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DEVELOPMENT AGREEMENT

AUG 14 2007

BY AND AMONG

City of Santa Clara
Planning Division

THE CITY OF SANTA CLARA
a chartered California municipal corporation,

THE REDEVELOPMENT AGENCY OF THE CITY OF SANTA CLARA
a public body, corporate and politic,

THE STATE OF CALIFORNIA
Department of General Services,

and

SUMMERHILL WINCHESTER, LLC
a California limited liability company,

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DEVELOPMENT AGREEMENT

THIS DEVELOPMENT AGREEMENT (“**Agreement**”), dated for convenience this 19th day of June, 2007, by and among the CITY OF SANTA CLARA (“**City**”), a chartered California municipal corporation, the REDEVELOPMENT AGENCY OF THE CITY OF SANTA CLARA (“**Agency**”), the STATE OF CALIFORNIA, Department of General Services (“**State**”), and SUMMERHILL WINCHESTER, LLC (“**SummerHill**”), a California limited liability company, on the basis of the following facts, understandings and intentions of the Parties.

Recitals

1. Section 65864 et seq. of the California Government Code authorizes City to establish procedures to enter into binding Development Agreements with persons having legal or equitable interests in real property located within the City for development of such property.
2. The Code of the City of Santa Clara, California (“**SCCC**”) Section 17.10.010 et seq., adopted by the City Council (“**City Council**”) of the City, establishes the authority and procedure for review and approval of proposed development agreements.
3. The State of California is currently the legal owner of the property (“**Property**”) governed by this Agreement, comprising an approximately seventeen (17) acre site, located at 90 North Winchester Boulevard in the City of Santa Clara, further described in **Exhibit A** attached hereto and incorporated by this reference.
4. The State and SummerHill have executed an agreement entitled “Purchase and Sale Agreement State of California Department of General Services Portion of Former Bay Area Research Extension Center” dated August 15, 2003 (“**SummerHill Purchase Agreement**”) whereby State has agreed to sell approximately ten (10) acres of the Property to SummerHill (“**SummerHill**”).

Parcel") upon the meeting of certain conditions enumerated therein. The parties intend that SummerHill shall develop the SummerHill Parcel as market rate housing.

5. The State and the Agency have entered into an agreement entitled "Purchase and Sale Agreement", dated July 5, 2005, ("**Agency Purchase Agreement**") for Agency purchase of approximately six (6) acres of the Property ("**Senior Parcel**"). It is intended that Agency will take possession of the Senior Parcel and develop the Senior Parcel as a senior rental housing project that is affordable to very low- and low-income seniors. The State has also agreed to transfer and dedicate to City the remaining one (1) acre portion of the Property for use as a park ("**Park Parcel**").

6. The parties intend that SummerHill and the developer of the Senior Parcel ("**Senior Developer**") shall develop the Property in accordance with this Agreement. For purposes of this agreement, these parties shall be referred to collectively as the "**Developers.**"

7. On June 19, 2007, the City granted certain land use approvals ("**Approvals**") to the State and SummerHill affecting the Property, including a General Plan Amendment, Resolution No. 07-7430; rezoning to Planned Development zoning, Resolution No. 07-7432 ("**Rezoning**"); parcel map for the preliminary division of the property, Resolution No.07-7431 ("**Parcel Map**"); and vesting tentative map showing individual housing lots on the SummerHill Parcel, Resolution No. 07-7433 ("**Tentative Map**"). The entire project for development of market rate housing, senior housing, the public park and related improvements is referred to herein as the "**Project.**"

8. Prior to its adoption of the Approvals described in Recital 7, above, the City Council of the City of Santa Clara (i) reviewed and considered the significant environmental impacts of the Project and several alternatives to the Project, as described in that certain Final Environmental Impact Report, State Clearinghouse No. 2003072093 (the "**Project EIR**") and (ii) adopted Resolution No. 07-7429 on June 19, 2007, certifying the Project EIR as adequate and complete, making

Findings concerning Mitigation Measures and Alternatives (the “**Findings**”), adopting a Statement of Overriding Considerations, and adopting a Mitigation Monitoring and Reporting Plan (the “**MMRP**”), all in accordance with the provisions of the California Environmental Quality Act, California Public Resources Code section 21000 et seq. (“CEQA”).

9. The Approvals authorize SummerHill to implement its responsibilities with respect to the Project by building a residential community consisting of approximately one hundred ten (110) single family homes on the SummerHill Parcels, along with a fully improved one (1.0) acre park and other related infrastructure on the Property as further required herein. The Approvals additionally authorize the Senior Developer to implement their responsibilities with respect to the Project by building up to one hundred sixty-five (165) senior residences along with approximately two and one half (2.5) acres of landscaped area on the Senior Parcel (“**Senior Project**”).

10. Each of the parties acknowledges that development and construction of the Project is a large-scale undertaking involving major investments by Developers and City. Certainty that the Project can be developed and used in accordance with the Approvals will benefit Developers and City, and provide to each of the parties a permanent plan for development of the Property.

11. The City is willing to enter this Agreement for the reasons enumerated in SCCC Section 17.10.010 to (i) eliminate uncertainty in the comprehensive development planning of large-scale projects in the City, such as the Project; (ii) secure orderly development and fiscal benefits for public services, improvements and facilities planning in the City; (iii) meet the goals of the General Plan; and (iv) plan for and concentrate public and private resources in the development process for the mutual benefit of Developers and City.

12. City’s willingness to enter into this Agreement is a material inducement to Developers to implement the Project, and Developers propose to enter this Agreement in order to (i) obtain

assurance from City that the Property may be developed, constructed, completed and used pursuant to the Approvals and in accordance with existing policies, rules and regulations of the City, subject to the limitations expressed herein; and, (ii) provide for a coordinated and systematic approach to funding the cost of certain public improvements and facilities planned by the City, and to establish the timing and extent of contributions required from Developers for these purposes.

13. On April 11, 2007, April 25, 2007, and May 14, 2007, City's Planning Commission held duly noticed public hearings on this Agreement and (i) determined that consideration of this Agreement based on the Final EIR complies in all respects with CEQA; (ii) determined that this Agreement is consistent with the City's General Plan; and (iii) recommended that the City Council approve this Agreement.

14. On June 19, 2007, the City Council held a duly noticed public hearing on this Agreement and determined that consideration of this Agreement complies in all respects with CEQA; found this Agreement to be consistent with the City's General Plan; and, introduced Ordinance No. 1821, approving this Agreement.

15. On July 10, 2007, the City Council adopted Ordinance No. 1821, enacting this Agreement (the "**Adopting Ordinance**").

16. Developers have requested that the City consider entering into a development agreement and proceedings have been taken in accordance with state law.

Agreement

NOW, THEREFORE, pursuant to the authority contained in Section 65864 et seq., of the California Government Code and SCCC Section 17.10.010 et seq., and in consideration of the mutual covenants and promises of the parties, the parties agree as follows:

///

1. Definitions

As used in this Agreement, the following terms, phrases and words shall have the meanings and be interpreted as set forth in this Section (the meaning given the term in the singular shall include the term in the plural and vice versa):

2. Development of the Property/Description of the Project

2.1 In General

As used herein, the term "Project" shall mean the development of the Project Site as described in the "Project Approvals" (defined in Recital 7, above), including all on-site and off-site "Project Facilities and Infrastructure" (defined in Paragraph 5, below). Any general reference in this Agreement to the "Project" shall be deemed to include a reference to the Project Site.

2.2 Project Approvals

As used herein, the term "Project Approvals" shall mean the Approvals described in Recital 7, including, in particular:

(a) those provisions of City's General Plan that relate to or affect the Project Site, as the General Plan existed on the Effective Date and as it may be amended from time to time in a manner consistent with the terms and provisions of this Agreement (the "**General Plan**"); and,

(b) the zoning of the Project Site, as the zoning existed on the Effective Date and as it may be amended from time to time in a manner consistent with the terms and provisions of this Agreement (the "**Zoning**"); provided that Project Approvals shall not mean or include amendments to the General Plan or zoning that are in conflict with the provisions of these Project Approvals as they existed on the Effective Date unless the Developers consent in writing to such conflicting amendments.

///

2.3 Subsequent Approvals

As used herein, the term "Subsequent Approvals" shall mean those permits and approvals (other than the Project Approvals and amendments thereto) that may be necessary or desirable for the development of the Project including, without limitation, (i) subdivision maps and related or similar approvals issued under the California Subdivision Map Act, (ii) development permits (including Site Plan Reviews and Conditional Use Permits as described in the Specific Plan), (iii) architectural review and design review approvals, (iv) any other discretionary or ministerial permits or approvals of City that may be necessary or appropriate for buildout of the Project and Project Site, and (v) any amendments to any of the foregoing that may be necessary or appropriate for the development of the Project.

2.4 Approvals

Project Approvals, amendments to Project Approvals, and Subsequent Approvals are sometimes referred to in this Agreement collectively as the "Approvals" and each individually as an "Approval."

2.5 Consideration to SummerHill

The parties acknowledge and agree that City's agreement to perform and abide by the covenants and Obligations of City set forth herein is material consideration for SummerHill's agreement to perform and abide by the covenants and Obligations of SummerHill set forth herein.

2.6 Consideration to Senior Developer

The parties acknowledge and agree that City's agreement to perform and abide by the covenants and Obligations of City set forth herein is material consideration for the Senior Developer's agreement to perform and abide by the covenants and Obligations of the Senior Developer set forth herein.

///

2.7 Consideration to City

The parties acknowledge and agree that the Developers' Agreement to perform and abide by the covenants and Obligations of the Developers, and each of them, set forth herein is material consideration for City's agreement to perform and abide by the covenants and Obligations of City set forth herein.

2.8 Rights of Developers Generally

Developers shall have a fully vested right to develop the Project and use the Project Site in a manner consistent with the provisions of this Agreement and "Applicable Law" as defined below.

2.9 Rights of City Generally

City shall have a right to regulate development of the Project and use of the Project Site in a manner consistent with the provisions of this Agreement and "Applicable Law" (as defined below).

2.10 Parameters of Project

The permitted uses of the Project Site, the density and intensity of use of the Project Site, the maximum height and size of buildings included in the Project, and provisions for the reservation and dedication of land (collectively, the "**Project Parameters**") shall be as set forth herein and in the Project Approvals.

2.11 Applicable Law

2.11.01 Applicable Law Defined. Except as otherwise agreed to by the Parties, the rules, regulations and official policies applicable to the Project and the Project Site during the term of this Agreement shall be those set forth in this Development Agreement and, except as otherwise set forth herein, the rules, regulations and official policies of City (including the plans, municipal codes, ordinances, resolutions and other local laws, regulations and policies of City) in force and effect on the Effective Date (collectively, "**Applicable Law**").

2.11.02 Approvals as Applicable Law. Applicable Law shall include, without limitation, the Approvals as they may be issued from time to time in a manner consistent with the terms and provisions of this Development Agreement.

2.11.03 No Conflicting City Laws. City may apply to the Project and the Project Site any rule, regulation or official policy of City (including any plan, municipal code, ordinance, resolution or other local law, regulation or policy of City) (each a “**City Law**”) that does not conflict with Applicable Law or this Development Agreement. City shall not, however, apply to the Project or the Project Site (whether by initiative, referendum, imposition of mitigation measures under CEQA or otherwise) any City Law that is in conflict with Applicable Law or this Development Agreement, unless Developers consent in writing to the application of such conflicting City law to the Project or the Project Site.

2.11.04 Examples of Conflicting City Laws

(a) City Law shall be deemed to conflict with Applicable Law or this Development Agreement if it would have any of the following effects:

(1) Prevent all or a portion of the Project from being developed, used, operated or maintained in accordance with the terms and provisions of the Approvals, as and when they are issued, or the development standards identified above as Project Parameters;

(2) Limit or reduce the overall density or intensity of the Project, or any part thereof, to a density or intensity that is lower than that specified in the Approvals;

(3) Modify any land use designation or permitted or conditional use of the Project Site in a manner inconsistent with the Approvals;

(4) Limit or control the rate, timing, phasing or sequencing of the approval, development or construction of all or any portion of the Project except as specifically permitted by this Development Agreement;

(5) Impose any condition, dedication or exaction that would conflict with Applicable Law or this Development Agreement;

(6) Require the issuance of discretionary or nondiscretionary permits or approvals by City other than those identified in Applicable Law;

(7) Apply to the Project any provision, condition or restriction that would be inconsistent with the Approvals; or,

(8) Apply to the Project any rent control provisions, uniform wage requirements or restrictions on the sale or resale of property.

(b) If City attempts to apply to the Project a City Law which Developer believes to conflict with Applicable Law or this Development Agreement, Developer shall provide to City in writing a notice describing the legal and factual basis for Developer's position. The parties shall meet and confer within thirty (30) days after the date of such written notice with the objective of attempting to arrive at a mutually acceptable solution to this disagreement. If no mutually acceptable solution can be reached, either party may take such action as may be permitted under Paragraph 27, below.

2.11.05 Uniform Codes and Standard Specifications

(a) Nothing herein shall prevent City from applying to the Project standards contained in uniform building, construction, fire or other uniform codes, as the same may be adopted or amended from time to time by City, provided that the provisions of any such uniform code shall:

(1) Apply to the Project only to the extent that such code is in effect on a City-wide basis; and,

(2) With respect to those portions of any such uniform code that have been adopted by City without amendment, be interpreted and applied in a manner consistent with the generally prevailing interpretation and application of such code in California.

(b) Nothing herein shall prevent City from applying to the Project “standards and specifications” for public improvements (e.g., streets, storm drainage, parking lot standards, driveway widths) as the same may be adopted or amended from time to time by City, provided that the provisions of any such standards and specifications shall apply only to the extent that they are in effect on a City-wide basis and only to the extent that such standards and specification are consistent with the Planned Development zoning of the Approvals (“**Planned Development Plan**”).

2.11.06 State and Federal Law

(a) Nothing herein shall prevent City from applying to the Project any change in City Law to the extent that the application of such change is required by:

(1) State or federal laws or regulations; or,

(2) Any regional governmental agency that, due to the operation of state law (and not the act of City through a memorandum of understanding, joint exercise of powers authority or other agreement that is undertaken or entered into following the Effective Date), has binding legal authority on City.

(b) If the application of such changes prevents or precludes performance of one or more provisions of this Development Agreement, City and Developers shall take any and all such actions as may be necessary or appropriate to ensure that the provisions of this Agreement shall be implemented to the maximum extent practicable.

2.12 Permitted Uses

(a) The SummerHill Parcels. The SummerHill Parcels shall contain a new residential community consisting of up to one hundred ten (110) market rate, single-family homes, ranging in size from 1500 to 3000 square feet, excluding garage space. Up to thirty-six (36) of said homes shall be traditional single family units located around the perimeter of the Project in order to compliment the existing residential community. Up to seventy-four (74) patio-homes will be located along mews in the center of the site.

(b) The Senior Parcel

(1) Escrow Closes. The Parties acknowledge that the State and Agency have entered into the Agency Purchase Agreement for the acquisition of the Senior Parcel at a subsidized price in consideration for, and with the sole purpose of, satisfying the City's affordable housing requirement with respect to the Project Site/Property. If the Agency closes escrow on the Senior Parcel in accordance with the Agency Purchase Agreement, then the Senior Parcel shall be developed for up to 165 units of senior residences which shall be made affordable to low- and very low- income seniors in accordance with the requirements of the City of Santa Clara.

(2) Agency Fails to Close Under Senior Purchase Agreement. In the event that SummerHill closes escrow on the SummerHill Parcel, and the Agency decides not to close escrow under the terms of the Agency Purchase Agreement and the State is not in breach of the Agency Purchase Agreement, then State shall have no obligation to sell or lease the Senior Parcel. If State elects to remarket the Senior Housing Parcel for residential development, it shall include in any future purchase agreement, lease or title transfer agreement, the requirement that the Senior Parcel shall be required to satisfy the City's affordable housing requirement only for the Senior Parcel by including housing on the Senior Parcel affordable to moderate income households, as defined in the

City Housing Element, in the amount of ten percent (10%) of the units constructed only on the Senior Parcel. Neither State nor its subsequent buyer shall have the obligation to develop the Senior Project and any new development proposal will be subject to any required additional approvals by the City, including new or further environmental review. If Agency fails to close escrow and take title, then the Agency shall no longer be considered a party and shall have no further rights or obligations under this Agreement, except for such obligations that may have been incurred prior to the date of such sale or other transfer. In such circumstances, SummerHill shall be deemed to have met the City's affordability requirement.

(3) State Fails to Close Under Senior Purchase Agreement. In the event that SummerHill closes escrow on the SummerHill parcels and the State decides not to close escrow under the terms of the Agency Purchase Agreement and the Agency is not in breach of the Agency Purchase Agreement, and the Agency does not pursue its rights under the Agency Purchase Agreement, then State shall commence to advertise the Senior Parcel and promptly select an alternative developer to acquire and develop the Senior Parcel, subject to future approvals by City, in accordance with this Agreement. The alternative buyer may develop the Senior Project, as provided in the Planned Development Plan for the Senior Parcel. Any new development proposal that is different than the Senior Project may require additional approvals by the City, including new or further environmental review. In the event that State fails to close escrow as provided for in the Agency Purchase Agreement or if title to the Senior Parcel should revert to State, State shall include in any future purchase agreement, lease or title transfer agreement, the requirement that the Senior Parcel shall be required to satisfy the City's affordable housing requirement for the entire Property by including housing on the Senior Housing Parcel affordable to moderate income households, as defined in the City Housing Element, in the amount of ten percent (10%) of the units constructed on

the entire Property. By way of example, if the Property could be developed with 275 units, upon transfer or sale to any person other than Agency, such new development shall include 28 affordable units. Upon any transfer or sale of the Senior Parcel to a developer by State or if Agency fails to close escrow and take title, then the Agency shall no longer be considered a party and shall have no further rights or obligations under this Agreement, except for such obligations that may have been incurred prior to the date of such sale or other transfer.

2.13 Effective Date of Agreement

(a) Assuming all Parties have signed this Agreement, this Agreement shall become “Effective” as to the Parties on that date that the Adopting Ordinance takes legal effect (“**Effective Date**”). Upon the Effective Date, this Agreement shall become recordable against the Project Site or any Portion, and the rights, obligations, terms and provisions of this Agreement apply to, and be enforceable by, the Parties and their successors and assigns. Further, the Rights and Obligations of this Agreement shall constitute covenants and/or equitable servitudes running with such portion of the Project Site pursuant to California law (including, without limitation, Civil Code section 1468) such Rights and Obligations shall be enforceable by and against Developers as owner of such portion of the Project Site. The terms and conditions set forth herein shall be for the benefit of or a burden upon each such portion of the Project Site as to which this Agreement is Effective, shall run with such portion, and shall be binding upon Developers and its successors and assigns during their respective ownerships of such portion of the Project Site. In the event that a referendum petition challenging the Adopting Ordinance causes an election to be held, which election results in the Adopting Ordinance being upheld, then the Effective Date shall be deemed for all purposes to be the date that the Adopting Ordinance would have become effective in the absence of the referendum.

(b) Nothing in this Paragraph shall obligate City to issue any permits necessary to construct the Project unless and until both the Environmental Remediation described in Paragraph 2.15 and the Site Preparation described in Paragraph 5.7 have been completed.

2.14 Dedication of Necessary Right of Way

Upon approval of the first final map (or maps) for any of the Property (“**Final Map**”), the owner(s) of the Property shall dedicate, or make irrevocable offers of dedication, for a public entry street and public loop street on the interior of the Property. The owner(s) of the Property shall also dedicate public utilities easements under said streets if required by City. The public streets dedicated and developed pursuant to this Agreement shall be as shown on the Planned Development Plan.

2.15 Environmental Remediation

Pursuant to the SummerHill Purchase Agreement, SummerHill, acting on behalf of the State is obligated to contract for environmental remediation on the Property in accordance with the terms set forth in the Remedial Action Work Plan for the Property (“**RAW**”), as the RAW may be approved by the California Department of Toxic Substances Control (“**DTSC**”). The State shall be responsible in accordance with section 4.2(b) of the SummerHill Purchase Agreement for all costs associated with the remediation of hazardous materials in accordance with said RAW and this Agreement does not modify or amend the provisions of the SummerHill Purchase Agreement.

2.16 Density Bonus Allowances

The City shall grant Developers standard allowances through the Planned Development rezoning process in accordance with the intent and provisions of the State Density Bonus Law.

2.17 Single Integrated Development

City and Developers acknowledge that the Project is and shall be considered a single integrated development project. However, nothing in this Agreement is intended to prevent SummerHill from

commencing, developing or completing its market rate housing project, and selling the market rate units developed thereunder on the SummerHill Parcels as long as SummerHill has met all of its obligations under this Agreement and the Development Plan.

3. Term/Timing of Development

(a) The term (“**Term**”) of this Agreement shall commence, and the Agreement shall become effective, on the Effective Date. This Agreement shall terminate at 12:01 a.m. on August 10, 2017, unless sooner terminated or extended as hereinafter provided for in this Agreement.

(b) The Term will be extended an additional five (5) years upon written request by Developers not less than ninety (90) days prior to the expiration of the initial ten (10) year term and, the payment of fees comparable to those associated with 230,000 square feet of residential space that could be built in accordance with this plan. For the purposes of this Agreement, those fees shall be set at five hundred thousand dollars (\$500,000). Developers shall be entitled to full credit of these paid fees which shall be applied towards the total sum of the future development fees calculated and applied to the issuance of building permits within that additional five (5) year extension. Any such fees not so credited shall be refunded to Developers upon the conclusion of the five-year extension. Following expiration of the Term or any extension, (or if sooner terminated, this Agreement shall have no force and effect, subject, however, to post-termination obligations of this paragraph 3), this Development Agreement may be terminated with respect to the property included in a recorded final subdivision map creating residential lots on any portion of the Project Site (a “**Residential Small Lot Final Subdivision Map**” or “**Small Lot Map**”), provided that no further on-site or off-site infrastructure is required and no conditions remain to be satisfied before building permits can be issued for such lots.

(c) As relates to each individual residential lot within the Project Site, this Agreement shall automatically terminate on the date the City issues a certificate of occupancy, final building inspection or similar permit for a residential unit constructed on such lot.

(d) Except as set forth specifically in this Agreement, Developers shall not be required to initiate or complete development of any portion of the Project within any particular period of time, nor shall Owner be required to delay development of the Project. Developer may respond to market conditions and other relevant factors in advancing or delaying the phasing and development of the Project as it determines, in its sole business judgment, to be necessary. Not in limitation of the foregoing, the Parties desire to avoid the result of the California Supreme Court's holding in *Pardee Construction Co. v. City of Camarillo*, 37 Cal.3d 465 (1984), where the failure of the parties therein to consider and expressly provide for the timing of development resulted in a later-adopted initiative restricting the timing of development to prevail over such parties' Agreement, and therefore acknowledge that Developers shall have the right to develop the Project at such time as Developers deem appropriate within the exercise of its subjective business judgment and no annual or other limit, moratoria, or other limitation upon the number of, or phasing or pacing or, units which may be constructed on, or building permits which may be obtained for lots, or the like shall apply to the Project.

(e) In the event of any litigation brought by a third party with respect to this Development Agreement or any of the Project Approvals (as defined in Paragraph 2.2), including, but not limited to any challenge to the environmental determinations made pursuant to CEQA, the Term of this Agreement shall be extended to the date when such litigation has resulted in a final, non-appealable judgment or other conclusion or extended by time equal to the time required to conclude such litigation.

4. Development Fees and Exactions

4.1 Development Fees

(a) In General. City shall impose against or apply to the Project or the Project Site only those financial obligations described in this Paragraph 4.1. Except as otherwise specifically stated below, any financial obligation imposed against or applied to the Project under this Paragraph 4.1 shall be consistent with the provisions of controlling California law, including California Government Code section 66000 et seq. All such controlling California law (e.g., Cal. Const. Arts XIX and XIII A and their implementing statutes; Govt. Code §§66000 to 66025, etc.) is referred to collectively in this Development Agreement as “AB 1600.”

(b) Existing Project Fees Defined. The Project shall be subject to all impact fees and charges of City in the amounts of such fees and charges in effect as of the Effective Date (the “**Existing Project Fees**”). City may increase the Existing Project Fees from time to time during the term of this Development Agreement to reflect increases in the Engineering News Record Construction Cost Index, the Consumer Price Index, or such other reasonable measure of change in the cost of providing the facilities, improvements, or services that the Existing Project Fees are expressly intended to fund. New fees or charges or increases in Existing Project Fees in excess of those reasonably justified and warranted by changes in the costs of providing the facilities, improvements or services expressly contemplated by the Existing Project Fees shall not be applied to the Project or Project Site without the written consent of Developers. Where a portion of an increase in an Existing Project Fee is a result of or attributable to a change in the list of facilities, improvements or services that the Existing Project Fees are used to fund, the Project shall not be subject to such portion of the fee increase. Existing Project Fees shall not be challengeable by Developers regardless of whether the amount of such Fees satisfies the requirements of AB 1600.

Increases in Existing Project Fees shall be subject to AB 1600, shall be adopted in accordance with the limitations set forth herein and shall be challengeable by Developers.

(c) Monthly Utility Rates. The Project shall be subject to the City's rates for monthly utilities service and their current amounts in effect as of the Effective Date (collectively, "**Existing Utilities Charge**"). Developers accept the Existing Utilities Charges and hereby waive any and all administrative, legal and/or equitable rights and remedies it might otherwise have to question, protest, adjudicate or otherwise challenge such Existing Utilities Charges, regardless of whether or not the amount of such Existing Utilities Charges satisfies the requirements of Controlling Law. Additionally, the Project shall be subject to amendments to the Existing Utilities Charge that increase the amount of the Existing Utilities Charge (the increment of increase to the amount of the Existing Utilities Charges - i.e., the dollar amount difference between the Existing Utilities Charges and the amended Existing Utilities Charges - is referred to as the "**Existing Utilities Charge Increment**"). The Existing Utilities Charge Increment shall be subject to the provisions of Controlling Law, and can be questioned, protested, adjudicated or otherwise challenged by Developer. Notwithstanding the foregoing, at a minimum, the Project shall always be subject to the Existing Utilities Charge.

(d) Contribution to City Infrastructure. In addition to the foregoing development impact fees, SummerHill shall, concurrently with the close of escrow of the SummerHill Parcel, pay to City the sum of two hundred thousand dollars (\$200,000) as a contribution toward the South of Forest Assessment District for reconstruction and rehabilitation of roadways immediately adjacent to the Project Site. In the event that the South of Forest Assessment District is not created within three (3) years of the Effective Date of this Agreement, City may use this sum for infrastructure improvements in the area of the Project.

4.2 Dedications

Developers shall offer to dedicate to City, upon request by City, all portions of the Property designated in the Conditions of Approval for public easements, streets or public areas.

4.3 Reimbursement for Expenses of City

Developers agree to reimburse City for expenses over and above fees paid by Developers as an applicant for reasonable and actual costs incurred by City relating to this Agreement. Developers shall pay the costs associated with the planning, processing and environmental review process for the Project, provided that such costs shall be limited to (i) reasonable costs directly associated with the preparation of the EIR; (ii) fees ordinarily charged by City for processing land use applications and permits in effect as of the Effective Date, provided that such fees and costs are applied to Developers in the same manner as other similarly situated applicants seeking similar land use approvals and are not limited in applicability to the Project or to related uses; and (iii) fees associated with permit plan checking. Developers shall reimburse City for reasonable staff overtime expenses incurred by City in processing review, approval, inspection and completion of the Project provided that such overtime expenses are (a) reasonably necessary for the completion of the Project in accordance with Developers' schedule; and (b) applied to Developers in the same manner as similarly situated project applicants.

5. Project Infrastructure and Dedication

5.1 In General

Any public improvements constructed by Developers and dedicated or otherwise conveyed to City, and any right-of-way or other real property dedicated to City, shall be dedicated or otherwise conveyed (i) free and clear of any liens unacceptable to the City and (ii) except as otherwise agreed to by City, in a condition free of any toxic materials.

5.2 Funding of Engineering for Site Layout

Pursuant to the terms of the SummerHill Purchase Agreement, SummerHill is obligated to pay for (i) development of the Tentative Map for the Property, (ii) design of public streets, curb, gutter and sidewalk, driveways and pedestrian facilities (such design shall include public streets along the perimeter of the Senior Parcel); and (iii) costs to design utilities to serve the Senior Project.

5.3 Funding for Construction of Public Streets and Utilities within Project

SummerHill shall construct all street improvements on the new public streets, including all frontages of the senior housing site, except for the Winchester Boulevard frontage that is not a part of the new entry road improvement area, shown in **Exhibit B**, attached hereto and incorporated by this reference. Additionally, SummerHill shall construct the infrastructure improvements shown on the approved SummerHill Planned Development plans, including sewer, storm drain, water main extensions within its subdivision and across the one-acre public park area. As these improvements have been designed to accommodate and benefit the Senior Parcel, the Senior Developer shall reimburse SummerHill for its proportionate share of the actual costs of these improvements, in the percentages shown in **Exhibit C**, attached hereto and incorporated by this reference, upon the earlier to occur of the recordation of a final map for the development of the Senior Parcel, the recordation of a condominium map for the development of the Senior Parcel, or issuance of a building permit for the development of the Senior Parcel.

5.4 Urban Run-off

(a) Sizing. SummerHill shall construct a storm water treatment system to meet the requirements of Provision C.3 of the City's National Pollution Discharge Elimination System permit ("NPDES Permit"). The size of the storm water treatment system shall be sufficient to treat all storm water discharge for the Property, based on the calculations shown in **Exhibit D**, attached

hereto and incorporated by this reference. To the extent the Senior Parcel is able to meet the requirements of C.3 of the NPDES Permit independently from the SummerHill structure, the storm water treatment system constructed by SummerHill shall be reduced in size to accommodate the SummerHill Parcel and all public facilities, including, but not limited to, the streets and the Park Parcel. The Park Parcel shall be included in the sizing of the urban run-off improvements only to the extent that the improvements in the Park Parcel trigger its requirement to meet Provision C.3 of the NPDES Permit.

(b) Construction, Maintenance and Operation. The storm water treatment system shall be constructed on the Park Parcel. Developers shall consent to the creation of a financing mechanism, including, but not limited to a Mello-Roos or Lighting District, for the purposes of financing the maintenance, upkeep and operation, including an amount sufficient for capital replacement of the system over its useful life, of the storm water treatment facility. In creating the financing mechanism, Developers agree that there shall be no charge to City for any discharge from any public facilities located within the Project, including, but not limited to, the public streets and Park Parcel.

5.5 Dedication and Construction of Public Park Improvements

(a) Dedication. State shall, upon the recordation of the Parcel Map, convey in fee simple to City the one-acre Park Parcel, as depicted on the Parcel Map, subject to a reservation of mineral rights without rights of surface entry, and any easements or dedications identified on the Parcel Map. No additional consideration shall be required for this conveyance.

(b) Design and Construction. SummerHill shall, at its sole cost and expense and in accordance with the provisions of this paragraph, design and construct park improvements on the Park Parcel.

(1) Prior to issuance of the twentieth (20th) building permit for construction of a single-family residence, SummerHill shall provide construction drawings, in a form acceptable to City, in accordance with the design shown conceptually in the Development Plans (“**Park Plans**”).

(2) Prior to issuance of the seventieth (70th) building permit for a single-family residence, SummerHill shall provide security to construct the improvements identified in the Park Plans.

(3) Prior to issuance of the ninety-fifth (95th) building permit for a single-family residence, SummerHill shall have substantially completed construction of the improvements identified in the Park Plans.

5.6 Design of On-Site and Off-Site Improvements

Development of the SummerHill Parcel and the Senior Parcel by the Developer or Senior Developer shall be subject to final architectural and design review by City pursuant to the policies, regulations and ordinances in effect as of the Effective Date. All improvement plans shall be prepared in accordance with the Project Approvals, which shall govern the design and scope of all on-site and off-site improvements benefiting or to be constructed on the Property, including all street widths and dedications.

(a) Water System Improvements. Developers shall provide water system improvements as required by the Development Plan.

(b) Sewer Improvements. Developers shall provide sewer system improvements as required by the Development Plan.

(c) Road/Traffic Improvements. Developers shall provide road and traffic improvements as required by the Development Plan.

5.7 Site Preparation

Prior to close of escrow, SummerHill shall deep till the Property. For purposes of this Agreement, "deep tilling" shall mean mixing of surficial and subsurficial soils such that the soil is excavated in layers to a depth of thirty-six (36) inches and then mixed with soils from lower levels. Agency shall reimburse SummerHill for the cost of deep tilling on the Senior Parcel. Such reimbursement shall be due and payable upon the earlier to occur of the recordation of a final map for the development of the Senior Parcel, the recordation of a condominium map for the development of the Senior Parcel, or issuance of a building permit for the development of the Senior Parcel.

6. Credits and Reimbursements

(a) City acknowledges that Developer may have fronted or will in the future front the costs to prepare studies, reports, plans, specifications and other documents necessary for the Project Approvals or infrastructure necessary to serve the Project. City acknowledges that Developers shall, consistent with this Agreement, be required to front the cost construction of certain infrastructure improvements necessary to serve, not only the Project, but also other areas of the City. In light of the benefits Developer is creating by fronting the cost of these studies, plans, reports, specifications, documents and construction, Developer shall receive credits or reimbursement as set forth herein.

(b) For purposes of this paragraph 6, "credit" shall mean Developer is excused from paying an otherwise lawfully imposed fee, tax, assessment or charge.

(c) For purposes of this section, "reimbursement" shall mean Developer shall receive all or a portion of any existing City fee or any other financing mechanism City may use to collect the costs to design, plan, permit, complete environmental review, acquire real property, and construct certain infrastructure improvements.

(d) In no event shall credits exceed the actual funds expended by Developer. In no event shall reimbursement exceed the actual amount collected by City for that purpose.

(e) Developer's right to receive reimbursement shall occur only when City receives funds from others benefiting (the "**Benefited Properties**") from fronted infrastructure and programs. To the extent permitted by law, City shall impose fees, taxes, assessments and charges against the Benefited Properties for that infrastructure and for those programs that Developer paid for. If City attempts in good faith but is unable to collect such reimbursement from a particular Benefited Property, SummerHill hereby holds City harmless for such failure. However, City shall continue to collect such reimbursement from other Benefited Properties and shall pay such proceeds to SummerHill to the extent permitted by law. City and Developer from time to time may enter into additional agreements to effectuate the purposes of this Paragraph 6.

7. **Cooperation in Implementation**

Upon Developers' satisfactory completion of all required preliminary actions provided in the Development Plan, and payment of required processing fees, if any, City shall proceed in a reasonable and expeditious manner, in compliance with the deadlines mandated by applicable agreements, statutes or ordinances, to complete all steps necessary for implementation of this Agreement and development of the Property in accordance with the Development Plan, including the following actions:

(a) Scheduling all required public hearings by the City Council and Planning Commission; and,

(b) Processing and checking all maps, plans, land use and architectural review permits, permits, building plans and specifications and other plans relating to development of the Property filed by Developers as necessary for complete development of the Property. Developers, in a timely

manner, shall provide City with all documents, applications, plans and other information necessary for the City to carry out its obligations hereunder and to cause City's planners, engineers and all other consultants to submit in a timely manner all necessary materials and documents. It is the parties' express intent to cooperate with one another and diligently work to implement all land use and building approvals for development of the Property in accordance with the Development Plan and the terms hereof.

8. Periodic Review

8.1 Annual Review

City and Developers shall review all actions taken pursuant to the terms of this Agreement once annually during each year of the Term, within sixty (60) days prior to each anniversary of the Enactment Date, unless the City and Developers agree in writing to conduct the review at another time.

8.2 Developers' Submittal

Within ninety (90) days before each anniversary of the Enactment Date, Developers shall submit a letter ("**Compliance Letter**") to the City's Director of Planning and Inspection ("**Director**") describing Developers' compliance with the terms of the Conditions of Approval and this Agreement during the preceding year. The Compliance Letter shall include a statement that the Compliance Letter is submitted to the City pursuant to the requirements of Government Code Section 65865.1 and City Code.

8.3 City's Findings

Within sixty (60) days after receipt of the Compliance Letter, the Director shall determine whether, for the year under review, each of the Developers have demonstrated good faith substantial compliance with the terms of this Agreement. If the Director finds and determines that a Developer

has complied substantially with the terms of this Agreement, or does not determine otherwise within sixty (60) days after delivery of the Compliance Letter, the annual review shall be deemed concluded and this Agreement shall remain in full force and effect with respect to that Developer. If City does not initiate an annual review or the City Council does not make its determination within one hundred twenty (120) days after delivery of the Compliance Letter for a given year, then it shall be deemed conclusive that Developer has complied in good faith with the terms and conditions of this Agreement during the period under review. Upon a determination of compliance, the Director shall issue a recordable certificate confirming Developer's compliance through the year under review. Any Developer may record the certificate with the Santa Clara County Clerk-Recorder's Office with respect to such Developer's parcel. If the Director initially determines the Compliance Letter to be inadequate in any respect, he/she shall provide notice to that effect to such Developer as provided in SCCC Section 17.10.220. If, after a duly noticed public hearing thereon, the City Council finds and determines that a Developer has not complied substantially in good faith with the terms of this Agreement for the year under review, the City Council shall give written notice thereof to such Developer specifying the noncompliance. If such Developer fails to cure the noncompliance within a reasonable period of time as established by the City Council, the City Council, in its discretion, may (i) grant additional time for such Developer's compliance, or, following the hearing described in SCCC Chapter 17.10, modify this Agreement to the extent necessary to remedy or mitigate the non-compliance, of such Developer or (ii) terminate this Agreement as to said Developer. Except as affected by the terms hereof, the terms of SCCC Section 17.10.240(b)(2), et seq., shall govern the City's compliance review process. During any review, a Developer shall bear the burden of proof to demonstrate good faith compliance with the terms of this Agreement.

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8.4 Mitigation Monitoring Program Evaluation

During its Annual Review, City shall conduct an evaluation (the “**MMRP Evaluation**”) to determine whether the mitigation measures adopted by City in connection with the Project Approvals are being implemented as set forth in the MMRP.

9. **Retail Power Purchase**

Within thirty (30) days of the Effective Date of this Agreement and as a material condition precedent to the validity of this Agreement, each of the Developers shall execute a power purchase agreement with the City in which the Developers agree to purchase, for a specified term, all of the electric power required by its operation in Santa Clara exclusively from City’s electric utility at the retail rate and upon the terms set forth in the agreement. The power purchase agreement shall be a separate agreement, and shall provide for such commercially reasonable terms as the parties may determine to govern the conditions of service, and for a process of amendment that does not involve a requirement that this Agreement be amended. In the event of a failure of the parties to enter into a power purchase agreement contemporaneously with this Agreement, this Agreement shall have no legal force or effect until a power purchase agreement is executed, unless both City and such Developer waive, in writing, the requirements of this section or amend this Agreement as provided.

10. **Default and Remedies**

10.1 Default

Failure by either party to perform any material term or provision of this Agreement shall constitute a default, provided that the party alleging the default gave the other party advance written notice of the default and thirty (30) days to cure the condition, or, if the nature of the default is such that it cannot be cured within thirty days, the party receiving notice shall not be in default if the party commences performance of its obligations within the thirty (30) day period and diligently completes that

performance. Written notice shall specify in detail the nature of the obligation to be performed by the party receiving notice.

10.2 Remedies

It is acknowledged by the Parties that City would not have entered into this Agreement if City were to be liable in damages under or with respect to this Agreement or the application thereof. City shall not be liable in damages to Developers, or to any assignee, transferee or any other person, and Developers covenant not to sue for or claim damages. Upon any Developer's material default, City shall be entitled to initiate legal proceedings to specifically enforce this Agreement, or terminate it as to such defaulting Developer. City may terminate this Agreement due to default without legal action.

10.3 Default by Developers/Withholding of Building Permit

City may, at its discretion, refuse to issue a building permit for any structure within a Developer's property, if such Developer has materially failed and refused to complete any requirement applicable to the building permit. In addition, where City has determined that a Developer is in default as described above, City may also refuse to issue the defaulting party any permit or entitlement for any structure or property located within the Project. This remedy shall be in addition to any other remedies provided for by this Agreement.

11. Amendment or Termination

11.1 Agreement to Amend or Terminate

City and Developers, by mutual agreement, may terminate or amend the terms of this Agreement, and the amendment or termination shall be accomplished in the manner provided under California law for the enactment of Development Agreement Amendments.

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11.2 Development Plan

City and Developers anticipate that the Project will be implemented by the following future actions: (i) subdivision of the Property; (ii) architectural review of precise design plans and elevation; and, (iii) installation of future public improvements to serve the Property. The foregoing actions shall not require an amendment to this Agreement. Upon City approval, these actions shall become part of the approved Development Plan. Upon the written request of Developers, City may amend or modify the Development Plan (or any of the individual approvals or documents comprising the Development Plan) in compliance with procedural provisions of the zoning or other land use ordinances and regulations in effect on the date of application for amendment or modification.

11.3 Enforceability of Agreement

The City and Developers agree that unless this Agreement is amended or terminated pursuant to its terms, this Agreement shall be enforceable by either party notwithstanding any subsequent change in any applicable General Plan, Redevelopment Plan, Specific Plan, zoning ordinance, subdivision ordinance or any other land use ordinance or building ordinance, resolution, regulation or rule, or policy adopted by City, with the exceptions listed in this Agreement.

12. **Mortgagee Protection: Certain Rights of Cure**

12.1 Mortgagee Protection

This Agreement shall be superior and senior to all liens placed upon the Property or any portion thereof after the date on which this Agreement (or a memorandum thereof) is recorded, including the lien of any deed of trust or mortgage ("**Mortgage**"). Notwithstanding the foregoing, no breach hereof shall defeat, render invalid, diminish or impair the lien of any Mortgage made in good faith and for value, but all of the terms and conditions contained in this Agreement shall be binding upon and effective against all persons and entities, including all deed of trust beneficiaries or mortgagees

(“**Mortgagees**”) who acquire title to the Property or any portion thereof by foreclosure, trustee’s sale, deed in-lieu-of foreclosure or otherwise.

12.2 Mortgagee Obligations

City, upon receipt of a written request from a foreclosing Mortgagee, shall permit the Mortgagee to succeed to the rights and obligations of the foreclosed upon Developer under this Agreement, provided that all defaults by such Developer hereunder that are reasonably susceptible of being cured are cured by the Mortgagee as soon as reasonably possible. The foreclosing Mortgagee shall comply with all of the provisions of this Agreement.

12.3 Notice of Default to Mortgagee

If City receives notice from a Mortgagee requesting a copy of any notice of default given to a Developer and specifying the address for service thereof, City shall endeavor to deliver to the Mortgagee, concurrently with service thereof to such Developer, all notices given to said Developer describing all claims by the City that Developers have defaulted hereunder. If City determines that a Developer is not in compliance with this Agreement, City also shall endeavor to serve notice of noncompliance on the Mortgagee concurrently with service on the Developer. Each Mortgagee shall have the right during the same period available to Developer to cure or remedy, or to commence to cure or remedy, the condition of default claimed or the areas of noncompliance set forth in City’s notice.

13. Assignability

13.1 Assignment

With the exception of the State, which may assign or transfer its interests under this Agreement without the consent of the other parties hereto, no party shall assign or transfer any of its interests, rights or obligations under this Agreement without the prior written consent of another party, which

consent shall not be unreasonably withheld (however, Developers shall not require consent of the other Developers to make such transfer). Should a Developer assign any of its interests, rights or obligations under this Agreement, it shall nonetheless remain liable for performance of the obligations for installation of public improvements. During the Term, Developers shall provide City with written notice of transfer of fee title (not including leases or ground leases) to the Property within thirty (30) days following each transfer. Each successor in interest to a Developer shall be bound by all of the terms and provisions applicable to the portion of the Property acquired. This Agreement shall be binding upon and inure to the benefit of the parties' successors, assigns and legal representatives. This Agreement shall be recorded by the City in the Santa Clara County Clerk-Recorder's Office promptly upon execution thereof by each of the parties.

13.2 Pre-Approved Transfers

The following transfers shall not require approval by the City Council: (a) sale or lease of a subdivided parcel of the Property or of one or more completed buildings or portions thereof by Developer; and (b) transfer of any interest in the Project or the Property by Developer to an affiliated or related company or entity.

14. General

14.1 Construction of Agreement

The language in this Agreement in all cases shall be construed as a whole and in accordance with its fair meaning. The laws of the State of California shall govern this Agreement and all actions concerning this Agreement shall be brought in the Superior Court of the County of Santa Clara. The captions and headings herein are not considered part of this Agreement and shall not be used in interpreting the provisions hereof.

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14.2 No Waiver

No delay or omission by the City in exercising any right or power accruing upon any Developer's noncompliance or failure to perform under the provisions of this Agreement shall impair or be construed to waive any right or power. A waiver by City of any of the covenants or conditions to be performed by Developers or City shall not be construed as a waiver of any succeeding breach of the same or other covenants and conditions.

14.3 Agreement is Entire Agreement

This Agreement and all exhibits attached hereto or incorporated herein, together with the Development Plan, contain the sole and entire Agreement between the parties concerning the Property. The parties acknowledge and agree that they have not made any representation with respect to the subject matter of this Agreement or any representations inducing the execution and delivery, except representations set forth herein, and each party acknowledges that it has relied on its own judgment in entering this Agreement. The parties further acknowledge that all statements or representations that heretofore may have been made by either of them to the other are void and of no effect, and that neither of them has relied thereon in its dealings with the other. To the extent that there is any conflict between the Development Plan and this Agreement, the Development Plan shall govern the parties' respective rights and obligations.

14.4 Estoppel Certificate

Any party from time to time may deliver written notice to the other party requesting written certification that, to the knowledge of the certifying party, (i) this Agreement is in full force and effect and constitutes a binding obligation of the parties, (ii) this Agreement has not been amended or modified either orally or in writing, or, if it has been amended or modified, specifying the nature of the amendments or modifications, and, (iii) the requesting party is not in default in the

performance of its obligations under this Agreement, or if in default, describing therein the nature and monetary amount, if any, of the default. Upon receipt of a request for an estoppel certificate and all supporting documentation to review and act on such request, the Party receiving said request shall execute and return the certificate within forty-five (45) days after receipt thereof. The Director shall have the right to execute the certificates requested by any Developer. At the request of a Developer, the certificates provided by City establishing the status of this Agreement with respect to any lot or parcel shall be in recordable form, and the Developer shall have the right to record the certificate for the affected portion of the Property at its cost.

14.5 Severability

Each provision of this Agreement which shall be adjudged to be invalid, void or illegal in no way shall affect, impair or invalidate any other provisions hereof and the other provisions shall remain in full force and effect.

14.6 Further Documents

Each party shall execute and deliver to the other all other instruments and documents as may be reasonably necessary to carry out this Agreement in order to provide and secure to the other party the rights and privileges granted by this Agreement.

14.7 Time of Essence

Time is of the essence in the performance of each and every covenant and obligation to be performed by the parties hereunder.

14.8 Indemnification Provisions

Developers hereby release and agree to protect, defend, hold harmless and indemnify City, its City Council, officers, employees, agents and assigns from and against all claims, injury, liability, loss, cost and expense or damage, however same may be caused, including all costs and reasonable

attorney's fees in providing the defense to any claim arising from the performance of this Agreement by Developers, their agents, subcontractors and/or assigns except to the extent that such claims, injury, liability, loss, cost and expense or damage, are caused by the sole negligence or willful misconduct of City. This provision is intended to be broadly construed and extends to, among other things, any challenge to the validity of this Agreement or anything related to its passage.

14.9 Construction

This Agreement has been reviewed and revised by legal counsel for the City and each of the Developers and no presumption or rule that ambiguities shall be construed against the drafting party shall apply to the interpretation or enforcement of this Agreement.

15. Termination

15.1 Termination upon Completion of Development

This Agreement shall terminate upon the expiration of the Term, or when the Property has been fully developed and all of a Developers' obligations are satisfied as determined by the City. This Agreement shall also be deemed terminated as to any parcel of the Property upon transfer of said parcel to a Residential Purchaser as further set forth in Section 3, above. Upon termination of this Agreement as to all or any portion of the Property, either SummerHill or the City may record a *Notice of Termination* for each affected parcel in the Santa Clara County Clerk-Recorder's Office. Each *Notice of Termination* shall be in a form satisfactory to the City Attorney.

15.2 Effect Upon Termination on Developers Obligations

Termination of this Agreement as to any of the Developers shall not affect such Developer's obligations to comply with the City General Plan and the terms and conditions of any applicable zoning, or subdivision map or other land use entitlement approved with respect to the Project, nor shall it affect any other covenants or development requirements in this Agreement specified to

continue after the termination of this Agreement, or obligations to pay assessments, liens, fees or taxes.

15.3 Effect Upon Termination on City

Upon any termination of this Agreement as to the all or any portion of the Property, the entitlement, conditions of development, limitations on fees and all other terms and conditions of this Agreement shall no longer be vested with respect to the Property, or portion thereof, and the City shall no longer be limited by this Agreement, to make any changes or modifications to the entitlement, conditions or fees applicable to the Property or portion thereof.

15.4 Elements of Termination

This Agreement shall be deemed terminated and of no further effect upon the occurrence of any of the following events:

- (a) Expiration of the ten (10) year term, or the extended additional five (5) year term;
- (b) Entry after all appeals have been exhausted of a final court judgment or issuance of a final court order directed to the City to set aside, withdraw, or abrogate the City's approval of this Agreement or any material part thereof; or,
- (c) The effective date of a party's election to terminate the Agreement as provided in this Agreement.

16. Notices

Except as otherwise expressly provided herein, all notices and demands pursuant to this Agreement shall be in writing and delivered in person, by commercial courier or by first-class certified mail, postage prepaid. Except as otherwise expressly provided herein, notices shall be considered delivered when personally served, upon delivery if delivered by commercial courier, or two days after mailing if sent by mail. Notices shall be sent to the addresses below for the respective parties;

provided, however, that either party may change its address for purposes of this section by giving written notice to the other party. These addresses may be used for service of process:

City: City Clerk
City of Santa Clara
1500 Warburton Avenue
Santa Clara, CA 95050
Facsimile: (408) 241-6771

With copy to: City Attorney
City of Santa Clara
1500 Warburton Avenue
Santa Clara, CA 95050

State of California Paula Gutierrez
Department of General Services
Real Estate Services Division
707 Third Street, 6th Floor
West Sacramento, CA 95605
Facsimile: (916) 376-5088

With copy to: Ron Small
Facsimile: (916) 376-5088

Developers: Katia Kamangar
SummerHill Homes
777 California Avenue
Palo Alto, CA 94304
(650) 857-0122
Facsimile: (650) 842-4471

With copy to: Robert Kennis, Esq.
SummerHill Homes
777 California Avenue
Palo Alto, CA 94304
(650) 857-0122
Facsimile: (650) 213-8187

The provisions of this section shall be deemed directive only and shall not detract from the validity of any notice given in a manner that would be legally effective in the absence of this Section.

17. Developers are Independent Contractors

Developers are not employees of City, but are independent contractors with full rights to manage their employees subject to the requirements of the law. All persons employed or utilized by Developers in connection with this Agreement are employees or contractors of Developers and shall not be considered employees of City in any respect. Developers are responsible for obtaining statutory workers' compensation coverage, if any is required, for its employees, if any.

18. Project as a Private Undertaking

It is specifically understood and agreed that the Project is a private development. No partnership, joint venture or other association of any kind between City and any of the Developers is formed by this Agreement.

19. Nondiscrimination

Developers shall not discriminate, in any way, against any person on the basis of race, color, national origin, gender, marital status, sexual orientation, age, creed, religion or condition of disability in connection with or related to the performance of this Agreement.

20. Insurance

During the term of this Agreement, Developers shall purchase and maintain in full force and effect, at least the following insurance policies:

- (a) Commercial general liability insurance;
- (b) Comprehensive automobile injury insurance (bodily injury and property damage)

with respect to employees and vehicles assigned to performance of work under this Agreement;

- (c) Workers' compensation, employer's liability, if required by law, and, Developers shall, during the term of this Agreement, and at no expense to City, maintain the insurance policies, with limits of coverage, endorsements and with the required certificates as set forth in the attached

Exhibit E entitled “Insurance Requirements.” The scope and form of each respective insurance coverage shall be subject to approval of the City Attorney’s Office. City must approve all insurance coverages and carriers prior to Developers’ commencement of work under this Agreement.

21. Force Majeure

No party shall not be deemed to be in default where delays or defaults are due to war, insurrection, strikes, walkouts, riots, floods, earthquakes, fires, casualties, acts of God, acts of governmental entities (excluding acts of City) or enactment of conflicting state or federal laws or regulations.

22. Infrastructure Capacity

City hereby acknowledges that, with the exception of the infrastructure required to be constructed under this Agreement, it has sufficient capacity in its existing infrastructure, services and utility systems, including, without limitation, traffic circulation, flood control, sewer collection, sewer treatment, sanitation service and, except for services not provided by and outside City’s control, water supply, treatment, distribution and service, to accommodate the Project as provided in this Agreement. To the extent that City renders such services or provides such utilities, City hereby agrees that it will serve the Project and that there shall be no restriction on connection or service for the Project except for reasons beyond City’s control.

23. Operating Memoranda

The provisions of this Agreement require a close degree of cooperation between City and Developers. Refinements and further development of the Project may demonstrate that clarifications with respect to the details of performance of City and Developers or minor revisions to the Project are appropriate. If, and when, from time to time, during the term of this Agreement City and Developers agree that such clarifications or minor modifications are necessary or appropriate, they shall effectuate such clarifications through operating memoranda approved by City, Agency and

Developers, which, after execution, shall be attached hereto. No such operating memoranda shall constitute an amendment to this agreement requiring public notice or hearing. The City Attorney shall be authorized to make the determination whether a requested clarification may be effectuated pursuant to this Section or whether the requested clarification is of such a character to require an amendment hereof. The parties agree that modifications which would be categorized as exempt under the California Environmental Quality Act ("CEQA"), or which, after an initial study, the City determines do not require any further environmental review, or do not increase the density or intensity of use or maximum height, bulk, size or architectural style of proposed buildings may be effectuated through operating memoranda pursuant to this Section. The City Manager may execute any operating memoranda hereunder without City Council action.

24. Attorneys' Fees and Costs

If City or any of the Developers initiates any action at law or in equity to enforce or interpret the terms and conditions of this Agreement, the prevailing party shall be entitled to recover reasonable attorneys' fees and costs in addition to any other relief to which it may otherwise be entitled. In addition to the foregoing award of attorneys' fees to the prevailing party, the prevailing party in any lawsuit shall be entitled to its attorneys' fees incurred in any post-judgment proceedings to collect or enforce the judgment. This provision is separate and several and shall survive the merger of this Agreement into any judgment on this Agreement. If any person or entity not a party to this Agreement initiates an action at law or in equity to challenge the validity of any provision of this Agreement or the Project Approvals, the parties shall cooperate in defending such action. Developers shall bear its own cost of defense as a real party in interest in any such action, and shall reimburse City for all reasonable court costs and attorneys' fees expended by City in defense of any such action or other proceeding.

25. Amendments

No alterations or changes to the terms of this Agreement shall be valid unless made in writing and signed by each of the parties, and completed in compliance with the procedures listed in the Government Code for Development Agreement Amendments.

26. No Third Party Beneficiary

This Agreement shall not be construed or deemed to be an agreement for the benefit of any third party or parties, and no third party or parties shall have any claim or right of action hereunder for any cause whatsoever.

27. Dispute Resolution

(a) Any controversies between Developers and City regarding the construction or application of this Agreement, and claims arising out of this Agreement or its breach, shall be submitted to mediation within thirty (30) days of the written request of one party after the service of that request on the other party.

(b) The parties may agree on one mediator. If they cannot agree on one mediator, the party demanding mediation shall request the Superior Court of Santa Clara County to appoint a mediator. The mediation meeting shall not exceed one day (eight (8) hours). The parties may agree to extend the time allowed for mediation under this Agreement.

(c) The costs of mediation shall be borne by the parties equally.

(d) Mediation under this section is a condition precedent to filing an action in any court.

28. Legal Action

All legal actions shall be initiated in the Superior Court of the County of Santa Clara, State of California.

29. Consent

Where consent or approval of a party is required or necessary under this Agreement, the consent or Agreement shall not be unreasonably withheld.

30. Covenant of Good Faith and Fair Dealing

No party to this Agreement shall do anything which shall have the effect of harming or injuring the right of the other party to receive benefits of this Agreement; each party shall refrain from doing anything which would render its performance under this Agreement impossible; and, each party shall do everything which this Agreement contemplates to accomplish the objectives and purpose of this Agreement.

31. Authority to Execute

The person or persons executing this Agreement on behalf of each of the parties warrant and represent that they have the authority to execute this Agreement on behalf of those parties and represent that they have the authority to bind said parties to the performance of its obligations in this Agreement.

32. Cooperation in Event of Legal Challenge

(a) In the event of any administrative, legal or equitable action or other proceeding instituted by any person or entity not a Party to this Agreement challenging the validity of any provision of this Agreement, any Approval or the sufficiency of any environmental review of this Agreement or any Approval under CEQA (each a "Third Party Challenge"), the Parties promptly shall meet and confer as to the most appropriate means of responding to such Third Party Challenge; provided, however, that any such response shall be consistent with the provisions of subsections (b) and (c) below.

(b) City shall tender the complete defense of any Third Party Challenge to Developers, and upon any acceptance of such tender by Developers, the following shall apply:

(1) Developers shall indemnify City against any and all fees and costs arising out of the defense of such Third Party Challenge; and,

(2) Developers shall control the defense and/or settlement of such Third Party Challenge and may take any and all actions it deems necessary and appropriate in its sole discretion in connection therewith; provided, however, that Developers shall seek and secure City's consent to any settlement of such Third Party Challenge, which consent shall not unreasonably be withheld or delayed.

(c) If Developers should fail to accept City's tender of defense as set forth in subsection (b), City shall defend such Third Party Challenge and control the defense and/or settlement of such Third Party Challenge, and may take any and all actions it deems necessary and appropriate in its sole discretion in connection therewith; provided, however, that City shall seek and secure Developers' consent to any settlement of such Third Party Challenge, which consent shall not unreasonably be withheld or delayed. Developers shall indemnify City against any and all fees and costs arising out of the defense of such Third Party Challenge by City. Notwithstanding the foregoing, if Developers determine for any reason that either Developer no longer intends to exercise its ability to purchase the Project Site and/or develop the Project, then it may deliver notice of such determination to City and shall not be liable for any defense costs incurred by City more than ninety (90) days following the delivery of such notice.

33. Defense and Indemnity

SummerHill shall defend and indemnify City from and against any and all damages, claims, costs and liabilities arising out of the personal injury or death of any third party, or damage to the property

of any third party, to the extent such damages, claims, costs or liabilities result from the construction of the Project by SummerHill or by SummerHill's contractors, subcontractors, agents or employees. Nothing in this Paragraph 33 shall be construed to mean that SummerHill shall defend or indemnify City from or against any damages, claims, costs or liabilities arising from, or alleged to arise from, activities associated with the maintenance or repair by City or any other public agency of improvements that have been offered for dedication and accepted by City or such other public agency. City and SummerHill may from time to time enter into subdivision improvement agreements, as authorized by the Subdivision Map Act, which Agreements may include defense and indemnity provisions different from those contained in this Paragraph 33. In the event of any conflict between such provisions in any such subdivision improvement agreement and the provisions set forth above, the provisions of such subdivision improvement agreement shall prevail.

[Signatures follow on page 44 & 45]

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


CITY OF SANTA CLARA, CALIFORNIA
a chartered California municipal corporation

APPROVED AS TO FORM:


HELENE L. LEICHTER
City Attorney


JENNIFER SPARACINO
City Manager

ATTEST:


ROD DIRIDON, JR.
City Clerk

1500 Warburton Avenue
Santa Clara, CA 95050

Telephone: (408) 615-2210
Facsimile: (408) 241-6771

“City”


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:


HELENE L. LEICHTER
Agency General Counsel


JENNIFER SPARACINO
Executive Director

ATTEST:


ROD DIRIDON, JR.
Agency Secretary

1500 Warburton Avenue
Santa Clara, CA 95050

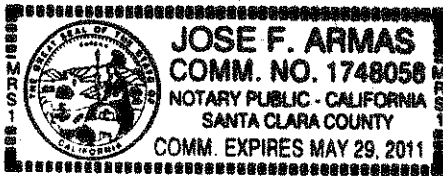
Telephone: (408) 615-2210
Facsimile: (408) 241-6771

“Agency”

California All-Purpose Acknowledgment

STATE OF CALIFORNIA)
) ss
COUNTY OF SANTA CLARA)

On July 12, 2007, before me, Jose F. Armas, a Notary Public in and for said County and State, personally appeared Jennifer Sparacino personally known to me to be the person whose name is subscribed to the within instrument and acknowledged to me that she executed the same in her authorized capacity, and that by her signature on the instrument the person, or the entity upon behalf of which the person acted, executed the instrument.



WITNESS my hand and official seal.

Jose Armas

NOTARY PUBLIC, STATE OF CALIFORNIA

THIS CERTIFICATE MUST BE ATTACHED TO THE DOCUMENT DESCRIBED BELOW:
Development Agreement with the State of California Department of General Services and Summerhill
Winchester, LLC.

THE STATE OF CALIFORNIA
Department of General Services

By: *Daniel C. Stevens*
Title: Assistant Chief
Telephone: 916 376-1826
Facsimile: 916 376-1780

“State”

SUMMERHILL WINCHESTER, LLC
a California limited liability company.

By: SUMMERHILL HOMES
a California corporation
Its: Manager

By: *Jason M. Hurd*
Title: President/CEO
Telephone: 650 857 0122
Facsimile: 650 857 1077

By: *Kate Kamanyan*
Title: SR. V.P. / Managing Director
Telephone: 650 857-0122
Facsimile: 650 857-1077

“SummerHill”

I:\DATA\WP\SUSAN\BAREC\Development Agreement 06-15-07 version.doc

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

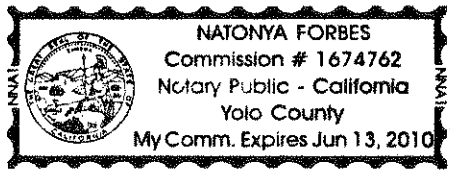
State of California

County of Yolo

On July 17, 2007 before me, Natonya Forbes, Notary Public

personally appeared Paula P. Gutierrez

- 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.

Place Notary Seal Above

Signature Natonya Forbes
Signature of Notary Public

OPTIONAL

Though the information below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent removal and reattachment of this form to another document.

Description of Attached Document

Title or Type of Document: Development Agreement / City of Santa Clara

Document Date: July 17, 2007 Number of Pages: 45

Signer(s) Other Than Named Above: _____

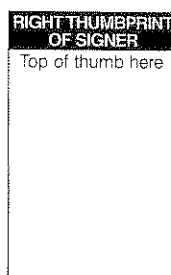
Capacity(ies) Claimed by Signer(s)

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



Signer Is Representing: _____

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



Signer Is Representing: _____

DEVELOPMENT AGREEMENT

EXHIBIT A

LEGAL PROPERTY DESCRIPTION

All that certain Real Property in the City of Santa Clara, County of Santa Clara, State of California, described as follows:

PARCEL ONE:

Beginning at County Surveyor's Station 39 + 66.42 on the Los Gatos-Santa Clara road as marked by a brass plug in the center of the road, at the Northeast corner of the Southeast quarter of the Northeast quarter of Section 15, Township 7 South, Range 1 West, Mt. Diablo Base and Meridian; thence South 0° 14' East, 370.2 feet along the center line of the Los Gatos-Santa Clara Road; North 89° 45' West 393.2 feet; North 26° 14' West 251.9 feet; North 89° 44' West, 417.5 feet; South 0° 16' West, 281.0 feet; South 89° 44' East, 60.0 feet; North 0° 16' East, 30.0 feet; South 89° 44' East 267.8 feet; South 0° 16' West, 200.0 feet; N 89° 36' West, 724.90 feet along the Northerly boundary of the property of F. E. Hurlbert; North 0° 16' East, 594.1 feet to the center of the Northeast quarter of Section 15; thence South 89° 44' East, 1317.0 feet along the Southerly line of the Prune Ridge Tract to the Point of Beginning.

PARCEL TWO:

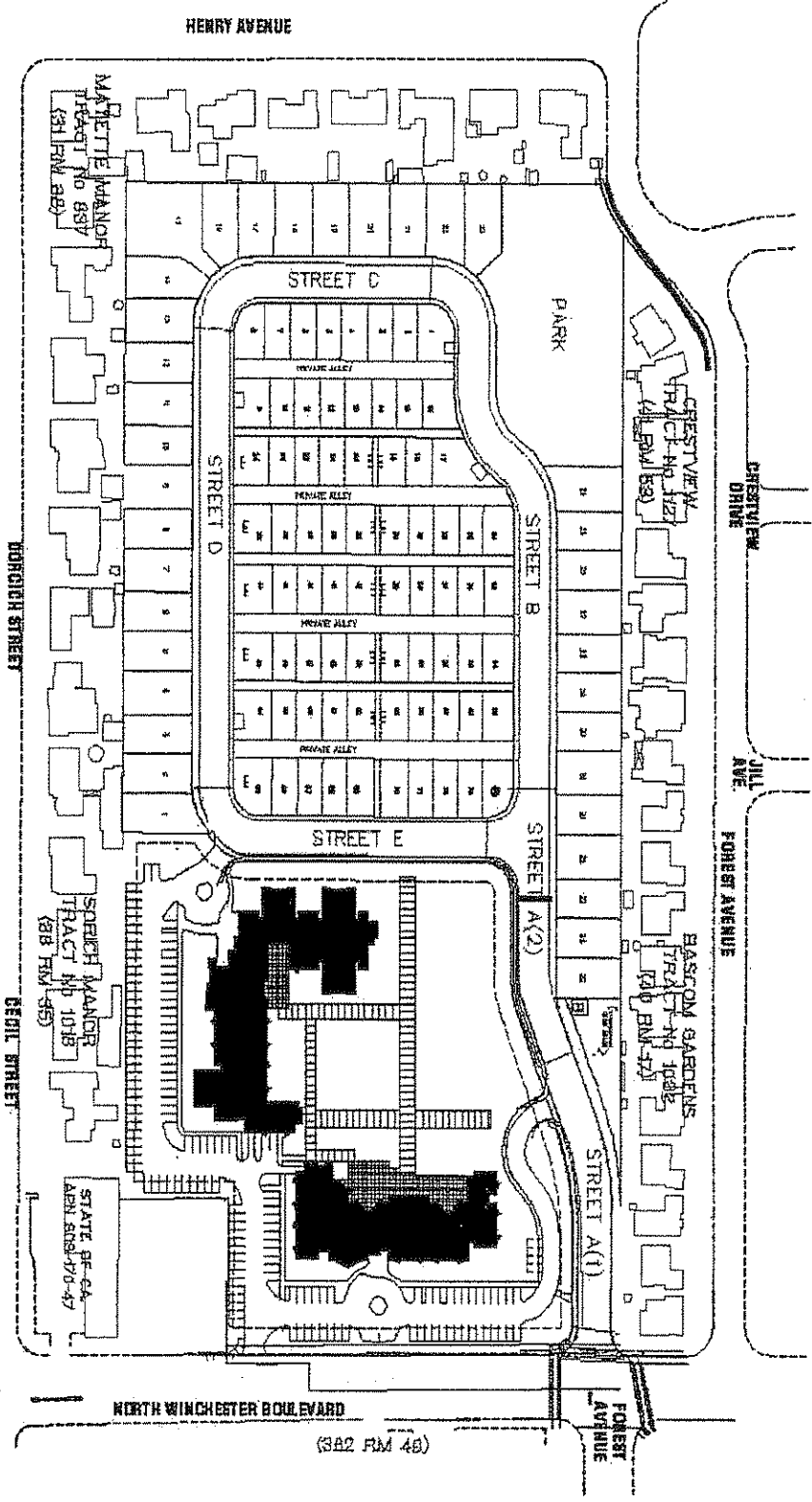
Commencing at County Surveyor's Station 39 + 66.42 on the Los Gatos-Santa Clara Road as marked by a brass plug in the center of the road, at the northeast corner of the southeast 1/4 of the northeast 1/4 of Section 15; thence South 0° 14' East 370.2 feet along the center line of the Los Gatos-Santa Clara Road and North 89° 45' West 30.00 feet to the True Point of Beginning of this description; thence North 89° 45' West 363.2 feet; thence North 26° 14' West 251.9 feet; thence North 89° 44' West 417.5 feet; thence South 0° 16' West 281.0 feet; thence South 89° 44' East 60.0 feet; thence North 0° 16' East 30.0 feet; thence South 89° 44' East 267.8 feet; thence South 0° 16' West 200.0 feet to the South line of that certain parcel of land conveyed to the State of California by M. P. Osborne by Deed dated September 12, 1921; thence South 89° 36' East along said South line 385 feet more or less to a point 212.00 feet West of said centerline of Los Gatos-Santa Clara Road measured along said South line and its Easterly prolongation; thence North 0° 14' West parallel with Los Gatos-Santa Clara Road, 130.00 feet; thence South 89° 36' East parallel with said South line 182.00 feet; thence North 0° 14' West 97.0 feet to the Point of Beginning.

DEVELOPMENT AGREEMENT

EXHIBIT B

**STREET IMPROVEMENTS ON THE NEW PUBLIC STREETS
INCLUDING ALL FRONTAGES OF THE SENIOR HOUSING SITE**

See Exhibit B, Page 2



DEVELOPMENT AGREEMENT

EXHIBIT C

**SUMMARY OF PERCENTAGES OWED BY EACH DEVELOPER
FOR FAIR SHARE COST OF IMPROVEMENTS**

**SummerHill Homes & Senior Parcel
Cost Sharing Matrix
90 N. WINCHESTER SITE
San José / Santa Clara**

STREET SEGMENT	SummerHill	Seniors
Winchester Boulevard, From Street A south	0.0%	100.0%
Winchester Boulevard/Forest Avenue Intersection	55.0%	45.0%
Street A from Winchester to Seniors' Primary Entry	49.3%	50.7%
Street A from Seniors' Primary Entry to Street E	65.1%	34.9%
Street B	95.0%	5.0%
Street C	96.2%	3.8%
Street D	95.2%	4.8%
Street E	59.6%	40.4%
Utilities Across Park to Forest & Henry	77.0%	23.0%

DEVELOPMENT AGREEMENT

EXHIBIT D

STORM WATER DISCHARGE PERCENTAGES

MEDIA FILTRATION SYSTEM TREATMENT SUMMARY						
Drainage Area #	DRAINAGE AREA LAND USE DESCRIPTION	RUNOFF COEFFICIENT (C)*	WATER QUALITY RAINFALL INTENSITY (IN/HR)	AREA (ACRES)	WATER QUALITY RUNOFF (CFS)	MEDIA FILTER CARTRIDGES REQUIRED
1	Public Streets	.89	0.17	2.53	0.38	11.4
2	Private Alleys & Small Lot SFD (½-Roofs)	.60	0.17	1.95	0.20	6.0
3	Small Lot SFD (½-Roofs), Patios & Walkways	.54	0.17	2.07	0.19	5.7
4	Senior Housing Site (Driveways & Parking Areas)	.60	0.17	1.96	0.20	6.0
5	Large Lot SFD Driveways	.89	0.17	0.24	0.04	1.2
6	Large Lot SFD Roofs (9 lots)	.89	0.17	0.29	0.04	1.3
TOTALS				9.04	1.05	31.6

* per Table 3: *Runoff Coefficients "C"*, from the City of Santa Clara Stormwater Treatment Requirements Worksheets, prepared by the Santa Clara Valley Urban Runoff Pollution Prevention Program.

DEVELOPMENT AGREEMENT

EXHIBIT E

INSURANCE REQUIREMENTS

Without limiting the Developers' indemnification of the City, and prior to commencing any of the Services required under this Agreement, the Developers shall purchase and maintain in full force and effect, at their sole cost and expense, the following insurance policies with at least the indicated coverages, provisions and endorsements:

A. COMMERCIAL GENERAL LIABILITY INSURANCE

1. Commercial General Liability Insurance policy which provides coverage at least as broad as Insurance Services Office form CG 00 01. Policy limits are subject to review, but shall in no event be less than, the following:

\$2,000,000 Each occurrence
\$2,000,000 General aggregate
\$2,000,000 Products/Completed Operations aggregate
\$2,000,000 Personal Injury

2. Exact structure and layering of the coverage shall be left to the discretion of Developers; however, any excess or umbrella policies used to meet the required limits shall be at least as broad as the underlying coverage and shall otherwise follow form.
3. The following provisions shall apply to the Commercial Liability policy as well as any umbrella policy maintained by the Developers to comply with the insurance requirements of this Agreement:
 - a. Coverage shall be on a "pay on behalf" basis with defense costs payable in addition to policy limits;
 - b. There shall be no cross liability exclusion which precludes coverage for claims or suits by one insured against another; and
 - c. Coverage shall apply separately to each insured against whom a claim is made or a suit is brought, except with respect to the limits of liability.

B. BUSINESS AUTOMOBILE LIABILITY INSURANCE

Business automobile liability insurance policy which provides coverage at least as broad as ISO form CA 00 01 with policy limits a minimum limit of not less than one million dollars (\$1,000,000) each accident using, or providing coverage at least as broad as, Insurance

Services Office form CA 00 01. Liability coverage shall apply to all owned, non-owned and hired autos.

In the event that the Work being performed under this Agreement involves transporting of hazardous or regulated substances, hazardous or regulated wastes and/or hazardous or regulated materials, Developers and/or their subcontractors involved in such activities shall provide coverage with a limit of two million dollars (\$2,000,000) per accident covering transportation of such materials by the addition to the Business Auto Coverage Policy of Environmental Impairment Endorsement MCS90 or Insurance Services Office endorsement form CA 99 48, which amends the pollution exclusion in the standard Business Automobile Policy to cover pollutants that are in or upon, being transported or towed by, being loaded onto, or being unloaded from a covered auto.

C. WORKERS' COMPENSATION

1. Workers' Compensation Insurance Policy as required by statute and employer's liability with limits of at least one million dollars (\$1,000,000) policy limit Bodily Injury by disease, one million dollars (\$1,000,000) each accident/Bodily Injury and one million dollars (\$1,000,000) each employee Bodily Injury by disease.
2. The indemnification and hold harmless obligations of Developers included in this Agreement shall not be limited in any way by any limitation on the amount or type of damage, compensation or benefit payable by or for Developers or any subcontractor under any Workers' Compensation Act(s), Disability Benefits Act(s) or other employee benefits act(s).
3. This policy must include a Waiver of Subrogation in favor of the City of Santa Clara, its City Council, commissions, officers, employees, volunteers and agents.

D. COMPLIANCE WITH REQUIREMENTS

All of the following clauses and/or endorsements, or similar provisions, must be part of each commercial general liability policy, and each umbrella or excess policy.

1. Additional Insureds. City of Santa Clara, its City Council, commissions, officers, employees, volunteers and agents are hereby added as additional insureds in respect to liability arising out of Developers' work for City (if any), using Insurance Services Office (ISO) Endorsement CG 20 10 11 85 or the combination of CG 20 10 03 97 and CG 20 37 10 01, or its equivalent.
2. Primary and non-contributing. Each insurance policy provided by Developers shall contain language or be endorsed to contain wording making it primary insurance as respects to, and not requiring contribution from, any other insurance which the Indemnities may possess, including any self-insurance or self-insured retention they may have. Any other insurance Indemnities may possess shall be considered excess insurance only and shall not be called upon to contribute with Developers' insurance.

3. General Aggregate. The general aggregate limits shall apply separately to Developers' work under this Agreement providing coverage at least as broad as Insurance Services Office (ISO) Endorsement CG 2503, 1985 Edition, or insurer's equivalent (CGL);
4. Cancellation. Each insurance policy shall contain language or be endorsed to reflect that no cancellation or modification of the coverage provided shall be effective until written notice has been given to City at least thirty (30) days prior to the effective date of such modification or cancellation. In the event of non-renewal, written notice shall be given at least thirty (30) days prior to the effective date of non-renewal.
5. Other Endorsements. Other endorsements may be required for policies other than the commercial general liability policy if specified in the description of required insurance set forth in Sections A through D of this **Exhibit E**, above.

E. ADDITIONAL INSURANCE RELATED PROVISIONS

Developers and City agree as follows:

1. Developers agree to ensure that subcontractors, and any other party involved with the Services who is brought onto or involved in the performance of the Services by Developers, provide the same minimum insurance coverage required of Developers, except as with respect to limits. Developers agree to monitor and review all such coverage and assume all responsibility for ensuring that such coverage is provided in conformity with the requirements of this Agreement. Developers agree that upon request by City, all agreements with, and insurance compliance documents provided by, such subcontractors and others engaged in the project will be submitted to City for review.
2. Each Developer agrees to be responsible for ensuring that no contract used by any party involved with such Developer reserves the right to charge City or Developers for the cost of additional insurance coverage required by this Agreement. Any such provisions are to be deleted with reference to City. It is not the intent of City to reimburse any third party for the cost of complying with these requirements. There shall be no recourse against City for payment of premiums or other amounts with respect thereto.
3. The City reserves the right to withhold payments from the Developers in the event of material noncompliance with the insurance requirements set forth in this Agreement.

F. EVIDENCE OF COVERAGE

Prior to commencement of any Services under this Agreement, Developers, and each and every subcontractor (of every tier) shall, at its sole cost and expense, purchase and maintain not less than the minimum insurance coverage with the endorsements and deductibles

