



July 6, 2005

Mr. Ron Garratt, Assistant City Manager  
City of Santa Clara  
1500 Warburton Avenue  
Santa Clara, CA 95050

Dear Ron:

Enclosed is a fully executed copy of the Purchase and Sales Agreement for a portion of the BAREC Property located at 90 North Winchester Boulevard, Santa Clara California. All of the needed modifications for the exhibits have been completed and attached to the Agreement.

If you have any questions or comments, please contact me at (916) 376-1826 or email me at [frank.davidson@dgs.ca.gov](mailto:frank.davidson@dgs.ca.gov).

Sincerely,

A handwritten signature in black ink that reads "J. Frank Davidson". The signature is written in a cursive, flowing style.

J.FRANK DAVIDSON, Assistant Chief  
Asset Planning and Enhancement Branch

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- Ron Garratt 07-06-05.doc

PURCHASE AND SALE AGREEMENT

FOR THE PURCHASE OF LAND  
BY AND BETWEEN  
THE REDEVELOPMENT AGENCY OF THE CITY OF SANTA CLARA  
AND  
STATE OF CALIFORNIA  
DEPARTMENT OF GENERAL SERVICES

This Purchase and Sale Agreement (“Agreement”) is made and entered on this fifth day of July, 2005, (“Effective Date”) by the State of California, Department of General Services (“State” or “Department”) and The Redevelopment Agency of the City of Santa Clara, a redevelopment agency, a public body, corporate and politic, organized and existing in the County of Santa Clara, under and by virtue of the laws of the State of California (California Health and Safety Code section 33000, et seq.) (“Agency”).

RECITALS

- A. State is the owner of certain real property formerly known as the Bay Area Research Extension Center (“PD Site”) that is approximately seventeen and two-tenths (17.2) acres in size (Exhibit A). The PD Site is located at 90 N. Winchester Boulevard, which is generally located, exclusive of the homes existing as of the Effective Date, north of Dorcich Street, south of Forest Avenue, west of N. Winchester Boulevard and east of Henry Avenue in Santa Clara, California.
- B. Government Code Section 11011.1 requires the Department to notify the City of surplus real property that is available for sale. Section 11011.1 also gives the Department the discretion to sell such property to the City for specified purposes at less than market value.
- C. Pursuant to Government Code section 11011.1 the Department notified the City of Santa Clara (“City”) that the PD Site was surplus property. The City and the Agency notified the Department that they were interested in a portion of the PD Site. The City staff has also informed the Department that the provision of affordable housing will likely be a condition to the City’s approval of any entitlements (the “Entitlements”) for the PD Site. The Department, by entering into this agreement, is not exercising its discretion to sell the Seniors’ Property (defined below) for less than market value pursuant to 11011.1 but, rather, in order to satisfy all the requirements of the Agency and City related to affordable housing and other consideration for the PD Site.
- D. The Agency desires to purchase approximately five and ninety-eight one-hundredth (5.98) acres of the PD Site fronting Winchester Boulevard (“Seniors’ Property”), as depicted in Exhibit A, and more particularly described in Exhibit B. The Seniors’ Property is expected to be developed for approximately 165 units of housing for affordable housing for senior citizens earning not more than sixty percent (60%) of

median income in Santa Clara County (“Seniors’ Project”), by an entity selected by the Agency (“Seniors’ Developer”). There will also be a dedication or transfer by the State to the City of approximately one (1) acre for a community park (the “Park”) within the PD Site. The balance of the PD Site, approximately nine and nine hundred twenty-seven thousandths (9.927) acres, is under contract of sale to SummerHill Winchester LLC, a California limited liability company (“SummerHill”), exclusive of the Seniors’ Property and the Park (the “Market Rate Property”), as illustrated in Exhibit A (the “SummerHill Sale”). State intends to sell the Market Rate Property and the Seniors’ Property in accordance with Chapter 631, Statutes of 2002, Section 1.

E. SummerHill is a real estate development company that intends to entitle, acquire, and develop the Market Rate Property for approximately one hundred eighteen (118) single family homes (“Market Rate Project”) in a manner generally consistent with SummerHill’s land use plan (the “Market Rate Plan”) described in Exhibit C.

F. The State will sell the Seniors Property pursuant to the terms of this Agreement immediately upon the State closing escrow on the SummerHill Sale.

## AGREEMENT

In further consideration of the above recitals, all of which are expressly incorporated into this Agreement, and the mutual promises and covenants of the parties contained in this Agreement, and for other good and valuable consideration the receipt and sufficiency of which is hereby acknowledged, the Parties agree as follows:

### 1. PROPERTY

1.1 Seniors’ Property. The term “Seniors’ Property” as used herein shall include any reversionary rights to roads, but does not include reversionary rights to the Park, the Market Rate Property, and the approximately 0.48 acre of property under the jurisdiction of the State Department of Veterans Affairs which is located adjacent to the PD Site, and all rights and easements appurtenant to the Market Rate Property, reserving therefrom all oil, mineral, gas and other hydrocarbon substances as defined by Public Resources Code 6407, without, however, the right of surface entry for the extraction of such substances located in a plane from the surface to a depth of five hundred (500) feet under the Seniors’ Property. The Seniors’ Property shall consist of the real property described in Exhibit B which is approximately five and ninety-eight one-hundredth (5.98) acres and includes a share of the entry road to the PD Site between Winchester Boulevard and the entry to the Seniors’ Property. The State has previously granted by an easement deed dated November 17, 1975 and recorded on December 1, 1975, in Book 747 at page 172, as instrument number 5163575, an area of approximately 0.216 acre fronting on and including a portion of Winchester Boulevard (“Winchester Road Easement Area”). The Winchester Road Easement Area shall be included in the legal description of the Seniors’ Property, but there shall be no cost to Agency for the Winchester Road Easement Area. In addition, there is an undocumented thirty (30) foot right-of-way along a portion of the Seniors’ Property into the middle of Winchester Boulevard. The undocumented right-of-

way area shall be included in the legal description of the Seniors' Property, but there shall be no cost to Agency for the undocumented right-of-way area.

## 2. PURCHASE PRICE

2.1 Purchase Price. The purchase price for the Seniors' Property consisting of five and ninety-eight hundredth (5.98) acres shall not exceed eleven million six-hundred eighty-four thousand, two hundred seventy-five dollars (\$11,684,275) ("Purchase Price"). The final price will be determined by calculating fifty-nine percent (59%) of the price per gross acre paid by SummerHill for their adjacent nine and nine hundred twenty-seven thousandths (9.927) acres, inclusive of roadways and, including the portion of the property (approximately 0.026 acres) located in Forest Avenue, but excludes the approximately one (1) acre park to be transferred by State to the City, and multiply that per acre price by five and ninety-eight one-hundredth (5.98) or the actual gross acreage purchased by Agency in the event City approves a project which results in less acreage for the Seniors' project. Agency shall have the right to verify the actual price paid by SummerHill prior to close of escrow under this Agreement by reviewing, after close of escrow by SummerHill, all closing documents related to the SummerHill purchase. This price is a discounted value from market value in order to provide for the affordable housing required for the PD Site, and there shall be an agreement which contain covenants, conditions and restrictions requiring that the Seniors' Property be used for affordable housing (the "Affordability Covenants") substantially in the form attached as Exhibit F. The Affordability Covenants shall not be subject to subordination unless the funding sources for the construction of the Seniors' Project are required by law to be in a priority position. Since the Seniors' Project is intended to be developed on two separate parcels, if subordination is required only on one parcel by a funding source, then only the Affordability Covenants on that parcel will be subordinated. The Agency agrees that should the Affordability Covenants be subordinated, then if the Affordability Covenants are terminated by foreclosure or otherwise, and the Seniors' Property is not used for affordable housing as described in Recital D, then Agency shall pay to State the price per acre difference between the Purchase Price for the parcel in question and the full value based on the SummerHill price. This obligation of Agency shall survive the transfer of title to the Seniors' Property and shall be evidenced by a guarantee agreement or other agreement deemed necessary to enforce this obligation. However, this obligation shall be an obligation of the Agency only, and in the event the Agency is no longer eligible to receive tax increment from any redevelopment project area then this obligation shall terminate.

2.2 Agency Costs in Addition to Price. Except as expressly set forth in this Agreement, Agency shall be responsible for all costs relating to the transfer of title and/or development of the Seniors' Property, including, but not limited to all costs associated with the preparation and approval of the plan for the development of the Seniors' Property, administrative, consultant and third-party costs and legal fees incurred by Agency, and the Seniors' Property's proportional share of mitigation measures required by the City as a condition of Entitlements for the PD Site, including but not limited to any intersection improvements, traffic lights, entrance and exit roads, and offsite traffic

mitigation and traffic calming improvements. The Seniors' Property's proportional share of traffic mitigation shall be forty-five percent (45%) of the cost of such measures. Agency shall pay or cause to be paid to SummerHill the costs of all mitigation measures being performed by SummerHill prior to construction based on engineering estimates of the cost of such work. In the event there is a cost increase over the estimate, then the Agency shall immediately pay forty-five percent (45%) of such cost, and if the cost is less, then Agency shall be reimbursed by SummerHill. In addition, Agency shall be responsible for any remediation costs or obligations beyond those standards established in the remedial action work plan only with respect to the Seniors' Property.

2.3 Seller Costs. The State, in addition to any administrative and legal fees incurred by State, shall be responsible for all costs associated with the clearing and grubbing of the Seniors' Property, removal and cleanup of surface structures, building foundations, basements, underground utilities up to a depth of three (3) feet, and underground storage tanks or vessels from the Seniors' Property. The proposed Seniors' Project includes significant excavation in order to create below grade parking for the Seniors' Project. In addition, as part of the site grading process, the Agency may desire to undertake a soils mixing process after close of escrow under this Agreement. This process involves using a grader to scrape the soil in small increments, stockpile and remix the soil, and then recompact the soil. It is possible that SummerHill may also desire to perform this same activity on the Market Rate Property. The State shall have no responsibility to coordinate or otherwise perform this soil mixing and site grading process. The State shall cause the remediation of Hazardous Materials on the Seniors' Property suitable for unrestricted residential development, as provided under Section 4 of this Agreement. The State Demolition Work and Hazardous Materials Remediation Work (as defined below in section 4.2 (a)) shall be performed by SummerHill.

2.4 Additional Consideration. In lieu of importing soil to refill any excavations made for the remediation of hazardous materials on both the Seniors' Property and the Market Rate Property, the State and SummerHill shall have the right, at no cost, to excavate soil from the areas proposed to be excavated for the Seniors' Project and to use such soil for back filling excavation areas. In addition, should the City determine that SummerHill's storm water retention proposal does not meet City requirements on SummerHill's site sufficient for issuance of the Entitlements, then SummerHill shall have the right to use that portion of the Seniors' Property that is not needed for, or does not unreasonably interfere with, the Seniors' Project and/or that portion that is being used for the Seniors' Project stormwater retention but where there is sufficient capacity if additional improvements are made to the Seniors' Project stormwater retention design, to also meet a portion of the City stormwater retention requirements for the Market Rate Project; provided, however, that any improvements to the Seniors' Project stormwater retention area(s) needed to accommodate the portion of the Market Rate Project shall be paid for by SummerHill.

2.5 Participation. If Agency sells the Seniors' Property to anyone for a price greater than the price paid by the Agency to the State, then Agency shall remit the difference to State within thirty (30) days after receipt by the Agency.

2.6 Terms of Payment. The Purchase Price stated in Section 2.1 above shall be delivered in cash at the close of escrow.

### 3. **DEPOSIT**

No deposit has been provided by Agency.

### 4. **HAZARDOUS SUBSTANCES**

4.1 Definition. Hazardous Substances or Hazardous Materials for the purposes of this Agreement shall mean any hazardous waste or hazardous substance as defined in any federal, state or local statute, ordinance, rule or regulation applicable to the Seniors' Property, including without limitations, the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended (Title 42 United States Code Sections 9601-9675), the Resource Conservation and Recovery Act (Title 42 United States Code Sections 6901-6992k), the Carpenter-Presley Hazardous Substance Account Act (California Health and Safety Code Sections 25300-25395.15), and the Hazardous Waste Control Law (California Health and Safety Code Sections 25100-25250.25).

4.2 Site Characterization and Remediation. State has performed a Phase 1 and Phase 2 Environmental Site Assessment and Characterization with respect to the PD Site, including the Seniors' Property, a copy of which has been provided to Agency. As part of the Phase 2, the State has had soil sampling performed on the PD Site, including the Market Rate Property, the Park and the Seniors Property, at a variety of locations, and a copy of the report prepared by Environ, dated July 2003, has been provided to Agency and City.

(a) The State studies have identified the presence of contaminated soil located on the PD Site, including the Seniors' Property. Remediation of the contaminated soil has not yet commenced. The State has entered into a Voluntary Cleanup Agreement (the "VCA") with the California Department of Toxic Substances Control (the "DTSC") in order to obtain a regulatory review and approval of the remediation of the contaminated soils (the "Hazardous Materials Remediation Work"). The State shall be responsible for paying for and obtaining from the DTSC an approved Remedial Action Workplan (the "RAW"). The State expects that the process for approval by the DTSC will include an analysis of the environmental impacts associated with the Hazardous Materials Remediation Work and the City and State shall include such activities as part of the environmental impact report (the "EIR") described in section 7.1 below.

(b) State has represented that under the terms of its purchase agreement with SummerHill that SummerHill is required to commence the clearing and grubbing of the PD Site within fifteen (15) days following the Entitlements and approvals of the RAW by DTSC. The RAW contemplates that

the remediation work will commence once the site has been cleared and grubbed. All Hazardous Material Remediation Work required with respect to the PD Site shall be completed by SummerHill in accordance with the RAW. The draft RAW contemplates the remediation of arsenic contaminated soil in Field 4 mostly located on the Market Rate Property, and two smaller locations on the Seniors' Property. If the approved RAW identifies additional areas to be remediated then these shall also be included. Agency and State agree that Environ shall be responsible for soil sampling required under the RAW and to prepare all reports to the DTSC. Copies shall be provided to Agency for review at Agency's discretion and State shall deliver or cause to be delivered to Agency a letter described in Exhibit C (the "No Further Action Letter") from the DTSC stating that the Seniors' Property has been remediated of hazardous materials in accordance with the RAW and that no further action is required for the Seniors' Property to be suitable for unrestricted residential development. Once work under the RAW has been completed, the No Further Action Letter has been issued, SummerHill has completed the State Demolition Work, and close of escrow on the Seniors' Property has occurred pursuant to the terms of this Agreement, then the Seniors' Developer may perform any soil mixing at its sole cost and Agency may perform, at its cost, any additional soil sampling it desires. In the event a No Further Action Letter cannot be delivered, then this Agreement shall terminate and State shall have no obligations for payment to Agency and Agency shall have no obligations to State.

4.3 State Release. State shall not be responsible for the removal or mitigation of any Hazardous Substances or Hazardous Materials occurring, discovered, or reported after the transfer of title, unless such conditions were caused by the State. Agency hereby releases the State from all liability, except for claims or enforcement actions by government agencies, under the Comprehensive Environmental Response Compensation and Liability Act (42 U.S.C. Section 9601 et. seq.), as it may be amended, and under any other provision of law now in effect, or that in the future may be in effect, relating to the presence of any such Hazardous Substances or Hazardous Materials in or on the Seniors' Property, occurring, discovered or reported after the transfer of title, unless such conditions were caused by the State. This release shall run to and be binding upon any permitted or approved assignee. The term "State" does not include the Regents of the University of California, or the University of California.

4.4 Indemnity. State, to the extent permitted by law, shall defend, indemnify and hold Agency and the Seniors' Developer harmless from and against any and all claims, liabilities, obligations, losses, damages, compliance and remediation costs and expenses, including, but not limited to, reasonable attorneys' fees, fines, court costs and litigation expenses that Agency may incur or sustain by reason of or in connection with the existence of Hazardous Substances or Hazardous Materials on, in or under soils, ground water, surface water or otherwise released on the Seniors' Property before the transfer of title and which release was caused by the State.

4.5 City Acknowledgement Regarding DTSC. The City Attorney, on behalf of the Agency, sent a letter to the State, dated May 7, 2003, regarding concerns the Agency had with respect to the cleanup goals for the property being purchased by the Agency. The State's consultant replied to that letter on May 28, 2003. A conference call was held between the DTSC, the State, and the Agency on July 29, 2003. The City Attorney, on behalf of the Agency, sent a letter to the DTSC dated August 25, 2003, regarding concerns the Agency had with respect to the cleanup goals for the property being purchased by the Agency. The DTSC on September 30, 2003, sent a letter in response to the Agency's August 25, 2003, letter explaining the DTSC process and the rationale for the cleanup goal being proposed as part of the State's voluntary cleanup agreement with DTSC. The Agency acknowledges and agrees that the DTSC response letter, the proposed RAW and the cleanup goals established in such workplan meet the procedural and substantive standards required by applicable law.

## 5. CONDITIONS OF SALE

In addition to any other conditions described in this Agreement, Agency and State agree that escrow shall close only upon satisfaction of the following conditions:

5.1 Entitlements and Close of Escrow. SummerHill shall have closed escrow on the SummerHill Sale. This Purchase and Sale Agreement shall not be construed as an Agreement by the City of Santa Clara concerning any future land use decision concerning the PD Site; provided, however, that in the event that the City decides to require additional open space or affordable housing requirements, or fails or refuses to approve the Entitlements for the PD Site then this Purchase and Sale Agreement shall be terminable at the option of either the State or Agency upon notice by the terminating party to the other party and, if so terminated, neither State or Agency shall owe anything to one another or have any further obligations to one another.

5.2 Title. Title to the Seniors' Property shall be conveyed to the Agency, or if directed by the Agency, to the Seniors' Developer and an ALTA extended coverage title policy issued by Title Company at the Close of Escrow, insuring title in the amount of the Purchase Price, subject only to exceptions approved by Agency prior to the Effective Date. The cost of the ALTA extended coverage title policy shall be the responsibility of the Agency.

### 5.3 Title Matters.

(a) Condition of Title. It shall be a condition to the Close of Escrow in favor of Agency that title to the Seniors' Property shall be conveyed to the Agency, or if so designated by Agency, the Seniors' Developer by the State by the Grant Deed subject only to the permitted exceptions ("Permitted Exceptions") described below

(b) Time to Object. Agency has obtained the Preliminary Report issued by the Title Company reflecting the status of the Seniors' Property. Agency shall notify State in writing (with a copy to Escrow Holder) within ten (10) business days after the

Effective Date of its objection to matters indicated as exceptions in the Preliminary Report.

(c) Time to Eliminate Exceptions. If Agency objects to one or more exceptions indicated in the Preliminary Report, Agency shall so notify the State in writing and provide reasonable specificity of such objections and the State may cure such objection by delivering to Agency (with a copy to Escrow Holder) within thirty (30) days after the State's receipt of Agency's written objection, State's written agreement to eliminate such exception(s) by the Closing Date. If State fails or refuses to cure any such exception after delivering a written agreement to do so, the State shall be in material default hereunder.

(d) Right to Cancel or Perform. If State does not agree to cure each exception to which Agency has objected, Agency shall elect one of the following, by delivering written notice to State (with a copy to Escrow Holder) prior to the Closing Date:

i) To waive its objections, take title subject to such exceptions, and proceed with Close of Escrow; or

ii) To terminate this Agreement and the Escrow, in which event neither party shall have any further obligation hereunder.

(e) Title Insurance. As of the Closing Date, Title Company shall issue a standard form ALTA Owner's Form B-1970 Policy of Title Insurance ("Title Policy") insuring Agency's or, if designated by Agency, the Seniors' Developer, title to the Seniors' Property in the amount of the Purchase Price, in conformance with such endorsements as Agency may require, showing fee simple title to the Seniors' Property vested in Agency or, if designated by Agency, the Seniors' Developers, subject only to the following permitted exceptions ("Permitted Exceptions"): (a) current, non-delinquent real estate taxes and assessments; (b) the matters set forth in the Preliminary Report and approved by the Agency pursuant to this Section 5; (c) any other matters approved in writing by the Agency; (d) covenants, conditions and restrictions related to use for affordable housing for senior citizens, and (e) matters excepted or excluded from coverage by the printed terms of the Title Policy's standard form.

5.4 Receipt of No Further Action Letter. Agency's receipt of the No Further Action Letter as referenced in Section 4.2 (b) above.

## **6. ESCROW**

6.1 Opening Escrow. The purchase and sale of the Seniors' Property shall be consummated through an escrow ("Escrow") at First American Title Guarantee of San Jose, California ("Escrow Holder"), escrow account number NCS-32180-SC.

6.2 Further Documents and Assurances. Each party agrees to execute diligently and in good faith appropriate escrow instructions and undertake all other actions and procedures reasonably required to place the Escrow in condition for closing as and when required by this Agreement. An original of this Agreement shall be deposited with the Escrow Holder within five (5) days after the Effective Date and shall be a part of the escrow instructions for the Seniors Property. The escrow instructions for the Seniors Property shall be consistent with the terms of this Agreement, and shall provide that as between State and Agency, the terms of this Agreement shall prevail if there is any inconsistency.

6.3 Grant Deed. State shall deliver or cause to be delivered to Escrow Holder in time for delivery to Agency or, or if designated by Agency, the Seniors' Developer, at the closing an original ink signed Grant Deed substantially in the form included as Exhibit E, duly executed and recordable form, conveying fee title to the Seniors' Property to Agency or, if designated by Agency, the Seniors' Developer.

6.4 Close of Sale. The close of escrow ("Close of Escrow" or "Closing") shall occur within ten (10) calendar days after receipt of the No Further Action Letter from DTSC, and after the close of escrow on the SummerHill Sale.

6.5 Closing Costs. All transfer taxes, title insurance premiums and recording and escrow fees shall be paid by Agency.

## **7. PROCESSING OF ENTITLEMENTS**

7.1 SummerHill's Lead. Except for State's obligations pursuant to section 4 above, SummerHill shall have the lead in the processing of the Entitlements for the Market Rate Project with the City and other applicable governmental agencies at SummerHill's expense. The State shall not be responsible for any expenses and costs associated with Entitlements and permits for the development of the Seniors' Property. State shall be responsible for its costs and the costs of its consultants incurred in the Entitlement process. The State shall also be responsible for processing and paying for the costs of the EIR to obtain the Entitlements. The State has retained a consultant who is assisting the City in preparing the EIR. However, State shall not be responsible for any costs of additional environmental work which may be required under the National Environmental Policy Act should the Seniors' Developer pursue or obtain funding from agencies or departments of the United States.

## **8. REPRESENTATIONS, WARRANTIES, AND DISCLOSURES**

8.1 Authority of State. State is a government entity, duly organized and validly existing under the laws of the State of California. State has full power and authority to own, sell, and convey the Seniors' Property to Agency and to enter into and perform its obligations pursuant to this Agreement. Department has no knowledge of any claim, proceeding or action relating to the Seniors' Property or to the State's right to convey the Seniors' Property. For the purposes of section 8.1 and 8.3 the knowledge of

the Department shall mean the actual knowledge of the Department of General Services, Real Estate Services Division, Asset Planning and Enhancement Branch.

8.2 Taxes. State is exempt from property taxes and none are or will be owing at close of escrow.

8.3 No Violation of Laws. Department has no knowledge of any claims or notices that the Seniors' Property is in violation of any federal, state or local law, regulation or code.

8.4 Closing Condition. The statements made in Sections 8.1 and 8.3 are true and correct as of the Effective date and shall be true and accurate as of the Closing, and the truth and accuracy of such statements shall constitute a condition to all of Agency's obligations hereunder.

8.5 Disclosures. Agency acknowledges that except as expressly set forth in this Agreement Agency is purchasing the Seniors' Property as is (subject to Entitlements and other conditions as provided herein) with all faults and solely in reliance on Agency's own investigations, and that notwithstanding any disclosure by State, as listed herein, or in any document relating to the Seniors' Property disclosed by State to Agency, or at any other time or in any other manner, no representations or warranties of any kind whatsoever, expressed or implied, have been made by State, State's agents, consultants. Agency further acknowledges and warrants that as of the close of escrow Agency will be aware of all zoning regulations and other land use requirements, site and physical conditions, and other matters affecting the use and condition of the Seniors' Property and subject to the express provisions of this Agreement agrees to purchase the Seniors' Property in the physical or entitlement condition that it is in at close of escrow, subject, however, to Agency's right to terminate should the Seniors' Property be damaged or destroyed by causes other than causes attributable to entry by Agency or its employees, agents or contractors on the Seniors Property.

8.6 Agency's Representations and Warranties. Agency hereby represents and warrants to State that the statements made by Agency in this Agreement are true and correct as of the date of the Agreement and shall be true and correct as of the Closing, and the truth and accuracy of such statements shall constitute a condition to all State's obligations under this Agreement. Agency further represents and warrants that Agency has all requisite authority and power to enter into this Agreement on the terms and conditions as herein contained.

8.7 Agency's Investigation of Property. As of the Effective Date, Agency has or commits to undertake all investigations that Agency has deemed necessary in connection with the physical condition of the Seniors' Property and the appropriateness of the Seniors' Property for Agency's intended use. Agency shall provide to State, at no cost other than the cost of reproduction, upon State's request, complete copies of all inspection reports obtained by Agency from third-party consultants concerning the Seniors' Property, except for appraisals, market analyses and other like reports. All

reports provided to State shall be without any express or implied representation or warranties, other than the representation that complete copies have been provided. Agency expresses no opinion concerning the accuracy of such documentation.

8.8 Existing Investigations, Studies and Documents. Agency has knowledge of the following investigations, studies and documents:

- (a) Preliminary Title Report
- (b) Preliminary Traffic Analysis by Hexagon Transportation Consultants, dated October 18, 2002
- (c) Boundary Survey and Utility Capacity Report by CSW [St]2, dated November, 2002
- (d) Utility Inventory Located in Surrounding Streets by HMM Engineering
- (e) Historic Evaluation Report by Ward Hill, dated October, 2002
- (f) Phase I Site Assessment and Phase 2 Site Characterization Reports by Environ, dated November 2002, and July 2003, respectively
- (g) Archeological Survey by Holman & Associates dated October 9, 2002
- (h) DGS-DTSC Voluntary Cleanup Agreement, docket number HAS-A 02/03-176

8.9 Reliability of Information. The information described above and elsewhere in this Agreement that the State has provided to Agency was obtained by and from sources deemed reliable; however, State makes no guarantees as to the accuracy of the information provided. The reports and other documents relating to the Seniors' Property disclosed by State to Agency pursuant to Section 8.8 or otherwise pursuant to or in connection with this Agreement are true and correct originals or copies thereof. State makes no representations or warranties nor expresses or implies any opinion concerning their accuracy.

## 9. **DEFAULT AND REMEDIES**

9.1 Cure. In the event of any default under this Agreement by Agency, and the default, if it be any default that can be cured by the payment of money, continues uncured for a period of five (5) business days after written notice thereof from State to Agency, or if it be a non-monetary default under this Agreement, and such default continues uncured for a period of thirty (30) days after written notice thereof from State to Agency (the "Non-Monetary Default Cure Period"), then this Agreement and all rights of Agency hereunder shall automatically and immediately terminate.

9.2 Available Defenses. In the event that arbitration or litigation is instituted between the parties to this Agreement, each party agrees that a copy of this Agreement may be offered in evidence and submitted to the court or arbitrator as the binding and irrevocable stipulation of each party that the Purchase Price, nor the adequacy of consideration generally provided under this Agreement shall be raised as a defense to the validity or enforceability of this Agreement.

## 10. INDEMNIFICATION

Agency and State shall each defend, indemnify, and hold the other harmless from and against any and all claims, liabilities, obligations, losses, damages, costs and expenses, including, but not limited to, reasonable attorneys' fees, court costs and litigation expenses that either party may incur or sustain by reason of or in connection with any misrepresentation made by the other party pursuant to this Agreement. Agency shall defend, indemnify, and hold the State harmless from and against any and all claims, liabilities, obligations, losses, damages, costs and expenses, including, but not limited to, reasonable attorneys' fees, court costs and litigation expenses that State may incur or sustain by reason of or in connection with any action or claim by the Seniors' Developer.

## 11. GENERAL PROVISIONS

11.1 Assignability. Agency may assign all or a portion of its rights hereunder to a qualified non-profit housing developer for the purpose of building affordable housing for low income seniors, provided that Agency shall not be released from its obligations under this Agreement without State's written consent. All other assignments shall require State's written consent, which shall not be unreasonably withheld. For all purposes hereof, the term "Agency" shall be deemed to mean the Agency named herein or its assignee.

11.2 Attorneys' Fees. If either party commences legal proceedings for any relief against the other party arising out of this Agreement, each party shall pay their respective Attorney's Fees and costs of suit.

11.3 Brokers. State represents and warrants to Agency, and Agency represents and warrants to State, that no broker or finder has been engaged by them in connection with any of the transactions contemplated by this Agreement, or to its knowledge is in any way connected with any of such transactions. Agency shall indemnify, protect, save harmless and defend State from any liability, cost, or expense connected with any claim for any commission or compensation made by any person or entity claiming to have been retained or contacted by Agency in connection with this transaction. State shall indemnify, save harmless and defend Agency from any liability, cost, or expense arising out of or connected with any claim for any commission or compensation made by any person or entity claiming to have been retained or contacted by State in connections with this transaction. This indemnity provision shall survive the Closing or any earlier termination of this Agreement.

11.4 Computation of Time Periods. All periods of time referred to in this Agreement, unless specifically stated as "business days," shall include all Saturdays, Sundays and state or national holidays, unless the last date to perform any act or give any notice or approval shall fall on a Saturday, Sunday or state or national holiday, such act or notice may be timely performed or given on the next succeeding day which is not a Saturday, Sunday or state or national holiday.

11.5 Counterparts. This Agreement or any escrow instructions pursuant to this Agreement may be executed in multiple copies, each of which shall be deemed an original, but all of which shall constitute one Agreement after each party has signed such a counterpart.

11.6 Entire Agreement. This Agreement, together with all exhibits attached hereto, constitutes the entire agreement between the parties with respect to the purchase and sale of the Seniors' Property. All prior or contemporaneous agreements, understandings, representations, warranties and statements, oral or written, are superseded.

11.7 Exhibits. Exhibits "A"- "F" are attached hereto and incorporated herein by reference thereto.

11.8 Facsimile Signatures. Any party to this Agreement may execute this Agreement and related documents contemplated in this agreement and transmit by facsimile the executed documents to one or more other parties to the Agreement. Signatures sent by facsimile by a party shall be binding on the party upon receipt by the other party or parties. Any party transmitting a signature by facsimile shall subsequently deliver an original of the signature of the other party receiving the signature by facsimile within three (3) business days after delivery of the facsimile signature.

11.9 Further Assurances. The parties agree to perform such further acts and to execute and deliver such additional documents and instruments as may be reasonably required in order to carry out the provisions of this Agreement and the intentions of the parties.

11.10 Gender, Number. As used herein, the singular shall include the plural and the masculine shall include the feminine, wherever the context so requires.

11.11 Good Faith and Fair Dealing. Each party agrees to deal with the other fairly and in good faith in performance of the acts contemplated herein.

11.12 Governing Law. This Agreement shall be governed, interpreted, construed and enforced in accordance with the laws of the State of California.

11.13 Headings. The captions and paragraph headings used in the Agreement are inserted for convenience of reference only and are not intended to define, limit or affect the construction or interpretation of any term or provision hereof.

11.14 Modification, Waiver. No modification, waiver, amendment or discharge of this Agreement shall be valid unless the same is in writing and signed by both Agency and State. The escrow instructions shall be considered a part of this Agreement, and no provision in said escrow instructions shall supersede or contradict the provisions of this Agreement, unless the parties agree in writing to such change.

11.15 Notice. Notice to either party shall be in writing and either personally delivered or sent by certified mail, postage prepaid, return receipt requested, addressed to

the party to be notified at the address specified herein. Any such notice shall be deemed received on the date of personal delivery to the party (or such party's authorized representative) or three (3) business days after deposit in the U.S. Mail, as the case may be.

State's Address for Notice:

Ms. Paula P. Gutierrez  
Supervising Real Estate Officer  
Asset Planning and Enhancement Branch  
Department of General Services  
State of California  
707 Third Street, 6<sup>th</sup> Floor  
West Sacramento, CA 95605

Agency's Address for Notice:

Redevelopment Agency of the City  
Santa Clara  
1500 Warburton Avenue  
Santa Clara, California 95050

with a copy to:

Ron Small  
Office of Legal Services  
Department of General Services  
707 Third Street, 7<sup>th</sup> Floor  
West Sacramento, CA 95605

with a copy to:

City Attorney  
{Same Address}

with facsimile copy to:

Paula P. Gutierrez  
(916) 376-1833

with facsimile copy to:

Ron Garratt  
(408) 241-6771

Ron Small  
(916) 376-5088

Either party may change its address for notice by delivering written notice to the other party as provided herein.

11.16 Material Obligations. The parties acknowledge that the State's willingness to enter into this Agreement is expressly conditioned on Agency's performance of all of its material obligations hereunder and that State would not enter into this Agreement but for Agency's agreement to perform all such obligations in full.

11.17 Severability. If any term, provision, covenant or condition of this Agreement is held to be invalid, void or otherwise unenforceable, to any extent, by any court of competent jurisdiction, the remainder of this Agreement shall not be affected thereby, and each term, provision, covenant or condition of this Agreement shall be valid and enforceable to the fullest extent permitted by law.

11.18 Successors. All terms of this Agreement shall be binding upon, inure to the benefit of, and be enforceable by the parties hereto and their respective heirs, legal representatives, successors, and permitted assigns.

11.19 Survival. The terms, covenants and conditions herein contained and required to be operative after delivery of the Deed in order to be fully effective shall be operative after Close of Escrow and shall not be deemed to have merged in the Deed.

11.20 Time. Time is of the essence of each provision of this Agreement, including without limitation all time deadlines for satisfying conditions and Close of Escrow.

11.21 Multiple Originals. This Purchase and Sale Agreement is executed in four (4) duplicate originals, each of which is deemed to be an original.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date first above written.

"State"  
STATE OF CALIFORNIA  
Department of General Services  
Real Estate Services Division

By: J. Frank Davidson  
J. Frank Davidson  
Assistant Chief

Date: 7-5-05

APPROVED AS TO FORM:

By: Ron Small  
Ron Small  
Staff Counsel

Date: 7-5-05

**REDEVELOPMENT AGENCY OF THE CITY OF SANTA CLARA,**  
a redevelopment agency, a public body, corporate and politic,  
organized and existing in the County of Santa Clara,  
under and by virtue of the laws of the State of California

APPROVED AS TO FORM:

  
\_\_\_\_\_  
MICHAEL R. DOWNEY  
Agency General Counsel

  
\_\_\_\_\_  
JENNIFER SPARACINO  
Executive Director

ATTEST:

  
\_\_\_\_\_  
ROD DIRIDON, JR.  
Agency Secretary

“Agency”

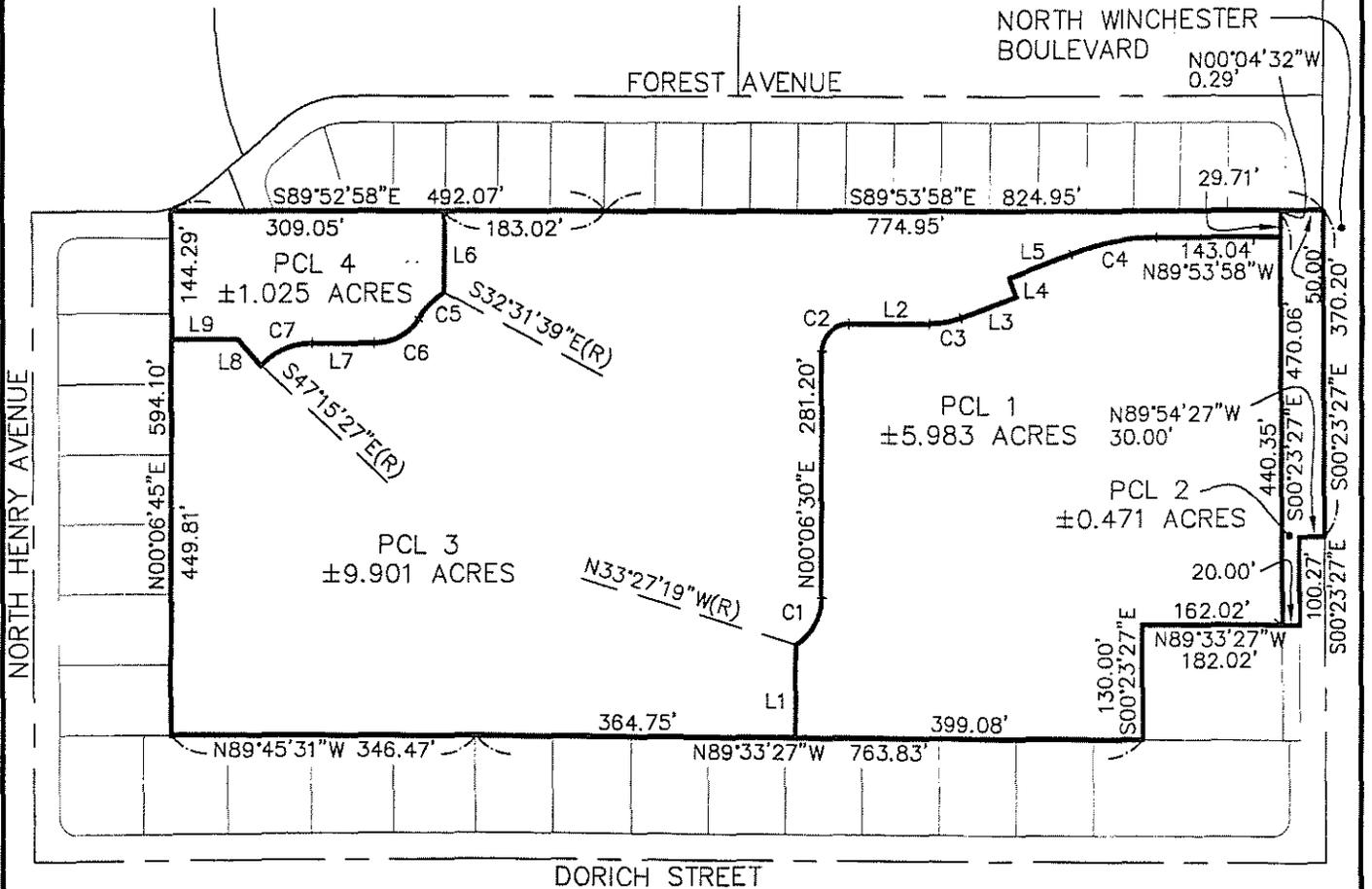
I:\DATA\WP\BAREC\SCRA Purchase (BAREC) final 06-24-05.doc

List of Exhibits

Exhibit A	PD Site
Exhibit B	Seniors' Property Legal Description
Exhibit C-1	SummerHill's Land Use Plan
Exhibit D	Form of DTSC No Further Action Letter
Exhibit E	Form of Grant Deed
Exhibit F	Form of Affordability Covenants

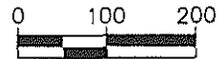
**EXHIBIT "A"**

**PD SITE**



LINE TABLE		
No.	Bearing	Distance
L1	N00°33'00"E	105.30'
L2	S89°53'30"E	92.41'
L3	N69°12'39"E	67.72'
L4	N20°47'21"W	22.50'
L5	N69°12'39"E	73.97'
L6	N00°06'19"E	91.45'
L7	S89°53'30"E	70.40'
L8	N40°51'39"W	39.84'
L9	N89°53'29"W	74.23'

CURVE TABLE			
No.	Radius	Delta	Length
C1	64.00'	56°26'12"	63.04'
C2	30.50'	90°00'00"	47.91'
C3	102.50'	20°53'51"	37.38'
C4	280.00'	20°53'23"	102.09'
C5	100.00'	24°34'07"	42.88'
C6	60.00'	57°12'16"	59.90'
C7	78.50'	47°21'56"	64.89'



**GRAPHIC SCALE**  
1 INCH = 200 FT.

SHEET 1 OF 1

Date: 06-23-05  
 Scale: 1" = 200'  
 Designed: -  
 Drawn: TG  
 Checked: JM  
 Proj. Eng.: -  
 Dwg Name: 3081EX03



San Jose  
 (408) 487-2200  
 Gilroy  
 (408) 846-0707

www.hmh-engineers.com

PROPOSED PARCELS EXHIBIT

SANTA CLARA

CALIFORNIA

**EXHIBIT "B"**

**SENIORS' PROPERTY LEGAL DESCRIPTION**

June 27, 2005  
HMH 3081-02-104  
Page 1 of 2

**PARCEL 1**

REAL PROPERTY in the City of Santa Clara, County of Santa Clara, State of California, being a portion of Parcel One and Parcel Two as described in the Quitclaim Deed recorded May 30, 2003 in Document 1705532 Official Records of Santa Clara County, described as follows:

BEGINNING at the southeasterly corner of said Parcel Two, said corner being on the northerly line of Parcel A as shown on the Parcel Map filed for record on September 13, 1978 in Book 426 of Maps at page 24, Santa Clara County Records;

Thence along the southerly line of said Parcel One & Two, North 89°33'27" West, 399.08 feet;

Thence North 00°33'00" East, 105.30 feet;

Thence northerly along a non-tangent curve to the left, having a radius of 64.00 feet, whose center bears North 33°27'19" West, through a central angle of 56°26'12" for an arc length of 63.04 feet;

Thence North 00°06'30" East, 281.20 feet;

Thence along a tangent curve to the right, having a radius of 30.50 feet, through a central angle of 90°00'00" for an arc length of 47.91 feet;

Thence South 89°53'30" East, 92.41 feet;

Thence along a tangent curve to the left, having a radius of 102.50 feet, through a central angle of 20°53'51" for an arc length of 37.38 feet;

Thence North 69°12'39" East, 67.72 feet;

Thence North 20°47'21" West, 22.50 feet;

Thence North 69°12'39" East, 73.97 feet;

Thence along a tangent curve to the right, having a radius of 280.00 feet, through a central angle of 20°53'23" for an arc length of 102.09 feet;

Thence South 89°53'58" East, 143.04 feet, to the westerly line of North Winchester Boulevard;

Thence along said westerly line, South 00°23'27" East, 440.35 feet to the southerly line of said Parcel Two;

**EXHIBIT "B"**

**SENIORS' PROPERTY LEGAL DESCRIPTION**

June 27, 2005  
HMH 3081-02-104  
Page 2 of 2

Thence along said southerly line the following two courses:

1. Thence North 89°33'27" West, 162.02 feet;
2. Thence South 00°23'27" East, 130.00 feet to the POINT OF BEGINNING.

Containing 5.983 acres, more or less

**PARCEL 2**

REAL PROPERTY in the City of Santa Clara, County of Santa Clara, State of California, being a portion of Parcel One and Parcel Two as described in the Quitclaim Deed recorded May 30, 2003 in Document 1705532 Official Records of Santa Clara County, described as follows:

BEGINNING at the northeasterly corner of said Parcel One, being on the monument line of Winchester Boulevard as shown on certain Record of Survey filed for record on October 16, 1975, in Book 362 of Maps, pages 48 through 56, Santa Clara County Records;

Thence along the easterly line of said Parcels One and Two, being said monument line, South 0°23'27" East, 370.20 feet, to the southerly line of said Parcel One;

Thence along said southerly line, North 89°54'27" West, 30.00 feet, to the easterly line of said Parcel Two;

Thence along said easterly line, South 0°23'27" East, 100.27 feet, to the southerly line of said Parcel Two;

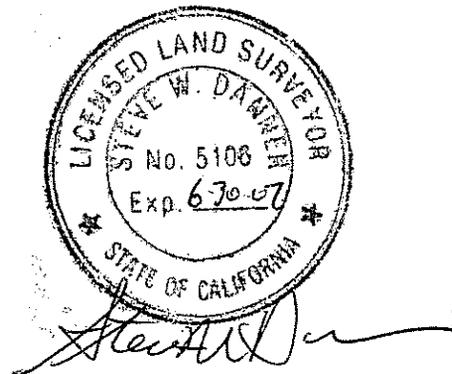
Thence along said southerly line, North 89°33'27" West, 20.00 feet, to the westerly line of North Winchester Boulevard;

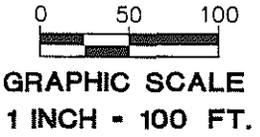
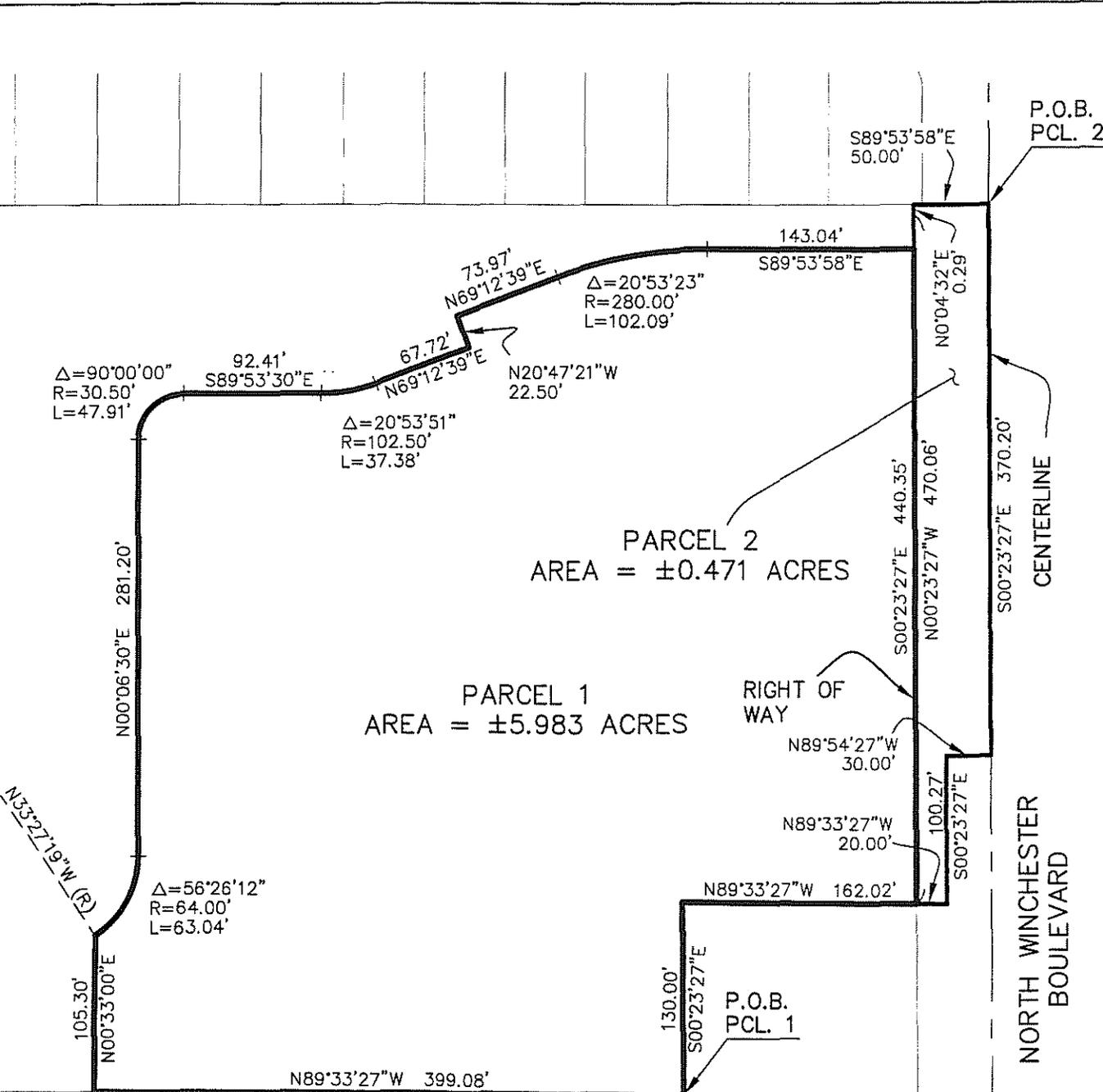
Thence along said westerly line, the following two courses:

1. Thence North 0°23'27" West, 470.06 feet;
2. Thence North 0°04'32" East, 0.29 feet, to the northerly line of said Parcel One;

Thence along said northerly line, South 89°53'58" East, 50.00 feet, to the POINT OF BEGINNING.

Containing 0.471 Acres, more or less.





SHEET 1 OF 1

Date:	6-27-05
Scale:	1" = 100'
Designed:	-
Drawn:	TG
Checked:	JM
Proj. Engr.:	-
Dwg Name:	3081PL05

**HMH**  
**ENGINEERS**

San Jose  
 (408) 487-2200

Gilroy  
 (408) 848-0707

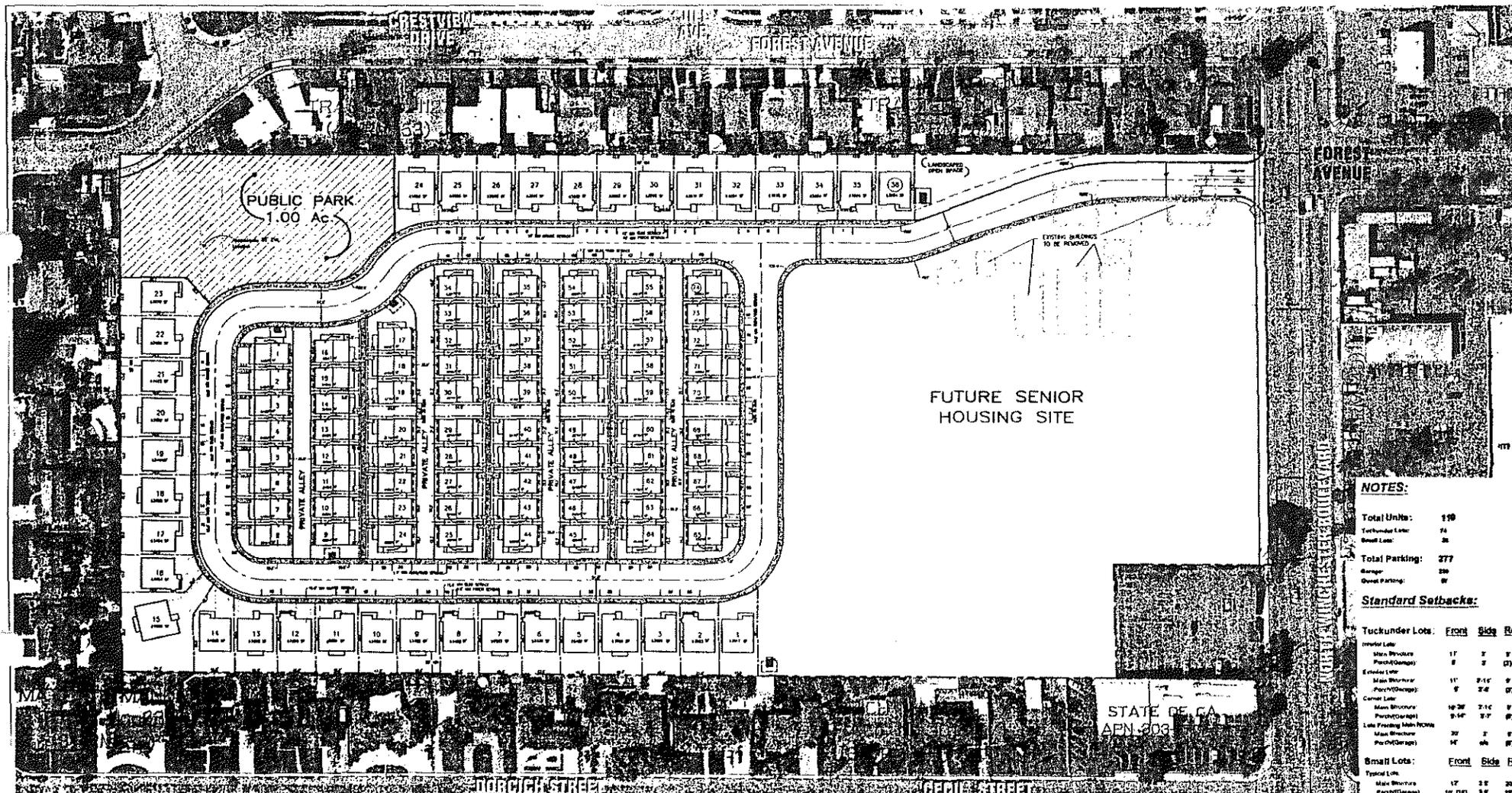
www.hmh-engineers.com

Plat to accompany description

SANTA CLARA CALIFORNIA

**EXHIBIT C**

**SUMMERHILL'S LAND USE PLAN**

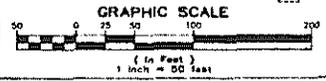
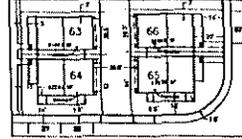
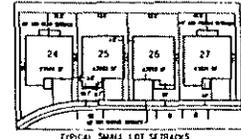
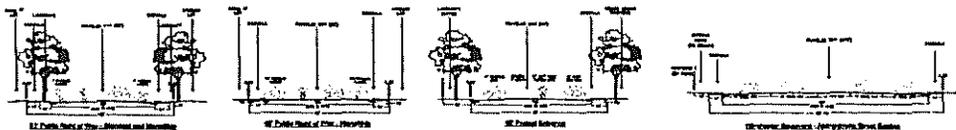


**NOTES:**

Total Units: 119  
 Technical Lot: 74  
 Small Lot: 26  
 Total Parking: 277  
 Garage: 236  
 Guest Parking: 41

**Standard Setbacks:**

Tuckunder Lots:	Front	Side	Rear
Max Structure	17'	2'	2'
Pool/Garage	8'	2'	(1)
Entire Lot	11'	2.1'	0'
Max Structure	11'	2.4'	0.7'
Pool/Garage	10.3'	2.1'	0'
Entire Lot	9.5'	2.7'	(0)
Max Structure	20'	2'	0'
Pool/Garage	14'	0.6'	(0)
Small Lots:	Front	Side	Rear
Max Structure	17'	2'	2'
Pool/Garage	10.1'	0.7'	0'



**LEGEND**  
 - - - - - PROJECT BOUNDARY  
 - - - - - ADJACENT PARCEL  
 - - - - - FUTURE RIGHT OF WAY  
 [Hatched] EXISTING BUILDINGS  
 [Dashed] PROPOSED TRANSFORMER

△	1	2	3	4
△	1	2	3	4
△	1	2	3	4
△	1	2	3	4

**Summerhill Homes**  
 777 California Avenue  
 Palo Alto, CA 94304

Date: Sep 16, 2004  
 Scale: 1" = 50'  
 Designed: WEB  
 Drawn: WEB  
 Checked: BTH  
 Proj. Eng: DHR



Ben Jones  
 (408) 437-3300  
 Gray  
 (408) 544-0107

Santa Clara

**90 Winchester Boulevard**  
 SITE PLAN  
 Rezoning

California

Sheet  
**C-2**  
 Of 46 Sheets  
 JOB NUMBER  
**3081-02**

**EXHIBIT D**

**FORM OF DTSC NO FURTHER ACTION LETTER**



# Department of Toxic Substances Control



Edwin F. Lowry, Director  
700 Heinz Avenue, Suite 200  
Berkeley, California 94710-2721

Winston H. Hickox  
Agency Secretary  
California Environmental  
Protection Agency

Gray Davis  
Governor

June 29, 2001

## FILE COPY

Mr. Ron Small  
Department of General Services  
Office of Legal Services  
1325 J Street, Suite 1911  
Sacramento, California 95814

Dear Mr. Small:

The Department of Toxic Substances Control (DTSC) has received the Remedial Action Implementation Report (Report) dated June 5, 2001 and the amendment on June 15, 2001 for the DGS Parcel 4, Former Agnew Development Center - West Campus in Santa Clara, California. On November 20, 2000, DTSC approved the Remedial Action Plan for Parcel 4. DTSC's remedial goals for each chemical of concern (metals and pesticides) were established and approved in the Remedial Action Plan. The Plan required that any soil above the remedial goals would be excavated and properly managed off-site. On January 17, 2001, DTSC approved the Remedial Design Implementation Plan and supporting documents for this project.

Our review of the Implementation Report for Parcel 4 indicates that the work has been conducted in accordance with the approved Remedial Action Plan and the Remedial and Design Implementation Plan and that the remedial goals for Parcel 4 have been achieved. With completion of this remediation, Parcel 4 does not pose a threat to human health or the environment under any land use, including unrestricted residential development and is safe for occupancy for single family homes. DTSC hereby approves the Report for Parcel 4, as amended. As with any real property, if previously unidentified contamination is discovered at the Site, additional assessment investigation and/or cleanup may be required.

Mr. Ron Small  
June 29, 2001  
Page Two

If you have questions regarding this approval, please contact Patrick Lee of my staff at (510)540-3847.

Sincerely,

A handwritten signature in black ink, appearing to read "Barbara J. Cook". The signature is fluid and cursive, with the first name "Barbara" being the most prominent part.

Barbara J. Cook, P.E.  
Branch Chief  
Northern California -Coastal Cleanup Operations Branch

cc: Mr. Luis Fracticelli  
Harding ESE  
383 4<sup>th</sup> Street, Suite 300  
Oakland, California 94607

**EXHIBIT E**

**FORM OF GRANT DEED**

RECORDING REQUESTED BY

State of California – Official business  
Department of General Services

Document entitled to free recordation  
Pursuant to Gov't. Code Sec. 6103

WHEN RECORDED MAIL TO:

SPACE ABOVE THIS LINE FOR RECORDER'S USE

APN: 303-17-048 (PTN)  
APN: 303-17-049

**STATE OF CALIFORNIA  
GRANT DEED  
(SENIOR HOUSING SITE)**

Pursuant to the provisions of Chapter 631 of the Statutes of 2002, Section 1, the STATE OF CALIFORNIA, through its duly appointed and qualified Director of General Services, hereby grants to the Redevelopment Agency of the City of Santa Clara, a redevelopment agency, a public body, corporate and politic, organized and existing in the County of Santa Clara, under and by virtue of the laws of the State of California (California Health and Safety Code §33000, et seq.), all its right, title, and interest in and to the real property in the County of Santa Clara described on the attached Exhibit A consisting of one page and by this reference made a part hereof.

EXCEPTING AND RESERVING to the State of California, in all lands described herein, all minerals and mineral deposits, including, but not limited to, oil and gas, other gases, including, but not limited to, nonhydrocarbon and geothermal gases, oil shale, coal, phosphate, alumina, silica, fossils of all geological ages, sodium, gold, silver, metals and their compounds, alkali, alkali earth, sand, clay, gravel, salts and mineral waters, uranium, trona, and geothermal resources, together with the right of the State or persons authorized by the State to prospect for, drill for, extract, mine and remove such deposits or resources, except that the State or persons authorized by the State shall not have the right to prospect for, drill for, extract, mine or remove such deposits above a plane located 500 feet below the surface nor a right to occupy and use the surface of such lands for said purposes.

This grant is subject to the COVENANTS AND CONDITIONS as contained in that certain Affordability Covenant Agreement dated \_\_\_\_\_. 2003 between the parties and shown in the Exhibit B, and shall run with the land and shall be applicable to any subsequent owners or holders of title or interest in said real property during the terms as specified in Exhibit B.

In accordance with Section 11011.1 (d) of the Government Code, if development as set forth in the attached Exhibit B, the Affordability Covenant Agreement, has not commenced within the time

as set forth therein, the [ ] and title shall REVERT TO THE STATE and to the Department of General Services.

IN WITNESS WHEREOF, the State has caused this Grant Deed to be executed this \_\_\_\_\_ day of \_\_\_\_\_, 2003.

STATE OF CALIFORNIA  
DEPARTMENT OF GENERAL SERVICES  
WILLIAM J. JEFFERDS, Ed.D, DIRECTOR

By \_\_\_\_\_  
J. FRANK DAVIDSON, ASSISTANT CHIEF  
Real Estate Services Division  
Asset Planning and Enhancement Branch

**ALL-PURPOSE ACKNOWLEDGMENT**

State of California

SS.

County of Sacramento

On \_\_\_\_\_ before me, \_\_\_\_\_, personally appeared

SIGNER(S)

personally known to me -OR-

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.

WITNESS my hand and official seal.

\_\_\_\_\_  
NOTARY'S SIGNATURE

----- OPTIONAL INFORMATION -----

The information below is not required by law. However, it could prevent fraudulent attachment of this acknowledgment to an unauthorized document.

**CAPACITY CLAIMED BY SIGNER (PRINCIPAL)**

**DESCRIPTION OF ATTACHED DOCUMENT**

- INDIVIDUAL
- CORPORATE OFFICER

\_\_\_\_\_  
TITLE(S)

\_\_\_\_\_  
TITLE OR TYPE OF DOCUMENT

- PARTNERS
- ATTORNEY-IN-FACT
- TRUSTEE(S)
- GUARDIAN/CONSERVATOR(S)
- OTHER: \_\_\_\_\_

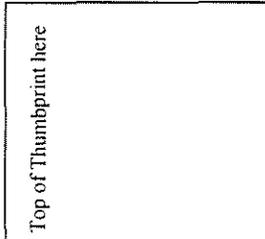
\_\_\_\_\_  
NUMBER OF PAGES

\_\_\_\_\_  
DATE OF DOCUMENT

\_\_\_\_\_  
OTHER

SIGNER IS REPRESENTING  
NAME OF PERSON(S) OR ENTITY(IES)

RIGHT THUMB PRINT  
OF  
SIGNER





**FORM OF AFFORDABILITY COVENANTS**

RECORDING REQUESTED BY AND  
WHEN RECORDED RETURN TO:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

(Space above line for Recorder's Use Only)

**AFFORDABILITY COVENANT AGREEMENT**

**AFFECTING REAL PROPERTY  
(INCLUDING RENTAL INSTRUCTIONS)**

THIS AGREEMENT CONTAINING COVENANTS AFFECTING REAL PROPERTY (the "Agreement") is entered into as of \_\_\_\_\_, 2005, by and between the \_\_\_\_\_ ("Developer"), and the STATE OF CALIFORNIA DEPARTMENT OF GENERAL SERVICES ("State").

WHEREAS, in accordance with the provisions of that certain Purchase and Sale Agreement dated July 5, 2005 (together with any amendments thereto, the "Purchase Agreement") by and between State, as seller, and Developer, as purchaser, or assignee of the rights and obligations under said Purchase Agreement, State will transfer to Developer that certain real property (the "Property") located in the City of Santa Clara, County of Santa Clara, California more particularly described in Exhibit "A" attached hereto and incorporated herein by this reference, pursuant to that certain State of California Grant Deed (Senior Housing Site) dated \_\_\_\_\_, 2005 (the "State Grant Deed"), recorded in the Official Records of the County of Santa Clara (the "Official Records") on \_\_\_\_\_, as Instrument No. \_\_\_\_\_;

WHEREAS, before State transferred the Property to Developer, State obtained a general plan amendment and zoning for the real property known as the \_\_\_\_\_, ("Development Property") for residential uses;

WHEREAS, as a condition of such entitlements, the City of Santa Clara ("City") has imposed certain conditions regarding the provisions of affordable housing;

WHEREAS, pursuant to state law, the State may sell property below fair market value if the property to be sold is intended to be used to provide affordable housing;

WHEREAS, State has entered into a purchase and sale agreement for the Development Property and the purchaser pursuant to such agreement (the "Development Property Purchaser") has processed the entitlements for development of the Development Property and the Property;

WHEREAS, for the purpose, among others, of furthering the development plan for the Development Property, State, City and the Development Property Purchaser have entered into that certain Development Agreement (the "Development Agreement"), recorded on

\_\_\_\_\_, as Document No. \_\_\_\_\_ in the Official Records of Santa Clara, California;

WHEREAS, Developer intends to construct on the Property certain improvements (the "Improvements") consisting of a one hundred sixty five unit (165) unit senior low income housing project. The Property and the Improvements are sometimes hereinafter collectively referred to as the "Project".

NOW THEREFORE, STATE AND DEVELOPER COVENANT AND AGREE AS FOLLOWS:

1. This Agreement is entered into in order to accomplish the purposes relating to affordable housing described by Section \_\_\_\_\_ of the Development Agreement.

2. The Developer covenants and agrees for itself, its successors, its assigns, and every successor in interest to the Property or any part thereof that the Developer, such successors, and such assigns shall devote the Property (and any part thereof, to the residential uses specified in this Agreement. The maximum incomes of eligible residential tenants and the maximum rents that may be charged are set forth in Section 5 below.

3. The Developer covenants and agrees for itself its successors, its assigns, and every successor in interest to the Property on any part thereof to operate the Property and the Improvements in conformity with all applicable laws (subject to Developer's right to contest the validity or applicability of laws or regulations), including all federal and state labor standards, maintain the improvements on the Property, keep the Property and the Improvements thereon free from any accumulation of debris or waste materials, or graffiti, and maintain the landscaping in a healthy condition. The Developer further covenants and agrees for itself, its successors, its assigns and every successor in interest to the Property that it shall obtain the State's prior written approval before changing the number of bedrooms in the improvements, or substantially modifying the exterior of the Improvements on the Property.

4. The covenants established in this Agreement and any amendments hereto approved by the State and the Developer shall, without regard to technical classification and designation, be binding for the benefit and in favor of the State, its successors and assigns, and the City of Santa Clara. Except as otherwise provided for herein, the covenants contained in this Agreement shall remain in effect for 55 years.

5. The Developer, for itself and its successors and assigns, hereby covenants and agrees that in the operation of the Improvements, the dwelling units shall be operated and maintained in accordance with the following:

A. Developer and its successors and assigns shall assure that all the residential units (other than one unit when it is occupied by a resident manager) shall be rented exclusively to households having an adjusted income not greater than, as applicable in accordance with Section B below, 50% or 60% of the area median income, at affordable rents (as set forth below), or such greater amount as may be allowed by the Allocation Committee, as may be adjusted from time to

time by the Allocation Committee, and only such households shall be eligible to occupy the units. For purposes of this Agreement such income shall be referred to as "Very Low Income" or "Low Income".

B. Developer, its successors and assigns shall not charge rents in excess of the amounts set forth in this Section 5.

1. With respect to XX project units:

(i) Monthly rents for the apartments (including a reasonable utility allowance for utilities to be paid by tenants) shall not exceed the product of 1/12 times 30 percent times 50 percent of the area median income, adjusted for family size, or such greater amount as may be allowed by the Allocation Committee, as may be adjusted from time to time by the Allocation Committee.

(ii) The area median income, adjusted for family size, shall be based upon the schedules of area median income issued from time to time by the United States Department of Housing and Urban Development ("HUD").

2. With respect to XX project units, not including an unrestricted manager's units:

(i) Monthly rents for the apartments (including a reasonable utility allowance for utilities to be paid by tenants) shall not exceed the product of 1/12 times 30 percent times 60% of the area median income, adjusted for family size, or such greater amount as may be allowed by the Allocation Committee, as may be adjusted from time to time by the Allocation Committee.

(ii) The area median income, adjusted for family size, shall be based upon the schedules of area median income issued from time to time by the United States Department of Housing and Urban Development ("HUD").

C. Developer, its successors and assigns shall provide preferences in the selection of eligible tenants to persons who have been displaced by State activities. Developer and State shall cooperate to effectuate this provision prior to the initial renting, or upon occurrence of a vacancy, or the re-renting of any dwelling units.

D. At the State's request Developer covenants and agrees to submit to the State within 120 days of the request, an annual report (the "Annual Report") which shall include for each rental unit the rental rate and the income and family size of the occupants. The Developer shall provide for the submission of such information in its leases with tenants.

E. To the extent Developer obtains funding and/or tax credits from other governmental entities which have reporting and management requirements designed to maintain and document the affordable status of the Property then developer agrees to provide a copy of such reports to the State if requested to do so by the State. If governmental entities do not have reporting and management requirements, then Developer agrees to provide to State a Management Plan that includes at a minimum the components listed below:

The components of the Management Plan shall include:

(a) Management Agent - Developer shall submit the name and qualifications of the proposed management agent.

(b) Management Program - Developer or its management agent shall describe the proposed management, maintenance, tenant selection and occupancy policies and procedures for the Development.

(c) Management Agreement - Developer shall submit a copy of the proposed management, agreement specifying the relationship and division of responsibilities between Developer and management agent.

(d) Tenant Lease or Rental Agreement - Developer shall submit a copy of the proposed *tenant* lease or rental agreement to be used in renting the dwelling units.

(e) Annual Budget - Prior to the completion of construction and annually thereafter not later than fifteen (15) days prior to the beginning of the next fiscal year of the Development, the Developer shall submit a projected operating budget.

6. The State and the City of Santa Clara are deemed the beneficiaries of the terms and provisions of this Agreement and the covenants herein, both for an in their own right and for the purposes of protecting the interests of the community and other parties, public or private, for whose benefit this Agreement and the covenants running with the land have been provided. The State shall have the right if any covenants are breached, to exercise all rights and remedies, and to maintain any actions or suits at law or in equity or other proper proceedings to enforce the curing of such breaches to which it is entitled.

7. Notices.

All notices or other communications required or permitted hereunder shall be in writing to the addresses set forth below, and shall be (i) personally delivered Monday through Friday between 9:00 a.m. and 5:00 p.m. by means of professional messenger service or (ii) sent by overnight courier, return receipt requested, or (iii) sent by electronic facsimile to the telefacsimile numbers set forth below. Such notices or other communications shall be deemed effective as follows: (i) if personally delivered as set forth above, the date of delivery to the address of the person to receive such notice, so long as such day is not a state or federal holiday in which case the notice shall be deemed effective on the next day provided that if the next day is Saturday, Sunday, or a state or federal holiday, such notice shall be effective on the following business day, (ii) if sent by overnight courier, the date of delivery to the address of the person to receive such notice, so long as such day is not a state or federal holiday in which case the notice shall be deemed effective on the next day provided that if the next day is Saturday, Sunday, or a state or federal holiday, such notice shall be effective on the following business day, (iii) if mailed as provided above, on the date of receipt or rejection, or (iv) if given by electronic facsimile, when received by the other party if received Monday through Friday between 9: 00 a.m. and 5: 00 p.m. so long as such day is not a state or federal holiday and otherwise on the next

day provided that if the next day is Saturday, Sunday, or a state or federal holiday, such notice shall be effective on the following business day.

**TO STATE:** State of California  
Deputy Director  
Real Estate Services Division  
Department of General Services  
707 Third Street, 6<sup>th</sup> Floor  
West Sacramento, California 95605  
Telephone: (916) \_\_\_\_\_  
Telefacsimile: (916) \_\_\_\_\_

**with a Copy to:** Department of General Services  
Office of Legal Services  
707 Third Street 7<sup>th</sup> Floor  
Sacramento, CA 95605  
Facsimile No.: (916) 376-5088

**TO DEVELOPER:** \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
Telephone: ( ) \_\_\_\_\_  
Telefacsimile: ( ) \_\_\_\_\_

**with a Copy to:** \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
Telephone: ( ) \_\_\_\_\_  
Telefacsimile: ( ) \_\_\_\_\_

Notice of change of address or telefacsimile number shall be given by written notice in the manner described in this Section 8.

8. Miscellaneous Provisions

(a) Partial Invalidity.

If any term or provision of this Agreement or the application thereof to any person or circumstance shall, to any extent, be invalid or unenforceable, the remainder of this Agreement, or the application of such term or provision to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby, and each such term and provision of this Agreement shall be valid, and shall be enforced to the fullest extent permitted by law.

(b) Waivers.

No waiver of any breach of any covenant or provision herein contained shall be deemed a waiver of any preceding or succeeding breach thereof, or of any other covenant or provision herein contained. No extension of time for performance of any obligation or act shall be deemed an extension of time for performance of any other obligation or act.

(c) Successors and Assign.

This Agreement shall be binding upon and shall inure to the benefit of the permitted successors and assigns of the parties hereto.

(d) Nonliability of Officers and Employees.

Notwithstanding anything to the contrary in this Agreement, no elective or appointive board, commission, member, officer, employee or agent of State or Developer shall be personally liable to the other party, its successors and assigns, in the event of any default or breach or for any amount which may become due to the other party, its successors and assigns, or for any obligation under this Agreement.

(e) Entire Agreement.

This Agreement (including all Exhibits attached hereto) is the final expression of, and contains the entire agreement between, the parties with respect to the subject matter hereof and supersedes all prior understandings with respect thereto. This Agreement may not be modified changed, supplemented, superseded, canceled or terminated, nor may any obligations hereunder be waived, except by written instrument signed by the party to be charged or by its agent *duly* authorized in writing or as otherwise expressly permitted herein. The parties do not intend to confer any benefit hereunder or any person, firm or corporation other than the parties hereto and lawful assignees.

(f) Continuing Obligations.

All terms and conditions in this Agreement, which represent continuing obligations and duties of the parties, that have not been satisfied prior to close of escrow shall survive close of escrow and transfer to title to Developer and shall continue to be binding on the respective obligated party in accordance with their terms. All representations and warranties by the respective parties contained herein or made in writing pursuant to this Agreement are intended to be, and shall remain, true and correct and shall be deemed to be material, and, together with all conditions, covenants and indemnities made by the respective parties contained herein or made in writing pursuant to this Agreement (except as otherwise expressly limited or expanded by the terms of this Agreement), and shall survive the execution and delivery of this Agreement and the Closing, or, to the extent the context requires, beyond and termination of this Agreement.

(g) Time of Essence.

State and Developer hereby acknowledge and agree that time is strictly of the essence with respect to each and every term, condition, obligation and provision hereof and that failure to timely perform any of the terms, conditions, obligations or provisions hereof by either party shall constitute a material breach of and a non-curable (but waivable) default under this Agreement by the party so failing to perform.

(h) Relationship of Parties.

Nothing contained in this Agreement shall be deemed or construed by the parties to create the relationship of principal and agent a partnership, joint venture or any other association between State and Developer.

(i) Construction.

Headings at the beginning of each Section and subsection are solely for the convenience of the parties and are not part of the Agreement. Whenever required by the context of this Agreement, the singular shall include the plural and the masculine shall include the feminine and vice versa. This Agreement shall not be construed as if it had been prepared by one of the parties, but rather as if both parties had prepared the same. Unless otherwise indicated, all references to Sections and subsections are to this Agreement. All exhibits referred to in this Agreement are attached and incorporated by this reference.

(j) Governing Law.

The parties hereto acknowledge that this Agreement has been negotiated and entered into in the State of California. The parties hereto expressly agree that this Agreement shall be governed by, interpreted under, and construed and enforced in accordance with the laws of the State of California.

(k) Counterparts.

This Agreement may be executed in multiple counterparts, each of which shall be deemed an original, but all of which, together, shall constitute one and the same instrument.

(l) Days of Week.

If any date for performance herein falls on a Saturday, Sunday or holiday, as defined in Section 6700 of the California Government Code, the time for such performance shall be extended to 5:00 p.m. on the next business day.

**EXHIBIT "A"**

**LEGAL DESCRIPTION**

REAL PROPERTY in the City of Santa Clara, County of Santa Clara, State of California,  
described as follows:

**ALL-PURPOSE ACKNOWLEDGMENT**

State of California

SS.

County of Sacramento

On \_\_\_\_\_ before me, \_\_\_\_\_, personally appeared

SIGNER(S)

personally known to me -OR-

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.

WITNESS my hand and official seal.

NOTARY'S SIGNATURE

**OPTIONAL INFORMATION**

The information below is not required by law. However, it could prevent fraudulent attachment of this acknowledgment to an unauthorized document.

**CAPACITY CLAIMED BY SIGNER (PRINCIPAL)**

**DESCRIPTION OF ATTACHED DOCUMENT**

- INDIVIDUAL
- CORPORATE OFFICER

TITLE(S)

TITLE OR TYPE OF DOCUMENT

- PARTNERS
- ATTORNEY-IN-FACT
- TRUSTEE(S)
- GUARDIAN/CONSERVATOR(S)
- OTHER: \_\_\_\_\_

NUMBER OF PAGES

DATE OF DOCUMENT

OTHER

SIGNER IS REPRESENTING  
NAME OF PERSON(S) OR ENTITY(IES)

RIGHT THUMB PRINT  
OF  
SIGNER

Top of Thumbprint here

