

RECORDING REQUESTED BY
AN WHEN RECORDED RETURN TO:

City of Foster City
610 Foster City Boulevard
Foster City, CA 94404
Attention: City Clerk

Record for the Benefit of
The City of Foster City
Pursuant to Government Code
Section 27383

2018-083475

10:08 am 10/26/18 AG Fee: NO FEE

Count of Pages 15

Recorded in Official Records

County of San Mateo

Mark Church

Assessor-County Clerk-Recorder



Space Above Reserved for Recorder's Use Only

15P

PROPERTY MAINTENANCE AND TDM AGREEMENT

by and between

AREOF VI US PILGRIM-TRITON, LLC,
a Delaware limited liability company,

and

THE CITY OF FOSTER CITY

PROPERTY MAINTENANCE AND TDM AGREEMENT

This Property Maintenance and TDM Agreement ("**Agreement**") is made and entered into effective as of June 15, 2018, regardless of the date actually executed or recorded, by and between the CITY OF FOSTER CITY, a California municipal corporation ("**City**") and AREOF VI US PILGRIM-TRITON, LLC, a Delaware limited liability company ("**Developer**" or "**Owner**"). City and Developer may be individually referred to herein as a "party" and, collectively, as the "parties."

RECITALS

A. Developer is the fee owner and developer of that certain approximately 3.44 acres of land and the improvements thereon located in the City of Foster City ("**City**"), County of San Mateo ("**County**"), and more particularly described on Exhibit A attached hereto (the "**Property**").

B. The Owner, as a "Developer" under that certain Master Development Agreement with the City dated February 11, 2010 (as amended, the "**Master Development Agreement**"), has been developing the Property as part of a mixed use development consisting of commercial/industrial office, retail, residential and live/work units. Sections 3.5.5 and 3.12 of the Master Development Agreement, as amended, and certain Subsequent Approvals issued by the City thereunder, require the Owner to provide for the ongoing maintenance to City standards of certain improvements located within the Property, and for the participation of the Property in a Transportation Demand Management ("**TDM**") Program.

C. This Agreement is entered into in satisfaction of Sections 3.5.5 and 3.12 of the Master Development Agreement as to the Property.

NOW, THEREFORE, the Parties executing this Agreement agree as follows:

ARTICLE ONE

INDIVIDUAL SITE MAINTENANCE

1.1. Maintenance Covenant. The Owner shall operate, maintain, repair and, as necessary, replace, all private streets and lanes, private open space, private recreation and private parks, private landscaped areas and private alleys located within the Property as depicted in Exhibit B attached hereto (collectively, the "**Private Maintenance Areas**"), at no cost or expense to the City, in accordance with the Private Property Maintenance Standards (as defined in Section 1.2 below).

1.2. Private Property Maintenance Standards. The Private Maintenance Areas shall be maintained in first class condition and repair, subject to normal wear and tear, and in compliance with the following standards, each as applicable (collectively, the "**Private Property Maintenance Standards**");

(a) Maintenance of the surface of all pedestrian areas level, smooth and evenly covered, subject to normal wear and tear, with the type of surfacing material originally installed thereon or such substitute therefor as shall be in all respects equal thereto or better in quality, appearance and durability;

(b) Prompt and regular removal of all papers, debris, filth and refuse as necessary to ensure that capacity of trash bins is not exceeded and that there is no unreasonable accumulation of refuse;

(c) Regular sweeping, wash down and/or cleaning of all hard surfaces, including brick, metal, concrete, glass, wood and other permanent poles, walls or structural elements as reasonably required to ensure clean appearance;

(d) Cleaning of lighting fixtures and re-lamping and/or re-ballasting as needed;

(e) Maintenance of signage in first-class condition, and repair or replacement of any damaged items within 10 days, provided, however, that if the repair or replacement cannot be reasonably cured within such 10-day period, an Owner shall be allowed additional time as is reasonably necessary to complete the repair or replacement so long as the Owner commences efforts to undertake the repair or replacement work within the 10-day period and thereafter diligently prosecutes the repair or replacement to completion;

(f) Maintenance of benches, awnings, planters, banners, furniture, trash containers, sculptures and other exterior elements as reasonably necessary to keep such items in first-class condition, and repair or replacement of any damaged items within 10 days, provided, however, that if the repair or replacement cannot be reasonably cured within such 10-day period, the Owner shall be allowed additional time as is reasonably necessary to complete the repair or replacement so long as the Owner commences efforts to undertake the repair or replacement work within the 10-day period and thereafter diligently prosecutes the repair or replacement to completion;

(g) Provision of adequate security lighting in all areas during periods of unrestricted public access, and maintenance and repair of all security and decorative light fixtures and associated wiring systems;

(h) Removal of any graffiti within 72 hours, provided, however, that if the graffiti removal cannot be reasonably cured within such 72-hour period, the Owner shall be allowed additional time as is reasonably necessary to complete the graffiti removal so long as the Owner commences efforts to remove the graffiti within the 72-hour period and thereafter diligently prosecutes the removal to completion;

(i) Maintenance and replacement of landscaping as necessary to maintain in first-class condition, including watering/irrigation, fertilization, pruning, trimming, shaping, and replacement, as needed, of all trees, shrubs, grasses, and other plants or plant materials, weeding of all plants, planters and other planted areas, staking for support of plants as necessary, repair and replacement, as needed, of irrigation system components, and clearance, cleaning and proper disposal of all cuttings, weeds, leaves and other debris; and

(j) Other maintenance as required by applicable laws.

ARTICLE TWO

CITY'S RIGHTS IN THE EVENT OF A FAILURE TO MAINTAIN.

2.1 **Notice and Opportunity to Cure.** If an Owner does not maintain the Private Maintenance Areas within its Property in accordance with the Private Property Maintenance Standards, the City shall have the right to notify the Owner in writing which notice shall specify the deficiencies and the actions required to be taken by the Owner to cure the deficiencies. Except as otherwise provided in Section 1.2 above, upon notification of any maintenance deficiency, the Owner shall have thirty (30) days within which to correct, remedy or cure the deficiency, provided, however, that if the maintenance deficiency cannot be reasonably cured within such 30-day period, the Owner shall be allowed additional time as is reasonably necessary to cure the maintenance deficiency so long as the Owner commences efforts to remedy the deficiency within the 30-day period and thereafter diligently prosecutes cure of the deficiency to completion. Notwithstanding the foregoing, if the City's written notification states that the problem is urgent and relates to the public health and safety, then the Owner shall have twenty-four (24) hours to rectify the problem, provided, however, if the problem cannot be reasonably rectified within such 24-hour period, the Owner shall be allowed additional time as is reasonably necessary to rectify the problem so long as the Owner commences efforts to rectify the problem within the 24-hour period and thereafter diligently prosecutes such rectification to completion.

2.2 **Maintenance by City.** In the event an Owner fails to correct, remedy, or cure or has not commenced correcting, remedying or curing such maintenance deficiency after notification and after expiration of any applicable cure period, then the City shall have the right (but not the obligation) to maintain the Private Maintenance Areas within the defaulting Owner's Property at the defaulting Owner's expense. The Owner agrees to pay the City upon demand all charges and costs reasonably incurred by the City for such maintenance. Until so paid, the City shall have a lien on the Property for the amount of such charges or costs, which lien shall be perfected by the recordation of a "Notice of Claim of Lien" against the Property. Any lien in favor of the City created or claimed hereunder is expressly made subject and subordinate to any mortgage or deed of trust made in good faith and for value, recorded as of the date of the recordation of the Notice of Claim of Lien, and no such lien shall in any way defeat, invalidate, or impair the obligation or priority of any such mortgage or deed of trust. In no event shall the City have any right to directly recover from any individual homeowner, or to exercise any lien rights against any individual homeowner or condominium owned by an individual homeowner. The City may also pursue any and all other remedies available in law or equity in the event of a breach of the maintenance obligations and covenants set forth herein.

ARTICLE THREE

TRANSPORTATION DEMAND MANAGEMENT PROGRAM

3.1 **Scope of Owner's TDM Obligations.** Owner shall be responsible for providing the TDM services described in this Article 3 to (a) the residents and employees of the Property; and (b) the occupants of the twenty-four (24) single family townhome residences located within the adjoining real property described as Parcel B of Parcel Map 01-15, The Waverly, recorded in the Official Records of San Mateo County in Book 82 of Maps at Pages 3-8 ("**Parcel B**").

3.2 **TDM Management Structure.** Owner will designate a transportation coordinator ("**Transportation Coordinator**") with authority to implement TDM strategies and oversee the management and marketing of the TDM program for the Property and Parcel B. The

Transportation Coordinator will be responsible for distributing informational materials prepared by third parties, managing transportation services offered as part of the TDM program (i.e. websites, transit passes etc.), monitoring results and coordinating with City and Commute.Org staff as needed. For the avoidance of doubt, nothing herein shall be deemed to require that the Transportation Coordinator be either (a) an employee of Owner; or (b) required to dedicate any fixed minimum amount of time to the performance of its services, and the responsibilities of the Transportation Coordinator, may, for example, be discharged by the staff of a third party property manager engaged by Owner.

3.3 TDM Communications. Welcome packets and information on transportation options and/or links to the appropriate website or mobile app will be provided to (a) all prospective tenants who are approved to rent an apartment and all prospective employees of Owner or its agents who receive an offer to work within the Property; and (b) all occupants of Parcel B. The Property will include one or more locations at which both residents and employees and occupants of Parcel B can obtain the above information on alternative transportation services. At minimum, information posted at these sites will include a link to the website (Commute.org or equivalent) and contact information for the Transportation Coordinator. Information may also include BART, CalTrain and Sam Trans schedules, information on the 511 Rideshare program and transit pass programs.

3.4 Rideshare Facilitation. The Transportation Coordinator will support residents (which, for purposes of this Article 3 shall include the occupants of Parcel B) and employees in identifying other residents or employees from throughout the Pilgrim Triton project who may be able to carpool to and/or from the Pilgrim Triton project together. The Transportation Coordinator will support carpool and vanpool formation by coordinating with the designated transportation coordinators at other properties within the Pilgrim Triton project to find suitable partners with similar work schedules, origins and destinations. The Transportation Coordinator will, upon request but at no material cost, offer assistance to Property residents or employees in registering for ride matching services such as those offered by 511.org.

3.5 Development of Transportation Materials. The Transportation Coordinator will be responsible for the development, at no material cost, of materials that provide residents and employees with information on how to get to and from the Property using alternative modes, including:

- (a) Transit passes available through transit agencies,
- (b) Walking and biking routes within the area including estimated times,
- (c) Bike parking facilities available on-site, and
- (d) Links to transit schedules including van shuttles, CalTrain, BART and Sam Trans' schedules.

3.6 CalTrain Shuttle Program.

- (a) Owner, at its expense, will coordinate with other owners of commercial and residential properties with the Pilgrim-Triton project to establish a shuttle service to and from the Property and other properties within the Pilgrim-Triton project and the San Mateo/Hillsdale CalTrain station during all business days' (Monday through Friday) other than national holidays. The shuttle service will operate at least five (5) trips from the

Property to the CalTrain station during peak morning commute hours and at least 5 trips from CalTrain to the Property during the peak evening commute hours. To the extent alternative transportation demand warrants the need for expanded service which determination shall be made by City in consultation with Commute.org or its successor based on actual data, City may require Owner and the other owners of property within the Pilgrim-Triton project, collectively, to modify the shuttle program to transport participants to and from the Millbrae BART station as well as the San Mateo/Hillsdale CalTrain station.

(b) The parties acknowledge that as of the date of this Agreement, Owner is meeting its shuttle service obligation for the Property and Parcel B by participating in and providing funding to the Commute.org Mariner's Island CalTrain shuttle program. In the event that Commute.org shall announce its intention to cease providing shuttle service to the Property, within ninety (90) days of the earlier of i) actual termination of shuttle service to the Property, or ii) receipt of notice of the anticipated termination of such service, Owner and the other owners of property within the Pilgrim-Triton project shall prepare and submit for City review and approval a plan to provide, at such owners' cost, shuttle service between the Pilgrim-Triton project and CalTrain and/or BART substantially equivalent to the level of service previously provided by Commute.org ("**Alternative Shuttle Program**"). Following City approval of such plan, Owner and the other owners of property within the Pilgrim-Triton project shall thereafter provide such shuttle service in accordance with the approved Alternative Shuttle Program.

3.7 Implementation, Monitoring and Enforcement. Owner acknowledges that ongoing monitoring and enforcement is needed to ensure the TDM program is meeting the transit metrics for the Property and Parcel B in terms of reduction of vehicle trips and/or vehicle miles traveled. At the request of City from time to time, Owner shall cause its Transit Coordinator to survey the residents' and employees' participation in the CalTrain shuttle program over time. Owner shall file an annual report as of January 31 of each year with the Foster City Community Development Department documenting efforts undertaken and results achieved in the previous year pursuant to the TDM program. As an alternative to the requirements set forth in this Article 3, Owner may propose, and City may approve or disapprove, in its sole reasonable discretion, alternative means of satisfying the TDM requirements for the Property and Parcel B. In evaluating any Owner-proposed alternative means of satisfying TDM requirements, City shall only require mitigation measures that are consistent with TDM requirements set forth in this Agreement and in the conditions of approval for the various land use entitlements and permits issued in connection with development of the Property and Parcel B.

ARTICLE FOUR

GENERAL PROVISIONS

4.1 Mortgagee Protection. In the event any mortgage, deed of trust or similar financing instrument (a "**Mortgage**") encumbering the Property shall be foreclosed, the Owner shall remain liable for any defaults existing at the time of any foreclosure, and the successor in title to the Property so foreclosed shall be responsible only to the extent necessary to bring the Property into current compliance with Owner's obligations under this Agreement, and not for any past uncured defaults or unpaid liens. Without limiting the foregoing, no event of default shall defeat the lien of any Mortgage, and no mortgagee or beneficiary shall have any liability hereunder unless, and then only during such period as, it shall be the fee owner of the Property.

4.2 Covenants Running with the Land; Successors and Assigns. All of the provisions contained in this Agreement shall constitute covenants running with the land and be binding upon Owner and its heirs, successors and assigns, and all other persons acquiring all or a portion of the Property, whether by operation of law or in any manner whatsoever; provided, however, that with respect to any portion of the Property that is comprised of for-sale residences, the Owner may assign its obligations under this Agreement to a duly formed homeowner's association by recording a duly executed assignment and assumption agreement in the Official Records of the County, and effective upon the recordation of such instrument, this Agreement shall not be binding on an individual homebuyer and shall only be binding on the duly formed homeowners association. Upon conveyance of fee title to the Property by Owner or its successor owner, as applicable, the conveying party shall be released from all obligations under this Agreement accruing after the effective date of such conveyance.

4.3 Severability. Invalidation of any one of the provisions of this Agreement shall in no way affect any other provision each of which shall remain in full force and effect.

4.4 Entire Agreement. This Agreement is fully integrated and contains the entire agreement between the parties as to the subject matter hereof. There are no representations, inducements or promises of any kind other than expressly stated herein. This Agreement may not be modified except by a writing signed by all parties.

4.5 Construction and Jurisdiction. This Agreement shall be governed by and construed under the laws of the State of California, without reference to choice of laws principles, and, unless otherwise required by applicable law, the parties agree that any action brought by either party under or in relation to this Agreement, including without limitation to interpret or enforce any provision of this Agreement, shall be brought in, and each party agrees to and does hereby submit to the jurisdiction and venue of, any state court located in San Mateo County, or, if there is federal jurisdiction, the United States District Court (Northern District) San Francisco. This Agreement is deemed to be joint work product of the parties, and shall not be construed against any particular party as the drafter.

4.6 Captions. The captions in this Agreement are for convenience and ease of reference only, and in no way define or limit the intent of this Agreement.

4.7 Incorporation of Recitals. The Recitals of this Agreement are hereby incorporated into the body of this Agreement as though fully set forth herein.

4.8 Independent Representation. Each of the parties to this Agreement is equally sophisticated. Each has conducted an independent investigation of all facts and circumstances they consider necessary or desirable. And each has consulted with its respective attorneys and advisors, to the extent it considers necessary or desirable, before entering into this Agreement.

4.9 Necessary Amendments. The parties hereto agree to reasonably cooperate in good faith to make revisions to this Agreement as necessary to take into account new or additional information as it becomes available as to the matters covered thereby. The Owner of any Property that is comprised of for-sale residences may seek reasonable modifications to this Agreement to respond to comments and requirements of the California Department of Real Estate, subject to approval by the City, which approval shall not be unreasonably withheld or delayed.

4.10 Attorneys' Fees. If any action for breach of or to enforce the provisions of this Agreement is commenced, the court in such action shall award to the party in whose favor a

judgment is entered, a reasonable sum as attorneys' fees and costs. The losing party in such action shall pay such reasonable attorneys' fees and costs.

4.11 Subordination. Owner shall use diligent commercially reasonable efforts to cause the mortgagee or beneficiary under any Mortgage recorded against the Property as of the recordation date hereof to subordinate the lien of its Mortgage to this Agreement within sixty (60) days following the recordation date of this Agreement, or as soon thereafter as is reasonably practicable. The form of subordination agreement shall be substantially as set forth on the Lender Consent and Subordination page immediately following the signature page hereof, or such other form as is reasonably approved by the City Attorney.

[SIGNATURES ON NEXT PAGE]

IN WITNESS WHEREOF, the parties hereto have entered into this Agreement as of the date first referenced above.

"OWNER"

AREOF VI US PILGRIM-TRITON LLC, a
Delaware limited liability company

By: _____

Name: Jay Glaubach

Title: Vice President

"CITY"

CITY OF FOSTER CITY, a municipal corporation

By: _____

Kevin W. Miller, City Manager
Jeff Moneda

ATTEST:

By: _____

Priscilla Tam, City Clerk

APPROVED AS TO FORM:

By: _____

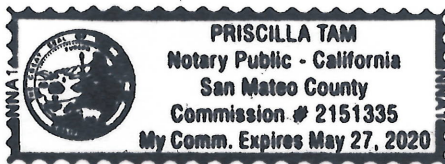
Jean Savaree, City Attorney

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT**CIVIL CODE § 1189**

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 San Mateo)
On July 20, 2018 before me, Priscilla Tam, Notary Public,
Date Here Insert Name and Title of the Officer
personally appeared Jeff Moneda
Name(s) of Signer(s)

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 [Signature]
Signature of Notary Public

Place Notary Seal Above

OPTIONAL

Though this section is optional, completing this information can deter alteration of the document or fraudulent reattachment of this form to an unintended document.

Description of Attached Document

Title or Type of Document: _____ Document Date: _____

Number of Pages: _____ Signer(s) Other Than Named Above: _____

Capacity(ies) Claimed by Signer(s)

Signer's Name: _____

- ☐ Corporate Officer — Title(s): _____
☐ Partner — ☐ Limited ☐ General
☐ Individual ☐ Attorney in Fact
☐ Trustee ☐ Guardian or Conservator
☐ Other: _____

Signer Is Representing: _____

Signer's Name: _____

- ☐ Corporate Officer — Title(s): _____
☐ Partner — ☐ Limited ☐ General
☐ Individual ☐ Attorney in Fact
☐ Trustee ☐ Guardian or Conservator
☐ Other: _____

Signer Is Representing: _____

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT


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 Los Angeles) ss.

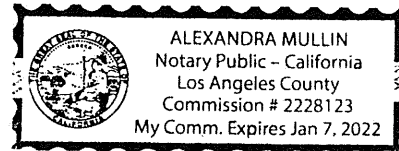
On June 25, 2018, 2018, before me, Alexandra Mullin, a Notary Public, personally appeared Jay Glaubach, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their 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.



Notary Public



January 7 2022

Commission Expiration Date

[SEAL]

RECORDING REQUESTED BY
AN WHEN RECORDED RETURN TO:

City of Foster City
610 Foster City Boulevard
Foster City, CA 94404
Attention: City Clerk

Record for the Benefit of
The City of Foster City
Pursuant to Government Code
Section 27383

Space Above Reserved for Recorder's Use Only

SUBORDINATION AND CONSENT OF LENDER

_____[Lender]_____, a _____, with an office at _____, _____, Attention: _____, and its successors and assigns ("**Beneficiary**"), is the beneficiary under that certain _____ [**Deed of Trust**] _____, executed by _____ [**Trustor**] _____, a _____, as Trustor, dated as of _____, 20__ and recorded on _____, 20__ in the Official Records of San Mateo County, California (the "**Official Records**") as Document No. _____ (the "**Deed of Trust**").

The Deed of Trust encumbers the real property described as the "Property" in that certain Property Maintenance and TDM Agreement (the "**Agreement**") between City of Foster City and Trustor dated _____, 20__ and recorded in the Official Records of San Mateo County on _____, 20__ as Instrument No. _____. As the beneficiary under the said Deed of Trust, Beneficiary hereby consents to the execution and recordation of the Agreement, and agrees that Beneficiary's interests in the Property and rights under the Deed of Trust shall be subject and subordinate to the Agreement.

Dated _____, 20__

[Lender],
a _____

By: **FORM - DO NOT SIGN**
Name: _____
Title: _____

[Signature must be notarized.]

EXHIBIT A

Legal Description of the Property

All that certain real property located in the City of Foster City, County of San Mateo, State of California, described as follows:

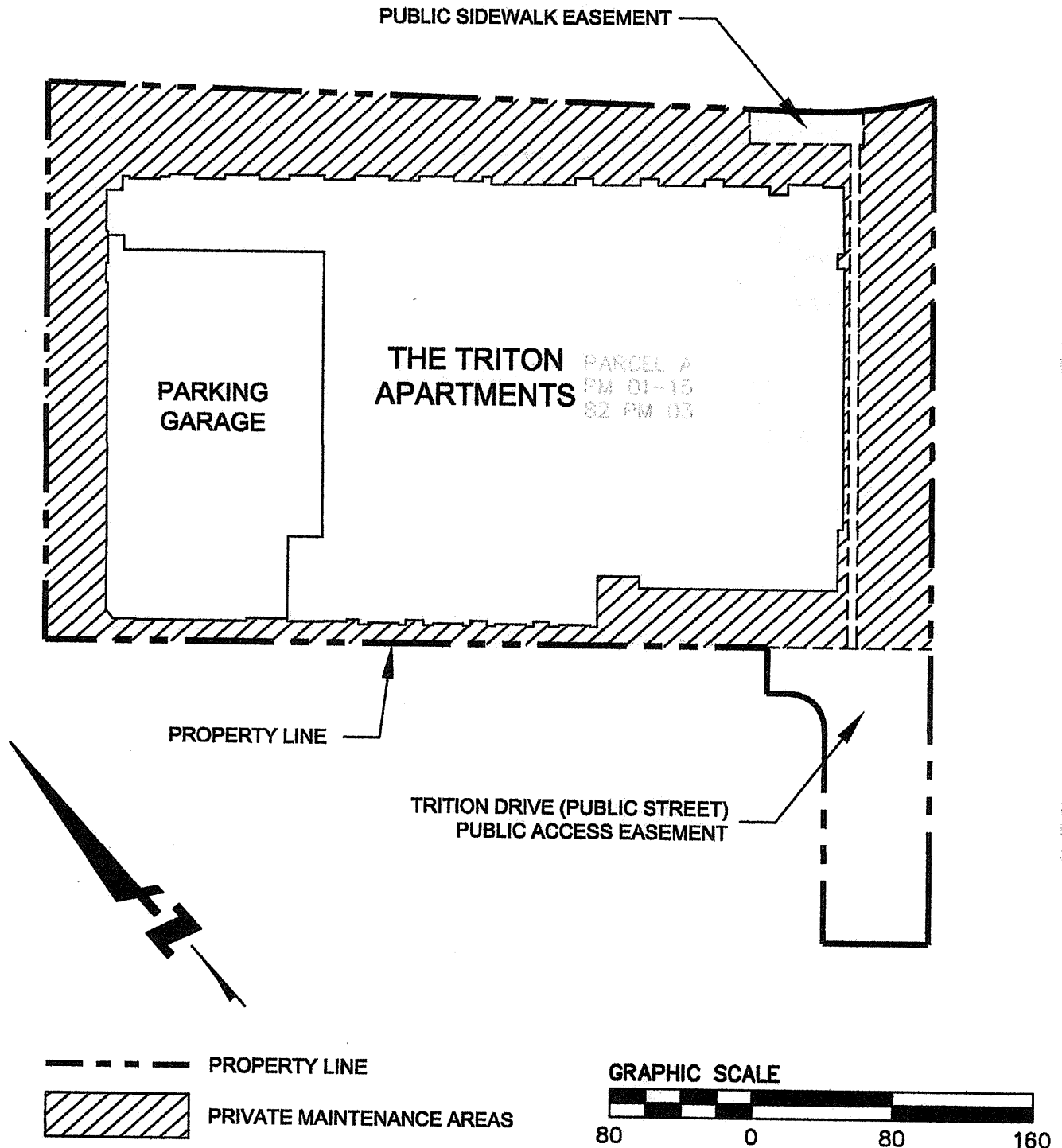
PARCEL A, AS SHOWN ON PARCEL MAP 01-15, THE WAVERLY, RECORDED IN BOOK 82 OF MAPS AT PAGES 3-8 OF SAN MATEO COUNTY RECORDS, ON JUNE 2, 2015.

EXHIBIT B

Depiction of Private Maintenance Areas

See attached.

EXHIBIT B



255 SHORELINE DR
SUITE 200
REDWOOD CITY, CA 94065
650-482-6300
650-482-6399 (FAX)

Subject Private Maintenance Areas

Job No. 20115216

By _____ Date 07/11/18 Chkd. _____
SHEET _____ OF _____

Yelena Cappello

From: Leslie Carmichael, AICP <leslie.carmichael@pacbell.net>
Sent: Thursday, October 25, 2018 2:02 PM
To: Yelena Cappello
Cc: Monica Ly
Subject: FW: Waverly/Triton: Stormwater Maintenance Agreement

Corrected email this time

From: Leslie Carmichael, AICP [mailto:leslie.carmichael@pacbell.net]
Sent: Thursday, October 25, 2018 2:00 PM
To: 'ycappello@fostercity.org'
Cc: mly@fostercity.org
Subject: FW: Waverly/Triton: Stormwater Maintenance Agreement

Yelena-

I'm out of the office until 11/6, but I left this document on my desk so you could find it. It has my latest email clipped to the top saying I was checking in to see what they wanted to do. Look near the phone.

Thanks!
Leslie

From: Leslie Carmichael [mailto:lcarmichael@fostercity.org]
Sent: Thursday, October 25, 2018 12:41 PM
To: leslie.carmichael@pacbell.net
Subject: FW: Waverly/Triton: Stormwater Maintenance Agreement

From: Mike Greene
Sent: Thursday, October 25, 2018 12:24:27 PM (UTC-07:00) Arizona
To: Yelena Cappello; Ramiza, Gerald J.; Leslie Carmichael
Cc: 'Michael Dreilinger'; 'tamsen.plume@hklaw.com'; Kristina D. Lawson; Thomas G. Jaros; City Attorney; Curtis Banks
Subject: RE: Waverly/Triton: Stormwater Maintenance Agreement

Fine with me, on behalf of the signatory under the instrument.

Michael Greene
Diablo Real Estate Group, P.C.
1333 N. California Blvd., Suite 575
Walnut Creek, California 94596
Direct: (925) 935-4400
Mobile: (925) 351-5000

From: Yelena Cappello <ycappello@fostercity.org>
Sent: Thursday, October 25, 2018 12:23 PM
To: Ramiza, Gerald J. <JRamiza@bwsllaw.com>; Mike Greene <mgreene@diablorege.com>; Leslie Carmichael <lcarmichael@fostercity.org>

Cc: 'Michael Dreilinger' <mdreilinger@aresmgmt.com>; 'tamsen.plume@hklaw.com' <tamsen.plume@hklaw.com>; Kristina D. Lawson <KLawson@hansonbridgett.com>; Thomas G. Jaros <tjaros@lplegal.com>; City Attorney <jbs@adcl.com>; Curtis Banks <cbanks@fostercity.org>
Subject: RE: Waverly/Triton: Stormwater Maintenance Agreement

Hello,

I'm happy to make the change below – do we need confirmation from anyone else prior to proceeding?

Thank you,

Yelena

From: Ramiza, Gerald J. <JRamiza@bwsllaw.com>
Sent: Thursday, October 25, 2018 10:49 AM
To: Mike Greene <mgreene@diablore.org>; Leslie Carmichael <lcarmichael@fostercity.org>; Yelena Cappello <ycappello@fostercity.org>
Cc: 'Michael Dreilinger' <mdreilinger@aresmgmt.com>; 'tamsen.plume@hklaw.com' <tamsen.plume@hklaw.com>; Kristina D. Lawson <KLawson@hansonbridgett.com>; Thomas G. Jaros <tjaros@lplegal.com>; City Attorney <jbs@adcl.com>; Curtis Banks <cbanks@fostercity.org>
Subject: RE: Waverly/Triton: Stormwater Maintenance Agreement

All, it seems like the best and easiest solution would be to type “**FORM –DO NOT SIGN**” on the signature line of the subordination agreement template as I have done on the above attached document.

Mike/Kristina, if that is acceptable to your clients, perhaps you can confirm by replying all to this email.

Yelena, assuming everyone is on board, you can print the subordination and consent of lender page of the above attached document, replace the corresponding page of the wet signed original document and present the original document, with slip replacement page, to the recorder's office. Hopefully, that will resolve the issue.

Jerry

Gerald J. Ramiza
Partner
BURKE, WILLIAMS & SORENSEN, LLP
1901 Harrison Street
Suite 900
Oakland, California 94612-3501
510.273.8780 phone
510.839.9104 fax
510.273.8723 direct
415.713.8819 mobile
jramiza@bwsllaw.com
www.bwsllaw.com

The information contained in this e-mail message is intended only for the CONFIDENTIAL use of the designated addressee named above

From: Mike Greene [<mailto:mgreene@diablore.org>]
Sent: Thursday, October 25, 2018 6:01 AM
To: Leslie Carmichael
Cc: 'Michael Dreilinger'; 'tamsen.plume@hklaw.com'; Kristina D. Lawson; Thomas G. Jaros; Jean Savaree; Curtis Banks; Yelena Cappello; Ramiza, Gerald J.
Subject: RE: Waverly/Triton: Stormwater Maintenance Agreement

Hi Leslie,

I'll take care of this, but not until tomorrow as I'm just swamped this week. The "problem" is with a format/approach that Jerry liked, so I'll send him the proposed change first. Very much on my radar, but no time until tomorrow.

Thanks for your patience,
Mike

Michael Greene

Diablo Real Estate Group, P.C.
1333 N. California Blvd., Suite 575
Walnut Creek, California 94596
Direct: (925) 935-4400
Mobile: (925) 351-5000

From: Kristina D. Lawson <KLawson@hansonbridgett.com>
Sent: Thursday, October 25, 2018 5:55 AM
To: Mike Greene <mgreene@diablorege.com>; Thomas G. Jaros <tjaros@lplegal.com>
Subject: FW: Waverly/Triton: Stormwater Maintenance Agreement

Mike, Did you have specific thoughts here that I can share with Leslie? Kristina

From: Leslie Carmichael <lcarmichael@fostercity.org>
Sent: Tuesday, October 23, 2018 1:53 PM
To: Kristina D. Lawson <KLawson@hansonbridgett.com>; Tamsen Plume - Holland & Knight LLP (tamsen.plume@hklaw.com) <tamsen.plume@hklaw.com>; City Attorney <jbs@adcl.com>
Cc: Curtis Banks <cbanks@fostercity.org>; Yelena Cappello <ycappello@fostercity.org>
Subject: RE: Waverly/Triton: Stormwater Maintenance Agreement

I'm just checking on how you would like to proceed to either modify the Agreement or argue with the County Recorder.

Thanks,
Leslie

From: Leslie Carmichael
Sent: Wednesday, October 17, 2018 10:22 AM
To: 'Kristina D. Lawson' <KLawson@hansonbridgett.com>; Tamsen Plume - Holland & Knight LLP (tamsen.plume@hklaw.com) <tamsen.plume@hklaw.com>; City Attorney <jbs@adcl.com>
Cc: Curtis Banks <cbanks@fostercity.org>; Yelena Cappello <ycappello@fostercity.org>
Subject: FW: Waverly/Triton: Stormwater Maintenance Agreement

The Property Maintenance and TDM Agreement for AREOF got kicked back by the County Recorder. I'm sending this to all of you attorneys because this document is a form for all the phases to use.

The issue is that the "Subordination and Consent of Lender" form attached to the Agreement confused them because it was not executed. I can see in Section 4.11 Subordination that this is a form to be used in the future, but that was not apparently clear to the Recorder. The name referenced in Section 4.11 does not exactly match the attached form itself. Would it help to refer to the attached form as Exhibit A and label it as such?

How do you want to proceed?

Thanks,
Leslie

From: Yelena Cappello
Sent: Tuesday, October 16, 2018 3:40 PM
To: Leslie Carmichael <lcarmichael@fostercity.org>
Subject: RE: Waverly/Triton: Stormwater Maintenance Agreement

Hi Leslie,

The Property Maintenance and TDM Agreement came back Recorder's Office as incomplete. Would you be able to review it? I checked with Vivian and she said it was a CDD item.

The items sent to the Recorder's Office included the Property Maintenance and TDM Agreement and Stormwater Maintenance Agreement.

Thanks!

-Yelena

From: Yelena Cappello
Sent: Tuesday, August 7, 2018 4:14 PM
To: Vivian Ma <vma@fostercity.org>
Subject: RE: Waverly/Triton: Stormwater Maintenance Agreement

Hi Vivian! It usually takes about 6 weeks to get the recorded document back, and I can provide you with a copy once it's recorded. Thanks!

From: Vivian Ma
Sent: Tuesday, August 7, 2018 4:12 PM
To: Yelena Cappello <ycappello@fostercity.org>
Subject: FW: Waverly/Triton: Stormwater Maintenance Agreement

Hi Yelena,

Now that Ashraf is gone, I just want to follow up on the O&M agreement. If it has already been recorded, or once it is recorded, can I have a copy of it for PW's record?

Thanks,
Vivian

From: Ashraf Shah
Sent: Monday, July 30, 2018 7:15 AM
To: Mike Greene <mgreene@diablore.org>; Ami Kern <akern@polizzottodevelopment.com>
Cc: Leslie Carmichael <lcarmichael@fostercity.org>; Vivian Ma <vma@fostercity.org>; Allan Shu <ashu@fostercity.org>; Michael Dreilinger <mdreilinger@aresmgmt.com>; Norm Dorais <NDORAIS@fostercity.org>; Jeff Moneda <jmoneda@fostercity.org>; Priscilla Tam <ptam@fostercity.org>; Leonard Matchniff <lmatchniff@fostercity.org>; Matthew Farrell <mfarrell@fostercity.org>; City Clerk's Office <CityClerk'sOffice@fostercity.org>; Michael Dreilinger <mdreilinger@aresmgmt.com>; Alix Mullin <amullin@aresmgmt.com>; Yelena Cappello <ycappello@fostercity.org>;

Mojtaba Nahrvar (mojtaban@csgengr.com) <mojtaban@csgengr.com>; Amy Dunning, PE (adunning@wilseyham.com) <adunning@wilseyham.com>

Subject: RE: Waverly/Triton: Stormwater Maintenance Agreement

Hi Ami and Mike,

Please find attached a copy of the signed c3-c6 checklist for your records. The O&M agreement is being processed by the City Clerk's office. You will receive a copy of the recorded document upon recordation.

I sign-off on the card for Jasmin last Thursday. Thanks

Ashraf

From: Mike Greene <mgreene@diablore.org>

Sent: Wednesday, July 25, 2018 7:59 PM

To: Yelena Cappello <ycappello@fostercity.org>

Cc: Leslie Carmichael <lcarmichael@fostercity.org>; Vivian Ma <vma@fostercity.org>; Allan Shu <ashu@fostercity.org>; Michael Dreilinger <mdreilinger@aresmgmt.com>; Norm Dorais <NDORAIS@fostercity.org>; Jeff Moneda <jmoneda@fostercity.org>; Priscilla Tam <ptam@fostercity.org>; Leonard Matchniff <lmatchniff@fostercity.org>; Matthew Farrell <mfarrell@fostercity.org>; City Clerk's Office <CityClerk'sOffice@fostercity.org>; Michael Dreilinger <mdreilinger@aresmgmt.com>; Alix Mullin <amullin@aresmgmt.com>; Ashraf Shah <ashah@fostercity.org>; Ami Kern <akern@polizzottodevelopment.com>

Subject: Waverly/Triton: Stormwater Maintenance Agreement

Hi Yelena,

Following on Ami's earlier message, someone from her team will drop off a new notary page and a new page 1 tomorrow, with the changes you requested. A copy of the changed page 1 is attached.

I wanted to let you know that the "broken edges" in the border of Alexandra Mullin's notary's stamp that you expressed concerns about are actually a feature of the seal, and not a defect in the stamp or her application. In addition to the clean new original notary page that we will deliver tomorrow as you requested, I'm attaching to this email a closeup of Alexandra Mullin's notary's stamp showing a very small code embedded within the side borders. If the Recorder has a question about the clarity of the stamp, feel free to provide the attached in order to confirm that the original stamp is absolutely the best quality available.

Thanks,
Mike

Michael Greene

Diablo Real Estate Group, P.C.
1333 N. California Blvd., Suite 575
Walnut Creek, California 94596
(925) 935-4400 - voice
(925) 351-5000 - mobile

This message contains information which may be confidential and/or privileged. If you have received this message in error, please notify me by reply email, delete this message, and do not use, copy, forward or disclose any information contained in or attached to this message. Thank you.

From: Ami Kern <akern@polizzottodevelopment.com>

Sent: Wednesday, July 25, 2018 4:34 PM

To: Yelena Cappello <ycappello@fostercity.org>; Ashraf Shah <ashah@fostercity.org>

Cc: Mike Greene <mgreene@diablore.org>; Leslie Carmichael <lcarmichael@fostercity.org>; Vivian Ma <vma@fostercity.org>; Allan Shu <ashu@fostercity.org>; Michael Dreilinger <mdreilinger@aresmgmt.com>; Norm

Dorais <NDORAIS@fostercity.org>; Jeff Moneda <jmoneda@fostercity.org>; Priscilla Tam <ptam@fostercity.org>; Leonard Matchniff <lmatchniff@fostercity.org>; Matthew Farrell <mfarrell@fostercity.org>; City Clerk's Office <CityClerk'sOffice@fostercity.org>
Subject: RE: Waverly/Triton: As-Built Re-Submission

Hi Yelena,
We will have this to you tomorrow afternoon.

Thank you,
Ami

AMI KERN
600 Congress Avenue, 14th Floor
Austin, TX 78701

T 972 591 8409 | M 469 265 2403
akern@polizzottodevelopment.com

polizzottodevelopment.com

New York | **Austin** | Los Angeles

From: Yelena Cappello <ycappello@fostercity.org>
Sent: Wednesday, July 25, 2018 11:56 AM
To: Ami Kern <akern@polizzottodevelopment.com>; Ashraf Shah <ashah@fostercity.org>
Cc: Mike Greene <mgreene@diablorege.com>; Leslie Carmichael <lcarmichael@fostercity.org>; Vivian Ma <vma@fostercity.org>; Allan Shu <ashu@fostercity.org>; Michael Dreilinger <mdreilinger@aresmgmt.com>; Norm Dorais <NDORAIS@fostercity.org>; Jeff Moneda <jmoneda@fostercity.org>; Priscilla Tam <ptam@fostercity.org>; Leonard Matchniff <lmatchniff@fostercity.org>; Matthew Farrell <mfarrell@fostercity.org>; City Clerk's Office <CityClerk'sOffice@fostercity.org>
Subject: RE: Waverly/Triton: As-Built Re-Submission

Hi Ami,

We noticed that the notary seal on page 6 has some broken edges; in our experience the County has requested that the seal be complete/continuous. Could you please include an continuous (unbroken) notary seal on this document to ensure that the County accepts it?

Also, could you please change the "return to" information at the top left of page 1 to the following:

Priscilla Tam
City Clerk/District Secretary
City of Foster City/Estero Municipal Improvement District
610 Foster City Boulevard
Foster City, CA 94404

Thank you, and please let me know if you have any questions.

Yelena

Yelena Cappello
Deputy City Clerk

From: Ami Kern <akern@polizzottodevelopment.com>

Sent: Wednesday, July 25, 2018 8:52 AM

To: Ashraf Shah <ashah@fostercity.org>

Cc: Mike Greene <mgreene@diablore.org>; Leslie Carmichael <lcarmichael@fostercity.org>; Vivian Ma <vma@fostercity.org>; Allan Shu <ashu@fostercity.org>; Michael Dreilinger <mdreilinger@aresmgmt.com>; Norm Dorais <NDORAIS@fostercity.org>; Jeff Moneda <jmoneda@fostercity.org>; Priscilla Tam <ptam@fostercity.org>; Leonard Matchniff <lmatchniff@fostercity.org>; Matthew Farrell <mfarrell@fostercity.org>; City Clerk's Office <CityClerk'sOffice@fostercity.org>

Subject: Re: Waverly/Triton: As-Built Re-Submission

Thank you Ashraf! I can provide a Dropbox link for you to upload the final document to if you can access dropbox.

Thanks,
Ami

AMI KERN
[600 Congress Avenue, 14th Floor](#)
[Austin, TX 78701](#)

T [972 591 8409](tel:9725918409) | M [469 265 2403](tel:4692652403)
akern@polizzottodevelopment.com

polizzottodevelopment.com

New York | **Austin** | Los Angeles

Sent from my iPhone

On Jul 25, 2018, at 8:42 AM, Ashraf Shah <ashah@fostercity.org> wrote:

Ami,
I received your final version. I professionally masked the "TBD" that still showed on the document, replaced the old pages with the revised ones, and scanned the revised final package. I couldn't attach a copy because of the size limitation. I will forward this to the City Clerk office for execution and recordation.

Regards,

Ashraf Shah, PE, PMP
Associate Civil Engineer
Public Works Engineering Department
610 Foster City Boulevard
(650) 286-3588

From: Ami Kern <akern@polizzottodevelopment.com>
Sent: Tuesday, July 24, 2018 7:44 PM
To: Ashraf Shah <ashah@fostercity.org>
Cc: Mike Greene <mgreene@diablorege.com>; Leslie Carmichael <lcarmichael@fostercity.org>; Vivian Ma <vma@fostercity.org>; Allan Shu <ashu@fostercity.org>; Michael Dreilinger <mdreilinger@aresmgmt.com>
Subject: RE: Waverly/Triton: As-Built Re-Submission

Hi Ashraf

I apologize for the garbled pdf. I am unsure what happened because I filled it in correctly on Adobe. This version should be correct. Please let me know if you need anything additional information.

Thanks,
Ami

AMI KERN

600 Congress Avenue, 14th Floor
Austin, TX 78701

T 972 591 8409 | M 469 265 2403
akern@polizzottodevelopment.com

polizzottodevelopment.com

New York | **Austin** | Los Angeles

From: Ashraf Shah <ashah@fostercity.org>
Sent: Tuesday, July 24, 2018 3:47 PM
To: Ami Kern <akern@polizzottodevelopment.com>
Cc: Mike Greene <mgreene@diablorege.com>; Leslie Carmichael <lcarmichael@fostercity.org>; Vivian Ma <vma@fostercity.org>; Allan Shu <ashu@fostercity.org>
Subject: RE: Waverly/Triton: As-Built Re-Submission

OK but how will you type it?

From: Ami Kern <akern@polizzottodevelopment.com>
Sent: Tuesday, July 24, 2018 1:45 PM
To: Ashraf Shah <ashah@fostercity.org>
Cc: Mike Greene <mgreene@diablorege.com>; Leslie Carmichael <lcarmichael@fostercity.org>; Vivian Ma <vma@fostercity.org>; Allan Shu <ashu@fostercity.org>
Subject: Re: Waverly/Triton: As-Built Re-Submission

I can be in your office to fill this portion out today.

AMI KERN

600 Congress Avenue, 14th Floor
Austin, TX 78701

T [972 591 8409](tel:9725918409) | M [469 265 2403](tel:4692652403)
akern@polizzottodevelopment.com

polizzottodevelopment.com

New York | **Austin** | Los Angeles

Sent from my iPhone

On Jul 24, 2018, at 1:40 PM, Ashraf Shah <ashah@fostercity.org> wrote:

Ami,
I found it in my inbox The designated person contact info cannot be left TBD. Please see attached. There is another sheet requiring this information. Please complete this information and email me the revised pages. I can swap them at my end to avoid sending back the original.

Regards,
Ashraf

From: Ami Kern <akern@polizzottodevelopment.com>
Sent: Tuesday, July 24, 2018 12:04 PM
To: Ashraf Shah <ashah@fostercity.org>
Cc: Mike Greene <mgreene@diablore.com>
Subject: Fwd: Waverly/Triton: As-Built Re-Submission

Please see below as it was signed for by F Danish yesterday morning

Thanks,
Ami

AMI KERN
[600 Congress Avenue, 14th Floor](#)
[Austin, TX 78701](#)

T [972 591 8409](tel:9725918409) | M [469 265 2403](tel:4692652403)
akern@polizzottodevelopment.com

polizzottodevelopment.com

New York | **Austin** | Los Angeles

Sent from my iPhone

Begin forwarded message:

From: Mike Greene <mgreene@diablore.com>
Date: July 23, 2018 at 12:12:46 PM PDT
To: Ami Kern <akern@polizzottodevelopment.com>
Cc: Christine Cheatham <ccheatham@polizzottodevelopment.com>, Gino Polizzotto <gpolizzotto@polizzottodevelopment.com>, Michael Dreilinger <mdreilinger@aresmgmt.com>, Julie Carpenter

<jcarpenter@diablorege.com>

Subject: RE: Waverly/Triton: As-Built Re-Submission

Signed for by "F. Danish" at 8:57 this morning.

Michael Greene

Diablo Real Estate Group, P.C.
1333 N. California Blvd., Suite 575
Walnut Creek, California 94596
Direct: (925) 935-4400
Mobile: (925) 351-5000

From: Ami Kern <akern@polizzottodevelopment.com>

Sent: Monday, July 23, 2018 11:28 AM

To: Mike Greene <mgreene@diablorege.com>

Cc: Christine Cheatham <ccheatham@polizzottodevelopment.com>;

Gino Polizzotto <gpolizzotto@polizzottodevelopment.com>; Michael

Dreilinger <mdreilinger@aresmgmt.com>

Subject: FW: Waverly/Triton: As-Built Re-Submission

Importance: High

Hi Mike,

Ashraf is indicating he has not received the final wet signed Stormwater Maintenance Agreement. Do you have a delivery receipt?

Thanks,

Ami

AMI KERN

600 Congress Avenue, 14th Floor
Austin, TX 78701

T 972 591 8409 | M 469 265 2403
akern@polizzottodevelopment.com

polizzottodevelopment.com

New York | **Austin** | Los Angeles

From: Ashraf Shah <ashah@fostercity.org>

Sent: Monday, July 23, 2018 1:24 PM

To: Jonathan Mitro <jmitro@bkf.com>; Eric Swanson

<eswanson@bkf.com>

Cc: Ami Kern <akern@polizzottodevelopment.com>; Amy Dunning, PE

(<adunning@wilseyham.com> <adunning@wilseyham.com>; Mojtaba

Nahrvar (<mojtaban@csgengr.com> <mojtaban@csgengr.com>);

'gregm@csgengr.com' <gregm@csgengr.com>; Christine Cheatham <ccheatham@polizzottodevelopment.com>; Leslie Carmichael <lcarmichael@fostercity.org>; Vivian Ma <vma@fostercity.org>; Allan Shu <ashu@fostercity.org>

Subject: RE: Waverly/Triton: As-Built Re-Submission

Importance: High

Eric and Jonathan,

I received the signed hard copies of the record drawing and the C3/C6 checklist. The record drawing is ok but the C3/C6 Development Review Checklist (attached) is missing Worksheets F and G and it is not the latest form posted on the County's web site. The latest forms can be found at <http://www.flowstobay.org/newdevelopment>

Please revise and resubmit the form ASAP so I can close this project.

Ami,

I did not receive the final original wet-signed O&M agreement yet.

Regards,
Ashraf

From: Jonathan Mitro <jmitro@bkf.com>

Sent: Thursday, July 19, 2018 4:17 PM

To: Ashraf Shah <ashah@fostercity.org>

Cc: 'Ami Kern' <akern@polizzottodevelopment.com>; Amy Dunning, PE <adunning@wilseyham.com> <adunning@wilseyham.com>; Mojtaba Nahrvar <mojtaban@csgengr.com> <mojtaban@csgengr.com>; 'gregm@csgengr.com' <gregm@csgengr.com>; Eric Swanson <eswanson@bkf.com>; Christine Cheatham <ccheatham@polizzottodevelopment.com>; Leslie Carmichael <lcarmichael@fostercity.org>

Subject: RE: Waverly/Triton: As-Built Re-Submission

Ashraf,

Original, signed hardcopies of the As-Builts and the C3/C6 checklist are in the mail for tomorrow morning delivery.

PDF scanned copies of these As-Builts their associated CAD files may be downloaded from the following link:

<https://bkf.sharefile.com/d-s99eb013ccfb4e6db>

Thank you for all your help!

-JNM

JONATHAN N. MITRO, PE | Project Engineer

BKF Engineers
d 925.940.2256
jmitro@bkf.com

From: Ashraf Shah <ashah@fostercity.org>
Sent: Tuesday, July 17, 2018 4:28 PM
To: Ami Kern <akern@polizzottodevelopment.com>; Amy Dunning, PE
(adunning@wilseyham.com) <adunning@wilseyham.com>; Mojtaba
Nahrvar (mojtaban@csgengr.com) <mojtaban@csgengr.com>; 'Greg'
(gregm@csgengr.com) <gregm@csgengr.com>
Cc: Jonathan Mitro <jmitro@bkf.com>; Eric Swanson
<eswanson@bkf.com>; Christine Cheatham
<ccheatham@polizzottodevelopment.com>; Leslie Carmichael
<lcarmichael@fostercity.org>
Subject: RE: Waverly/Triton: As-Built Re-Submission

Hi Ami,
The As-builts are good to go. They should be labeled a "Record Drawings" on all the sheets. Please stamp, sign and submit the original hard copy, a PDF scanned copy of the stamped/signed as-builts, and an AutoCAD copy for our records.

Thanks,
Ashraf

Confidentiality Notice: This email (including any attachment) is intended only for the individual or entity to which it is addressed and may contain information that is privileged, confidential and exempt from disclosure under applicable law. If you are not the intended recipient, you are not authorized to intercept, read, print, retain, copy, forward, or disseminate this communication. If you have received this communication in error, please reply to the sender or call 650-482-6300, and then please delete this message from your inbox as well as any copies. Thank you, BKF Engineers 2018

<20180724134410972.pdf>