a foreign person or entity as defined in the Foreign Investors Real Property Tax Act ("FIRPTA") and prior to the Close of Escrow Seller will deposit an affidavit certifying same. Escrow Holder's duties pertaining to these provisions are limited to the receipt from Seller of such affidavit prior to the Close of Escrow and delivery to Buyer of such affidavit at the Close of Escrow.

(j) During the term of this Agreement, the Seller shall have a continuing duty to notify Buyer of any material facts in Seller's knowledge (including, but not limited to, any information obtained by the Seller from the Existing Owner) which would render any of the representations set forth above false. Provided that Seller provides such notice in writing to Buyer, and the change in such representations does not materially adversely impact the Property or the transaction contemplated herein, as reasonably determined by the Buyer, the representations set forth above shall be deemed modified by such notice, and such change shall not in any way impact Buyer's obligation to proceed to the Close of Escrow hereunder at the Total Purchase Price stated herein (without any reduction or offset thereto). In addition, during the term of this Agreement, the Buyer may obtain knowledge (including, but not limited to, any information obtained by the Buyer from the Existing Owner) which would render any of the representations set forth above false. If Buyer obtains any such information, then the representations set forth above shall be deemed modified by such information. If the corresponding change in the applicable representations does not materially adversely impact the Property or the transaction contemplated herein, as reasonably determined by the Buyer, then such change shall not in any way impact Buyer's obligation to proceed to the Close of Escrow hereunder at the Total Purchase Price stated herein (without any reduction or offset thereto). To the extent any change in any of the representations made herein does have a material adverse impact on the Real Property or the transaction contemplated herein, as reasonably determined by Buyer, then Buyer shall have the right to either (a) proceed to the Close of Escrow hereunder at the Total Purchase Price stated herein (without any reduction or offset thereto), (b) terminate Escrow and this Agreement by giving written notice of such termination to Seller and Escrow Holder whereupon Escrow Holder shall return the Deposit to Buyer, and thereafter this Agreement automatically shall be terminated, or (c) only if the change in any of the representations made herein was caused by Seller's willful act in violation of this Agreement or if Seller made a representation that Seller knew to be untrue as of the date of this Agreement, then Buyer may proceed pursuant to Section 14 of this Agreement. Nothing in this Section shall be deemed to limit, waive, or modify the Buyer's right to perform an inspection as set forth in this Agreement.

Section 8. Representations and Warranties of Buyer. The Buyer hereby represents and warrants the matters set forth below to be true to the best of Buyer's knowledge as of the date hereof and as of the Closing Date. Such representations shall survive the Close of Escrow and conveyance of title to the Real Property. Buyer certifies that the below representations and warranty are true to the best of the Buyer's knowledge as of the Closing Date.

(a) The Buyer has the legal power, right and authority to

(b) enter into this Agreement and the instruments and documents referenced herein, and to consummate the transaction contemplated hereby. The individuals executing this Agreement and the instruments referenced herein on behalf of the Buyer hereby represents and warrants that they have the power, right and authority to bind Buyer.

(c) Buyer has all financing in place required for the Close of Escrow, and no additional consents of any third party or any official, committee, council or other governing body or any employee, office or other individual acting with regard to or on behalf of Buyer are required.

Section 9. Indemnification.

(a) The Seller hereby agrees to defend (with counsel reasonably selected by the Buyer), indemnify and hold the Buyer (and the Buyer's council members, employees and agents) harmless from and against any and all claims, liens, demands, losses, damages, liabilities, fines, penalties, charges, administrative and judicial proceedings and orders, and all costs incurred in connection therewith (including without limitation actual attorneys' fees and costs of experts and consultants) arising from personal injury or property damage relating to the Real Property which occurred prior to the date of Close of Escrow and was caused by Seller or Seller's agent, employees, or invitees and was not caused by the acts or omissions of Buyer or Buyer's agents, employees, or invitees; (ii) breach of contract, equitable or statutory claim arising from Seller's agreement and/or actions with Existing Owner made by, or on behalf of, the Existing Owner against Buyer; and (iii) the breach of any of Seller's representations made hereunder (collectively, the "**Seller Indemnified Claims**"). The indemnity contained in this Section shall survive the Close of Escrow and/or termination of this Agreement.

(b) The Buyer hereby agrees to defend (with counsel reasonably selected by the Seller), indemnify and hold the Seller (and the Seller's affiliates, employees and agents as well as the employees and agents of its affiliates) harmless from and against any and all claims, liens, demands, losses, damages, liabilities, fines, penalties, charges, administrative and judicial proceedings and orders, and all costs incurred in connection therewith (including without limitation actual attorneys' fees and costs of experts and consultants) arising from personal injury or property damage relating to the Real Property which occurred after the Close of Escrow and was not caused by the acts or omissions of Seller's or Seller's agents, employees or invitees, and/or Existing Owner.

(c) From and after the Closing Date, except for (i) a breach of Seller's representations, warranties and covenants set forth in this Agreement or in any closing document that survives the Closing Date, or (ii) Seller's breach of this Agreement (collectively, the "**Excepted Matters**"), Seller shall not be liable to Buyer for any loss or damage to persons or property, injury to Buyer's business or any loss of income therefrom, to the extent arising or resulting from this Agreement or the use, ownership, operation, entitlement or development of the Real Property. Effective upon the Closing Date, except for the Excepted Matters, Buyer unconditionally and absolutely hereby waives, releases, acquits, and forever discharges Seller, its affiliates, subsidiaries, directors, officers and employees (collectively, the "**Released Parties**"), of and from any and all claims, liens, demands, losses, damages, liabilities, fines, penalties, charges, administrative and judicial proceedings and orders, judgments, all costs and expenses incurred in connection therewith (including, without limitation, reasonable attorneys' fees, reasonable costs of defense, and reasonable costs and expenses of all experts and consultants), or compensation

whatsoever, direct or indirect, known or unknown, foreseen or unforeseen, accrued or not accrued, liquidated or unliquidated, fixed or contingent, which Buyer ever had, now has or may have, or which may arise in the future, in each such case in this paragraph above, to the extent arising from (a) any hazardous materials on, in, under, from or affecting the Real Property and not caused by Seller or its employees, agents or representatives, (b) to the extent arising or resulting from this Agreement or the use, ownership, operation, entitlement or development of the Real Property by Buyer, and/or (c) otherwise arising out of or connected to the physical condition of the Real Property.

THE ABOVE RELEASE IS INTENDED TO BE A FULL RELEASE OF ALL CLAIMS KNOWN AND UNKNOWN. BUYER HEREBY ACKNOWLEDGES THAT BUYER HAS READ AND IS FAMILIAR WITH THE PROVISIONS OF CALIFORNIA CIVIL CODE SECTION 1542 (“**SECTION 1542**”), WHICH IS SET FORTH BELOW:

“A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR.”

BUYER HEREBY WAIVES THE PROVISIONS OF SECTION 1542 IN CONNECTION WITH THE MATTERS WHICH ARE THE SUBJECT OF THE FOREGOING WAIVERS AND RELEASES.

Buyer's Initials

(d) The provisions in this Section 9 shall survive the termination of this Agreement and/or the Close of Escrow.

Section 10. Receipt of Property Documents. Buyer acknowledges that it has received and had the opportunity to review the following documents:

(a) The preliminary title report dated August 26, 2016 issued by Title Company under Order Number NCS-744038-SC; and

(b) that certain Phase I Environmental Site Assessment dated January 5, 2017 prepared by Cornerstone Earth Group under Job/Project No:206-42-2.

Section 11. Casualty.

(a) If, prior to the Close of Escrow, the Seller becomes aware that all or any material portion of the Real Property have been destroyed, contaminated or substantially damaged, then the Seller shall promptly give the Buyer notice thereof (which notice shall contain an estimate of the repair/cleanup costs and an estimate of insurance payments to be made to the Seller, if any). Notwithstanding anything to the contrary contained herein, all references to contaminants or contamination in this Section 11 shall be deemed to mean contamination by hazardous materials in breach of environmental laws.

(b) To the extent that Seller's notice confirms that Seller shall repair, clean up, and/or restore the Real Property (in a timely manner so as not to delay Close of Escrow) such that it is in a safe condition free of any contaminants, attractive nuisances or dangers to the general public prior to the Close of Escrow, then such destruction, contamination or substantial damage shall not in any other way impair or impact this Agreement, provided that Seller performs such repair, clean up, and/or restoration on or prior to the Close of Escrow. Assuming that Seller performs such repair, clean up, and/or restoration on or prior to the Close of Escrow, then this Agreement shall remain in full force, without adjustment in the Total Purchase Price. Accordingly, at the Close of Escrow, the Seller shall not assign to the Buyer any of the Seller's right, title, and interest, if any, in and to any insurance proceeds resulting from any casualty, including, but not limited to any right, title, or interest assigned by the Existing Owner to the Seller.

(c) If Seller does not include such confirmation in such written notice, then the Buyer, at its option, may terminate this Agreement upon written notice to the Seller not later than seven (7) business days after receipt of Seller's written notice thereof. For purposes of this Agreement, a "material portion" of the Real Property shall mean a casualty in excess of ten percent (10%) of the Purchase Price of the Real Property. If this Agreement is terminated, notwithstanding any other provision of this Agreement, all documents and funds, including the Deposit, if made, including any interest thereon, shall be returned to the Buyer, and neither party shall have any further rights or obligations hereunder, except for payment of any escrow and title cancellation fees which shall be borne equally by the Parties and those provisions specified to survive the termination of this Agreement. If the Buyer fails to deliver timely notice of its election to terminate this Agreement, then this Agreement shall remain in full force without adjustment in the Purchase Price and at the Close of Escrow, and the Seller shall assign to the Buyer all of the Seller's right, title, and interest, if any, in and to any insurance proceeds resulting from any casualty, including, but not limited to any right, title, or interest assigned by the Existing Owner to the Seller.

Section 12. "As Is" Sale. Subject to the terms and conditions of this Agreement, the Real Property shall be transferred to the Buyer "as is", "where is" and with all faults, and no patent or latent defect or deficiency in the condition of the Real Property whether or not known or discovered, shall affect the rights of either Seller or Buyer hereunder nor shall the Purchase Price be reduced as a consequence thereof. Buyer further acknowledges and agrees that except for any representations and warranties—expressly made by Seller in this Agreement (which Buyer understands and acknowledge are made to Seller's knowledge only), Seller has not made any representations, warranties or agreements by or on behalf of Seller of any kind whatsoever, whether oral or written, express or implied, statutory or otherwise, as to any matters concerning the Real Property including by way of example but not limitation the condition of the Real Property. Any and all information and documents furnished to Buyer by or on behalf of Seller

relating to the Property, including, without limitation, any environmental report, shall be deemed furnished as a courtesy to Buyer but without any warranty of any kind from or on behalf of Seller. Buyer hereby represents and warrants to Seller that Buyer has performed an independent and thorough inspection and investigation of the Property and the matters related thereto and has also investigated and has knowledge of operative or proposed governmental laws and regulations to which the Real Property may be subject. Buyer further represents that Buyer shall acquire the Real Property solely upon the basis of Buyer's independent inspection and investigation of the Real Property.

SELLER'S INITIALS: _____ **BUYER'S INITIALS:** _____

Section 13. Buyer's Remedies. Seller shall have thirty (30) days from receipt of Buyer's written notice to Seller of Seller's default under this Agreement to cure any such default, provided that if such default is not susceptible to cure within such thirty (30) day period, then Seller shall have such longer time as is reasonably necessary to effect such cure provided that Seller uses continual commercially reasonable efforts to effect such cure, in no event to exceed sixty (60) days after the date of the Buyer's initial notice to Seller. In the event of a breach of this Agreement by the Seller beyond applicable notice and cure periods, including, but not limited to, the Seller's failure to deliver title to the Real Property in accordance with Section 15 below, the Buyer may either (a) terminate Escrow and this Agreement by giving written notice of such termination to Seller and Escrow Holder whereupon Escrow Holder shall return the Deposit to Buyer, and thereafter this Agreement automatically shall be terminated, or (b) bring and maintain an action for specific performance, without any right to seek damages of any kind or nature. Except for the foregoing remedies Buyer waives the right to seek damages of any other type or any other remedy against Seller under or in connection with this Agreement for failure of the Close of Escrow to occur. Notwithstanding anything to the contrary contained herein, in the event that Seller is unable to proceed to the Close of Escrow because of a default of any Existing Owner under such Existing Owner's agreement with Seller, then Seller shall have the right in Seller's sole and absolute discretion but not the obligation to pursue remedies against the Existing Owner, and, if Seller informs Buyer of such situation and Seller elects not to pursue its remedies against the Existing Owner, then Buyer's sole remedy under this Agreement shall be to terminate Escrow and this Agreement by giving written notice of such termination to Seller and Escrow Holder whereupon Escrow Holder shall return the Deposit to Buyer, and thereafter this Agreement automatically shall be terminated (except for any provision that expressly survives termination). Notwithstanding anything to the contrary contained in this Agreement, to the extent that any provisions of this Agreement expressly survive the Close of Escrow, then Buyer shall be entitled to all remedies at law or equity with respect to a breach by Seller thereof.

Section 14. Joint Escrow Instructions; Close of Escrow. Subject to the other provisions of this Agreement, Escrow shall close on the later of the following: (i) the date on which is five (5) business days after the Real Property is determined to be in Blue Top Mass Graded Condition (pursuant to Section 14 (e)(v) below) (the "**Closing Date**"). Prior to the Closing Date, the following documents (collectively, the "**Closing Documents**"), shall be delivered to Escrow Holder's office:

- (a) Two (2) originals of this Agreement, executed by Seller and Buyer;

(b) One (1) original grant deed, in substantially the form attached hereto as Exhibit “D”, executed by Seller (the “**Grant Deed**”);

(c) An affidavit in form reasonably acceptable to Buyer certifying that Seller is not a “foreign person” within the meaning of Section 1445(e)(3) of the Internal Revenue Code of 1986, as amended, and a duly executed California 593-W form, both executed by Seller;

(d) One (1) original Preliminary Change of Ownership form executed by Buyer.

References in this Agreement to the “**Close of Escrow**” or the “**Closing**” shall mean and refer to the date on which the Grant Deed is recorded in the office of the recorder of Santa Clara County, California (the “**Official Records**”).

(e) Conditions to Closing. The following are Parties’ conditions to Closing (collectively, the “**Closing Conditions**”):

(i) Escrow Holder has received the Closing Documents and all such documents have been duly executed by all applicable parties and duly acknowledged (and are in form to record), where required.

(ii) Seller shall provide Buyer with the invoices together with reasonable back-up documentation evidencing the costs and expenses incurred in connection with the Blue Top Condition Expenses (the “**Blue Top Condition Expenses Billing Statement**”). Buyer shall have ten (10) business days to review, approve, or disapprove the Blue Top Condition Expenses Billing Statement. If Buyer approves the Blue Top Condition Expenses Billing Statement then Escrow Agent shall notify Buyer and Seller in writing of the Blue Top Condition Expenses due from Buyer at Closing. If Buyer disapproves the Blue Top Condition Expenses Billing Statement, then Buyer shall provide Buyer’s specific objection(s) in writing to Seller (the “**Blue Top Expenses Objection Notice**”). Seller shall have five (5) business days from Seller’s receipt of the Blue Top Expenses Objection Notice to review the Blue Top Expenses Objection Notice and respond to Buyer in writing that Seller either (i) agrees with Buyer’s objections contained in the Blue Top Expenses Objection Notice, (i) disagrees with Buyer’s objections contained in the Blue Top Expenses Objection Notice. If Seller agrees with Buyer’s objections contained in the Blue Top Expenses Objection Notice, then Seller shall provide a revised Blue Top Condition Expenses Billing Statement to Buyer for approval. If Seller disagrees with any or all of Buyer’s objections in the Blue Top Expenses Objection Notice, then Seller and Buyer shall negotiate in good faith to resolve such disagreement. If Seller and Buyer are able to resolve their disagreement regarding the disputed Buyer’s objections in the Blue Top Expenses Objection Notice, then Seller shall provide a revised Blue Top Condition Expenses Billing Statement to Buyer reflecting the Parties’ agreement with respect to Blue Top Condition Expenses for Buyer’s review

and approval. Buyer shall have three (3) business days to review, approve, or disapprove the revised Blue Top Condition Expenses Billing Statement. If Buyer approves the revised Blue Top Condition Expenses Billing Statement, then Escrow Agent shall notify Buyer and Seller in writing of the Blue Top Condition Expenses due from Buyer at Closing. If Buyer disapproves the revised Blue Top Condition Expenses Billing Statement, then the Parties shall again negotiate in good faith to resolve such disagreement. Once the Parties have agreed in writing to the amount of Blue Top Condition Expenses, the Parties shall advise Escrow Holder, and Buyer shall deposit the final Total Purchase Price within five (5) business days.

(iii) Escrow Holder has received from Buyer the Total Purchase Price from Buyer and is prepared to immediately disburse the Total Purchase Price to Seller in accordance with the terms and provisions of this Agreement.

(iv) Escrow Holder has received from Seller the remaining balance of all fees required for the sale and transfer of the Real Property pursuant to the terms of this Agreement, if any.

(v) The Real Property is in Blue Top Mass Graded Lot Condition, as certified in writing by an independent, third party engineer to be mutually selected by Seller and Buyer, and is ready to be delivered from Seller to Buyer in accordance with the terms of this Agreement.

(vi) Title Company has delivered to Seller an updated preliminary title report evidencing Seller as the fee owner of the Real Property and confirming that the Real Property is free and clear of all liens, encumbrances, clouds and conditions, right or occupancy or possession.

(vii) Seller has executed the Grant Deed which shall include the Dedicated Park Property, and is ready to authorize the Escrow Holder to release same for recordation in the Official Records, in accordance with the conditions of approval in the Seller's approved planning application.

(viii) Seller and Buyer have reviewed and approved the final settlement statement prepared by Escrow Holder, reflecting the final total of the Blue Top Condition Expenses and Total Purchase Price, and any approved costs and expenses for the transaction.

(ix) Seller has closed escrow and acquired the Property from the Existing Owner.

(f) Closing Procedures. When all of the foregoing Closing Conditions have been fully met, Escrow Holder shall take the following actions:

- (i) Notify Seller and Buyer that all Closing Conditions have been fully met, and obtain written confirmation from Seller and Buyer to proceed with the Closing; and then
- (ii) Disburse the Total Purchase Price to Seller in accordance with the Wire Instructions submitted by Seller and disburse the Escrow Fees to Escrow Holder; and then
- (iii) Record the Grant Deed in the Official Records; and then
- (iv) Pay all required fees for the sale and transfer of the Real Property.

Section 15. Condition of Title. At Close of Escrow, the Seller shall deliver insurable title to the Real Property, free and clear of all liens, encumbrances, clouds and conditions, rights of occupancy or possession except:

- (a) applicable building, subdivision and zoning laws and regulations;
- (b) any lien for current taxes and assessment not yet delinquent, or taxes and assessments accruing subsequent to recordation of the Grant Deed;
- (c) any liens, encumbrances, clouds, conditions, or exceptions arising due in whole or in part to the actions of the Buyer; and
- (d) All delinquent taxes and assessments, if any, must be paid prior to, or in connection with, the Close of Escrow.

Section 16. Title Insurance. As a condition to the Close of Escrow, Escrow Holder shall be ready to issue a CLTA Owner's Policy of Title Insurance to the Buyer in the insurable amount of the Real Property Purchase Price and showing only those exceptions to title described in Section 15, above. Escrow Holder's willingness to issue the Title Policy, subject to Buyer's paying the applicable premium, shall be conclusive evidence of Seller's satisfaction of their obligations of the title conditions reflected in Section 15, above.

Section 17. No Broker's Commission or Fee. Buyer represents to the Seller that it has not engaged or used the services of any person, firm or corporation that may claim a broker's commission or finder's fee upon execution of Agreement. The Seller represents to the Buyer that it has not been represented by any person, firm or corporation that may claim a broker's commission or finder's fee upon execution of Agreement. The Buyer and the Seller (each, reciprocally, as an "**Indemnitor**") agree to indemnify and hold the other (as "**Indemnitee**") harmless from all expense, loss, damage and claims, including the Indemnitee's attorneys' fees, if necessary, arising out the Indemnitor's breach of the foregoing representation.

Section 18. Notices. All notices required or permitted hereunder shall be in writing. Furthermore, any notice of default shall also clearly describe the nature of the default, the applicable cure period applicable to such default, the date on which such cure period expires and the requested action to cure such default. Any notice sent by personal service shall be deemed received on the actual delivery thereof. Any notice sent by registered or certified mail, return

receipt requested, shall be deemed given on the date of delivery shown on the receipt card, or if no delivery date is shown, then notice shall not be deemed given. Notices delivered by the United States Express Mail or overnight courier that provides next business day delivery shall be deemed given on the next business day after delivery of the same to the United States Postal Service or such courier with a signed acknowledgement of receipt. Each Party may change its notice address by giving at least five (5) days prior written notice to the other Party, to be given in accordance with this Section.

To Buyer: City of Sunnyvale
456 W. Olive Ave.
Sunnyvale, CA 94086
Attn: Kent Steffens

With a copy to: City of Sunnyvale
456 W. Olive Ave.
Sunnyvale, CA 94086
Attn: Chip Taylor, Director of Public Works

To Seller: Trumark Homes LLC
c/o Trumark
3001 Bishop Drive, Suite 100
San Ramon, CA 94583
Attn: Tony Bosowski

With a copy to: Trumark Homes LLC
c/o Trumark
3001 Bishop Drive, Suite 100
San Ramon, CA 94583
Attn: John Willisie

Section 19. CEQA and Seller Indemnification.

(a) Seller further acknowledges that the City retains discretion under the California Environmental Quality Act (“CEQA”) and applicable planning and zoning law. Before action on the Project by the City with regard to the Land Use Entitlements, the City retains full discretion to (i) make such modifications to any entitlements, permits or approvals as may be necessary to impose feasible measures to mitigate significant environmental impacts, (ii) select other feasible alternatives to avoid significant environmental impacts, (iii) balance the benefits against any significant environmental impacts prior to taking final action if such significant impacts cannot otherwise be avoided, (iv) determine not to proceed with the Project in the event there are substantial environmental impacts that cannot be mitigated so the Project can be approved without a statement of overriding considerations, or (v) take such other actions to approve or not approve the Project consistent with their lawful exercise of discretion.

(b) Seller shall defend, indemnify, and hold harmless the Buyer, or any of its boards, commissions, agents, officers, and employees from any claim, action, or proceeding against the City to attack, set aside, void, or annul, the approval of the Agreement pursuant to the CEQA when such claim, action, or proceeding is brought within the time period provided for in applicable state and/or local statutes. The City shall promptly notify the developer of any such claim, action or proceeding. The City shall have the option of coordinating the defense. Nothing contained in this condition shall prohibit the City from participating in a defense of any claim, action, or proceeding if the City bears its own attorney's fees and costs, and the City defends the action in good faith.

Section 20. General Provisions.

(a) Headings. The title and headings of the various sections hereof are intended as a means of reference and are not intended to place any construction on the provisions hereof.

(b) Invalidity. If any provision of this Agreement shall be found by a court of competent jurisdiction to be invalid or unenforceable, the remaining provisions shall not be affected thereby, and every provision hereof shall be valid and enforceable to the fullest extent permitted by law.

(c) Attorneys' Fees. In the event of any litigation between the Parties hereto to enforce or interpret any of the provisions of this Agreement, the prevailing party therein shall be entitled to recover from the unsuccessful party all costs and expenses, including reasonable attorneys' fees, all of which may be included as part of the judgment rendered in such litigation.

(d) Entire Agreement. This Agreement supersedes all prior negotiations and agreements between the Parties, and is intended by the Parties as a final expression of their agreement and may not be contradicted by evidence of any prior or contemporaneous agreement. The Parties further intend that this Agreement constitute the final and exclusive statement of its terms and that no extrinsic evidence whatsoever may be introduced in any judicial proceedings involving this Agreement. The Parties have read and reviewed this Agreement and agree that any rule of construction to the effect that ambiguities are to be resolved against the drafting party (including, but not limited to, Civil Code Section 1654, as may be amended from time to time,) shall not apply to this Agreement. No provision of this Agreement may be amended except by an agreement in writing signed by the parties hereto or their respective successors in interest. This Agreement shall be governed by and construed in accordance with the laws of the State of California.

(e) Successors and Assigns. Buyer may not assign or otherwise transfer all or any portion of its rights and obligations under this Agreement without Seller's consent, which consent shall not be unreasonably withheld, conditioned, or delayed. Seller may assign, convey, or otherwise transfer its rights and obligations hereunder, without Buyer's consent or prior notice. In any event, This Agreement shall be binding upon and inure to the benefit of the heirs, executors, administrators, successors and assigns of the Parties hereto.

(f) Time of the Essence. Time is of the essence in this Agreement.

(g) Cooperation of Parties. The Buyer and the Seller shall execute any and all other documents reasonably necessary or appropriate to close the purchase and sale pursuant to the terms of this Agreement at no material out of pocket cost to the performing party.

(h) Business Days. The term “business days” in this Agreement shall mean days on which the city offices of the City of Sunnyvale are open for business.

(i) Counterparts; Multiple Originals. This Agreement may be executed in counterparts, and multiple originals, each of which shall be deemed an original but all of which together shall constitute one and the same agreement.

(j) Governing Law, Jurisdiction and Venue. This Agreement shall be governed by and construed in accordance with the laws of the State of California and the Parties further agree that venue of any action brought hereunder shall be exclusively in the County of Santa Clara.

(k) Relationship of Parties. The relationship of the parties is that of seller and buyer, and nothing contained herein shall constitute either party the agent or legal representative of the other for any purpose whatsoever, nor shall this Agreement be deemed to create any form of business organization between the parties hereto, nor is either party granted the right or authority to assume or create any obligation or responsibility on behalf of the other party, nor shall either party be in any way liable for any debt of the other.

(l) Notwithstanding anything to the contrary contained in this Agreement, Seller shall not have any obligations under or with respect to this Agreement, including, without limitation, the obligation to sell the Real Property to Buyer, bring the Real Property to Blue Top Mass Graded Lot Condition, or pay for any Blue Top Condition Expenses in the event Seller does not for any reason close escrow on the purchase of the Property from Existing Owner.

[signature page follows]

IN WITNESS WHEREOF, the parties have executed this Agreement as of the dates shown below.

BUYER:

CITY OF SUNNYVALE, a California municipal corporation

By: _____

Name: _____

Its: _____

Date: _____

APPROVED AS TO FORM:

City Attorney

SELLER:

TRUMARK HOMES LLC,
a California limited liability company

By: _____

Name: _____

Its: _____

Date: _____

CONSENT OF ESCROW HOLDER

The undersigned Escrow Holder hereby agrees to (i) accept the foregoing Agreement, (ii) be Escrow Holder under said Agreement and (iii) be bound by said Agreement in the performance of its duties as Escrow Holder; provided, however, the undersigned shall have no obligations, liability or responsibility under (i) this Consent or otherwise unless and until said Agreement, fully signed by the parties, has been delivered to the undersigned or (ii) any amendment to said Agreement unless and until the same shall be accepted by the undersigned in writing.

FIRST AMERICAN TITLE INSURANCE COMPANY (“**Escrow Holder**”)

By: _____

Its: _____

Dated: _____

EXHIBIT "A"
MAP OF CITY PARK

SEE NEXT PAGE

G:\JOB2016\161065\CAD FILES\00-EXHIBITS\MAP OF CITY PARK EXHIBIT A.DWG 12/13/2018 4:38:14 PM ROGER FONG

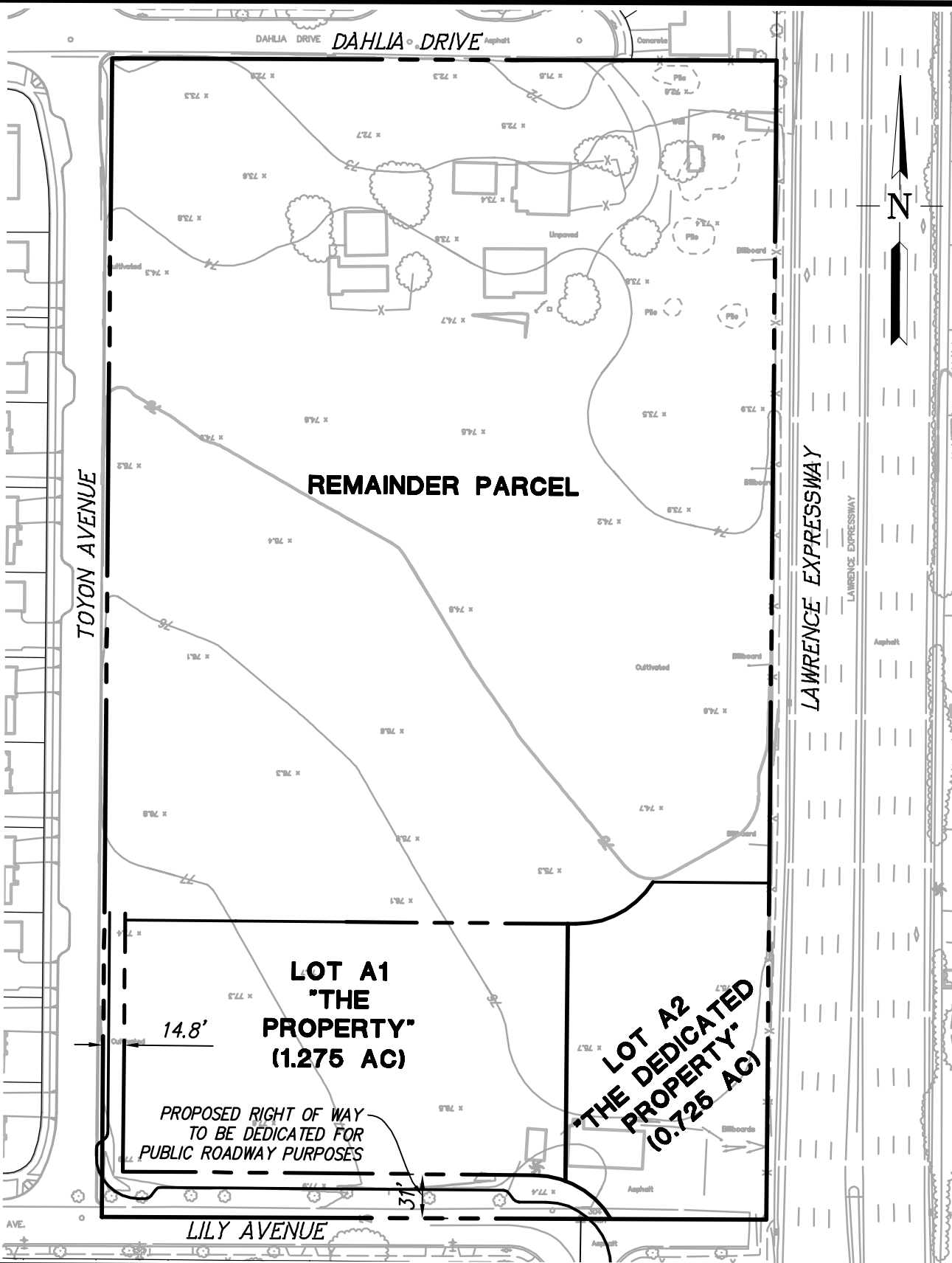


EXHIBIT A
 MAP OF CITY PARK
 AT
 CORN PALACE PROPERTY

RJA
RUGGERI-JENSEN-AZAR
 ENGINEERS ■ PLANNERS ■ SURVEYORS
 4690 CHABOT DRIVE, SUITE 200 PLEASANTON, CA 94588
 PHONE: (925) 227-9100 FAX: (925) 227-9300

CITY OF SUNNYVALE, SANTA CLARA COUNTY, CALIFORNIA

SCALE:
 1"=100'

DATE:
 12-13-2018

JOB NO.:
 161065

EXHIBIT "B"

LEGAL DESCRIPTION OF THE REAL PROPERTY

SEE NEXT PAGE

EXHIBIT "B"
LEGAL DESCRIPTION OF "THE PROPERTY"
SUNNYVALE, CALIFORNIA

Real property situate in the City of Sunnyvale, County of Santa Clara, State of California, and being a portion of Parcel 1 as described in the grant deed to Ben Francia, Trustee of the Francia Living Trust, recorded on the 22nd of August, 2007, document number 2007-19560287, Santa Clara County Records, and being more particularly described as follows:

Commencing at the southwestern corner of said Parcel 1 and being the southeastern corner of Tract 10101, The Estates at Sunnyvale, filed for record on the 10th of July, 2012, in Book 854 of maps at pages 8-13, Santa Clara County Records, North 24°49'39" East, 35.58 feet to the true Point of Beginning; thence along the following five (5) courses:

- (1) North 00°16'49" East 177.63 feet,
- (2) South 89°43'11" East 312.51 feet,
- (3) South 00°16'49" West 181.49 feet,
- (4) Along a non-tangent curve to the left with a bearing to the radius point of South 20°16'12" West, having a radius of 64.00 feet, a central angle of 19°59'23" and an arc length of 22.33 feet and
- (5) North 89°43'11" West 290.63 feet to the Point of Beginning.

Containing 1.275 acres, more or less

EXHIBIT "C"

TOTAL PURCHASE PRICE BREAKDOWN

| <u>Total Site</u> | | <u>Total SF</u> | CORN PALACE CITY PARK PURCHASE DETAIL | | | |
|--|--------------------|------------------|---|---|--|------------------|
| 9.09 | | 395960 | | | | |
| <u>Park Acres</u> | <u>Park SF</u> | <u>% of Site</u> | <u>Costs to Bring to Blue Top / Mass Graded Lot</u> | <u>Estimated Buyer's Pro-rata Share</u> <u>Not to Exceed Amounts</u> | <u>Methodology of</u> <u>Buyers Share</u> | <u>Estimates</u> |
| 1.275 | 55539 | 14% | Legal Review Fee | \$0 | City In House | \$0 |
| | | | Appraisal Fees | \$7,500 | ?? | ?? |
| 2018 Park In Lieu Fee | \$129 | | Williamson Act Cancellation Fee | \$306,828 | 14% of total cost | \$2,187,500 |
| 2019 Park In Lieu Fee(+2%)* | \$131.58 | | Environmental Remediation | \$118,291 | 14% of total cost | \$843,343 |
| <i>*per page 154 of City FY2017/18 Special Revenue Funds</i> | | | Clear & Grub/ Demo/ Grade/ SWPPP/Import | \$131,287 | 14% of total cost | \$936,000 |
| 2019 Land Price based on Calc | \$7,307,822 | | Escrow or Title Fees | \$18,270 | .25% of park value | |
| | | | Transfer or Property Taxes | \$24,335 | .333% of park value | |
| | | | | \$606,510 | | |
| Total Land Purchase Price | \$7,307,822 | | | \$121,302 | <i>20% cost contingency</i> | |
| | | | | \$727,812 | Total Cost Cap | |
| Total Blue Top Land Price (Land + Imp) not to exceed | \$8,035,634 | | | | | |

EXHIBIT "D"

FORM OF GRANT DEED

RECORDING REQUESTED BY
AND WHEN RECORDED MAIL TO:

City of Sunnyvale
456 W. Olive Ave.
Sunnyvale, CA 94086
Attn: Kent Steffens

No fee for recording pursuant to
Government Code Section 27383

APN: _____
Transfer Tax: _____

GRANT DEED

For valuable consideration, the receipt of which is hereby acknowledged, TRUMARK HOMES LLC, a California limited liability company [***OR its assignee***](“Grantor”), hereby grants to City of Sunnyvale, a California municipal corporation (“Grantee”), that certain real property (the “Property”) located in the City of Sunnyvale, County of Santa Clara, State of California, as more particularly described in Exhibit A, attached hereto and incorporated in this Grant Deed by this reference, subject to:

1. General and special real property taxes and assessments and supplemental assessments, if any, for the current fiscal year.
2. All other covenants, conditions, restrictions, reservations, rights, rights-of-way, dedications, offers of dedication and easements of record.

IN WITNESS WHEREOF, the Grantor has executed this Grant Deed as of _____, 201__.

GRANTOR:

TRUMARK HOMES LLC,
a California limited liability company

By: _____
Name: _____
Its: _____

ACKNOWLEDGED AND ACCEPTED BY
GRANTEE:

CITY OF SUNNYVALE, a California municipal
corporation

By: _____
Name: _____
Its: _____
Date: _____

APPROVED AS TO FORM:

City Attorney

EXHIBIT A TO GRANT DEED

LEGAL DESCRIPTION

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 _____

On _____, 20____, before me, _____
(here insert name and title of the officer)

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)