

**RECORD WITHOUT FEE
PURSUANT TO GOV'T CODE § 6103**

Recording Requested by:
Office of the City Attorney
City of Santa Clara, California

When Recorded, Mail to:
Office of the City Clerk
City of Santa Clara
1500 Warburton Avenue
Santa Clara, CA 95050

Form per Gov't Code § 27361.6

[SPACE ABOVE THIS LINE FOR RECORDER'S USE]

**AGREEMENT AND COVENANT RUNNING WITH THE LAND
TO CONSTRUCT AND MAINTAIN PAVERS
WITHIN THE PUBLIC RIGHT-OF-WAY**

[Restriction on 500 El Camino Real (Main Address), Santa Clara, CA]

This Agreement and Covenant Running with the Land ("Covenant") is made and entered into on this ____ day of _____, 2019 ("Effective Date"), by The President and Board of Trustees of Santa Clara College, a California non-profit corporation ("Owner"), and the City of Santa Clara, California, a chartered California municipal corporation ("City").

RECITALS

- a. WHEREAS, Owner is the sole and exclusive owner of real property commonly known as 500 El Camino Real (Main Address) in the City of Santa Clara, California, and is shown on the 2018-19 Santa Clara County Property Tax Roll as Assessor's Parcel Nos. 269-23-084 ("Property"). Property is also known as portions of formerly Alviso Street and formerly Franklin Street, said Streets were vacated per Resolution No. 16-8307 filed for record on April 26, 2016 as Document: 23286723, Santa Clara County Records.
- b. WHEREAS, City is the owner of The Alameda and Franklin Street, public right-of-ways.
- c. WHEREAS, Owner wishes to retain and maintain pavers within said public right-of-ways.
- d. WHEREFORE, the Parties enter into the following Covenant:

COVENANT

- 1. Owner proposes to retain and maintain and City agrees to permit certain existing private improvements ("Improvements") in the street right-of-way described and limited to the following:

Concrete pavers. The boundaries of Improvements encroachment are shown on attached Exhibit "A", attached hereto and incorporated herein by this reference.

2. Owner shall maintain, at Owner's expense, Improvements in a safe condition in compliance with City ordinances, rules, regulations, and such terms and conditions as all of the aforesaid are required by City from time to time. City approval of Improvements does not constitute approval on behalf of public utility companies. Approval of public utility companies shall be obtained separately by Owner. If, in the future, Improvements are removed, the area they are removed from shall be left in a safe condition. Removal shall be at Owner's expense and performed under an Encroachment Permit issued by City. Upon removal of Improvements, confirmation by City that the site has been returned to its original or better condition, and payment of applicable processing fee, City shall release Owner's obligations under this agreement by recording a Release of Interest at the County of Santa Clara Recorder's Office.
3. Owner shall permit public utility companies, the City, and their respective officers, employees, and agents to enter upon Property so that there is access to the street right-of-way for the purpose of installation, modification, repair, maintenance, removal or replacement of utility companies and City owned public improvements, facilities or properties situated in the street right-of-way. Owner waives any and all claims for damages or liabilities in connection therewith for property damages incurred as a result of City operations.
4. Owner shall pay City for any damages to City owned facilities caused by the construction or maintenance done by Owner in the street right-of-way. Payment to City shall be made within sixty (60) calendar days of said demand.
5. Owner shall modify, maintain, repair, or remove within sixty (60) days of a written demand of the City Engineer (or designee) at no cost to the City, Improvements (or portion thereof) which prohibits or interferes with the City's ability to maintain, repair, or replace its public facilities located in the street right-of-way. If owner fails to modify, maintain, repair, or remove Improvements (or portion thereof) within the time frame stated in the written demand of City, City shall cause the work to be done and bill Owner for any and all costs, fees, and expenses related to said work. Payment to City shall be made within sixty (60) calendar days of said demand for payment.
6. If Owner fails to pay City for damage to City facilities or for City caused work the Owner failed to perform upon City demand, City may enforce this Covenant in any manner allowed by law including a levy against the Property.
7. Owner shall defend, indemnify and hold harmless the City, its council, officers, employees, agents, successors and assign from any claims, demands, loss, liability, injury, damage, expense or cost (including reasonable attorney's fees) however same may be caused, which may be sustained, incurred, or asserted against City because of and/or arising from this Agreement, including but not limited to claims for design defect and/or dangerous condition of public property. Provided, however, that in no event shall Owner's obligations in this Section apply to any such claims, demands, losses, liabilities, injuries, damages, expenses, or costs to the extent arising out of City's sole negligence or willful misconduct.
8. As used herein, street right-of-way includes not only the roadway traveled by vehicles but the curb and gutter, sidewalk and area between and beyond the sidewalk, if any, to the private property lines or exterior line of right-of-way easements.

9. Each and every covenant made by Owner and/or City in this Covenant is made for the direct benefit of the respective lands described above or the interests in such lands held by the Parties, their heirs, assigns and/or successors in interest, and shall run with said respective lands or interest in lands, and if applicable, the responsibilities and burdens thereof are imposed on and shall run with said respective lands or interest in lands held by the Parties, their heirs, assigns and successors in interest.
10. The lands of Owner which are burdened by this Covenant and which will have the responsibility and burden for the modification, maintenance, repair, or removal of the Improvements is the above mentioned Property.
11. The lands of City which are benefited by the covenants included in this Agreement are The Alameda and Franklin Street, public streets owned by City.
12. Enforcement, either to restrain violation or to recover damages, shall be by proceedings at law or in equity against any person or persons violating or attempting to violate any covenant created through this Agreement.
13. Invalidation of any one of these covenants by judgment or court order shall in no way affect any of the other provisions which shall remain in full force and effect.
14. Owner represents and warrants to City that they are the owner(s) of Property at the time of their signature hereto, and have the authority to enter into this Covenant and the covenants contained herein, and grant such interests as are necessary to effectuate this Covenant.
15. Wherever the term "Owner" is used, it shall refer collectively to the Owner(s) signing this Covenant, and/or Owner's assigns and successors in interest. City and Owner may be referred to herein collectively as the "Parties" or individually as a "Party". It is the express intent of the Parties hereto to have the benefits and burdens of this covenant run with the land.

[The last paragraph, Paragraph 16, concerning recordation of
this Covenant, and the signature blocks are on page 4]

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16. This Covenant shall be recorded by City in the Office of the County Recorder of Santa Clara County.

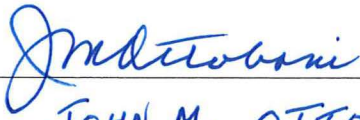
The Parties acknowledge and accept the terms and conditions of this Covenant as evidenced by the following signatures of their duly authorized representatives. It is the intent of the Parties that this Covenant shall become operative on the Effective Date first set forth above.

CITY OF SANTA CLARA, CALIFORNIA
a chartered municipal corporation

The President and Board of Trustees of Santa Clara College,
a California non-profit corporation

DEANNA J. SANTANA
City Manager

1500 Warburton Avenue
Santa Clara, CA 95050
Telephone: 408/615-2210
Fax Number: 408/241-6771

By: 
Name: JOHN M. OTTOBONI
Title: Assistant Secretary

APPROVED AS TO FORM:

Mailing Address: 500 EL CAMINO REAL
SANTA CLARA, CA 95053
Phone #: (408) 554-5355 Fax #: (408) 554-5477

BRIAN DOYLE
City Attorney

“OWNER” [APN 269-23-084 (2018-19)]

ATTEST:

NORA PIMENTEL, MMC
Assistant City Clerk

“CITY”

ALL LEGAL OWNER(S) OF PROPERTY MUST SIGN THIS DOCUMENT. IF OWNER(S) IS A CORPORATION, THE COMPLETE LEGAL NAME AND CORPORATE SEAL OF THE CORPORATION AND CORPORATE TITLES OF THE PERSONS SIGNING FOR THE CORPORATION SHALL APPEAR ABOVE. WRITTEN EVIDENCE OF AUTHORITY OF PERSON OR PERSONS EXECUTING THIS DOCUMENT ON BEHALF OF CORPORATION, PARTNERSHIP, OR JOINT VENTURE, OR ANY OTHER ORGANIZATION OTHER THAN A SOLE PROPRIETORSHIP SHALL BE ATTACHED.

ATTACH THE ALL-PURPOSE NOTARY ACKNOWLEDGMENT FORM FOR THE PERSON OR PERSONS EXECUTING THIS DOCUMENT ON BEHALF OF THE OWNER(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 SANTA CLARA

} ss

On January 10, 2019, before me, Sonia Gonzalez-Garcia, a Notary Public, personally appeared John M. Otaheni, 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.

Sonia Gonzalez-Garcia
SIGNATURE OF NOTARY PUBLIC

THIS CERTIFICATE MUST BE ATTACHED TO THE DOCUMENT DESCRIBED BELOW:

Exhibit "A" Agreement and Covenant Running with the Land

CERTIFICATE OF CORPORATE AUTHORIZATION OR TRANSFER (GENERAL)

I, John M. Ottoboni, being duly constituted Assistant Secretary of the President and Board of Trustees of Santa Clara College, a corporation organized and existing under and by virtue of the Laws of the State of California (herein after called this Corporation) do hereby certify that the following is a true and complete copy of resolutions duly adopted at a meeting of the Board of Trustees of this Corporation, duly called and held on June 5, 2015, at which a quorum was present and voting; that said resolutions are still in full force and effect and have not been rescinded; and that said resolutions are not in conflict with the Chapter or By-Laws of this Corporation:

RESOLVED: That any of the following officers of this corporation are hereby authorized, directed and empowered to cause to be transferred to this corporation of record all stock, bonds, and other securities now or hereafter standing in the name of or owned by this Corporation, and to make, execute and deliver, under the corporate seal of this Corporation, any and all written instruments of assignment and transfer necessary or proper to effectuate the authority hereby conferred.

FURTHER RESOLVED: That whatever there shall be annexed to any instrument of assignment and transfer, executed pursuant to and in accordance the foregoing resolution, a certificate of the Secretary or an Assistant Secretary of this Corporation in Office at the date of such certificate, and such certificate shall set forth these resolutions are in full force and effect and shall also set forth the names of the persons who are then officers of this Corporation, then all persons to whom such instrument with the annexed certificate shall thereafter come, shall be entitled, without further inquiry or investigation and regardless of the date of such certificate, to assume and to act in reliance upon the assumption that the shares of stock or other securities named in such instrument were theretofore duly and properly transferred, endorsed sold, assigned, set over and delivered by this Corporation, and that with respect to such securities the authority of these resolutions and of such officers is still in full force and effect.

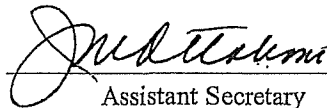
I further certify that the following is a true and correct list of the present officers of this Corporation:

Michael E. Engh, S.J., President
Paul Gentzkow, Chairman
Margaret Bradshaw, Vice-Chairman
Larry Sonsini, Secretary

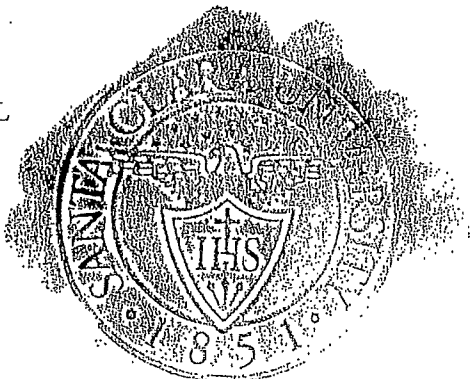
Molly McDonald, Assistant Secretary
Jack Lewis, Treasurer
Harry M. Fong, Assistant Treasurer
John M. Ottoboni, Assistant Secretary

IN WITNESS WHEREOF, I have hereunto set my hand and the seal of this Corporation this 21st day of April, 2016.

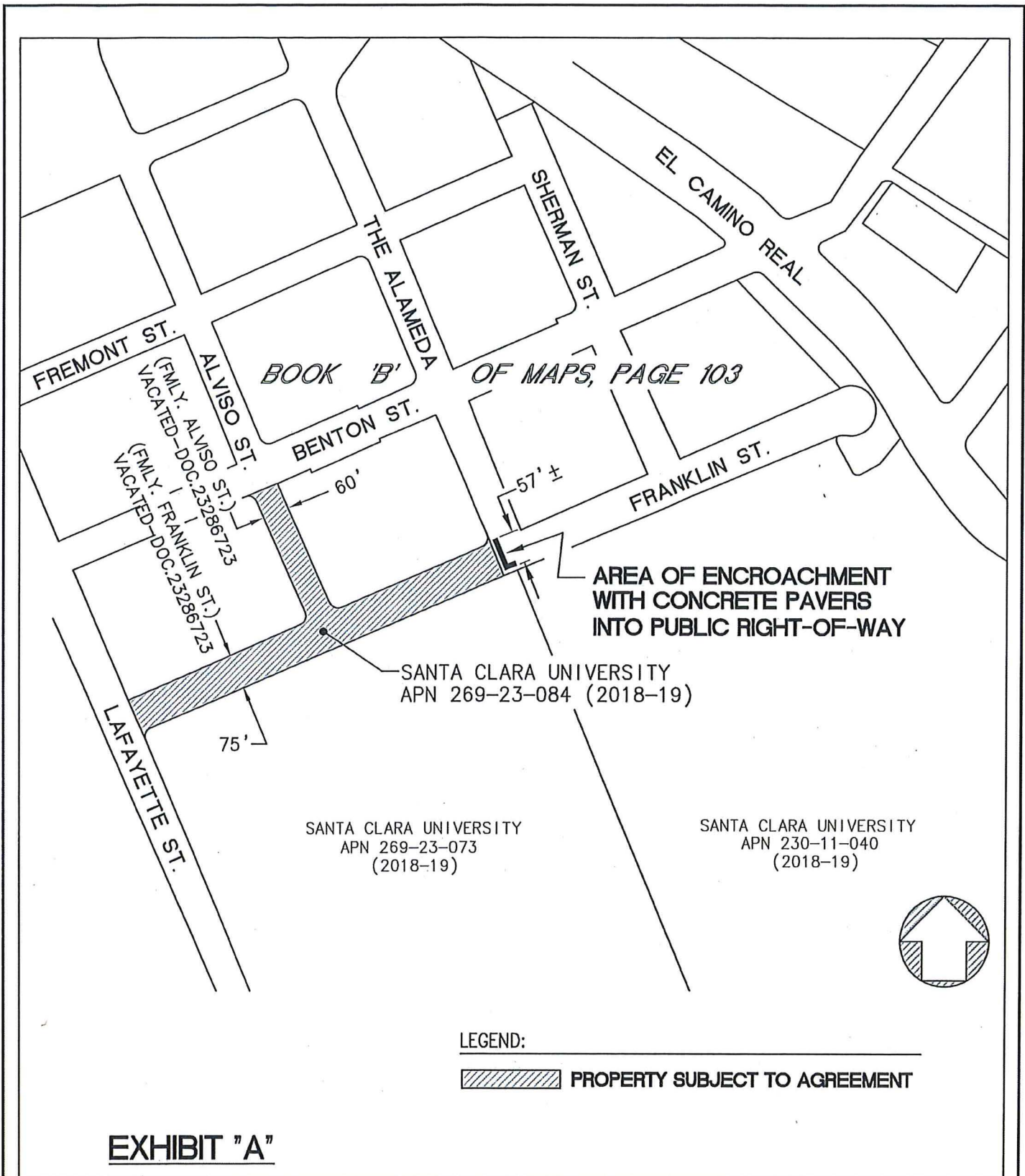
(Signed)


Assistant Secretary

SEAL



(Note: this certification should be used in conjunction with either the assignment provided on each certificate of stock and registered bond, or a separate assignment. The officer certifying the resolution must not execute the assignment. The certification and assignment must both bear the same date.)



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Revised	HL	10-25-2018
Drawn By	HL	10-18-2018
Checked By	J.D.	10-25-2018
Approved By	<i>M. Jack Liw</i>	10-30-2018
MICHAEL JACK LIW ASSITANT DIRECTOR OF PUBLIC WORKS/ CITY ENGINEER		

CITY OF SANTA CLARA

AGREEMENT AND COVENANT RUNNING WITH THE LAND
(ENCROACHMENT INTO PUBLIC RIGHT-OF-WAY)
500 EL CAMINO REAL (MAIN ADDRESS)

Scale NTS

Ref.
SC 19,104
Tracing No.
12,276-A

12,276-A