

REGULAR

NUMBER: 38.774

TITLE: AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MILPITAS AMENDING CHAPTER 10, TITLE XI OF THE MILPITAS MUNICIPAL CODE (ZONE CHANGE ZC 2005-11)

HISTORY: This Ordinance was introduced (first reading) by the City Council at its meeting of October 16, 2007, upon motion by Vice Mayor Livengood, and was adopted (second reading) by the City Council at its meeting of _____, 2007 upon a motion by Councilmember _____. Said Ordinance was duly passed and ordered published in accordance with law by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

ATTEST:

APPROVED:

Mary Lavelle, City Clerk

Jose S. Esteves, Mayor

APPROVED AS TO FORM:

Michael J. Ogaz, City Attorney

ORDAINING CLAUSE:

THE CITY COUNCIL OF THE CITY OF MILPITAS DOES ORDAIN AS FOLLOWS:

SECTION 1. The Zoning Map of the City of Milpitas, which said map was adopted as part of Ordinance No. 38, enacted as Chapter XI-10 (Zoning, Planning, and Annexation) of the Milpitas Municipal Code of the City, is hereby amended by rezoning approximately 21.73 acres located on the southwest corner of Technology Drive and Murphy Ranch Road (as shown on Exhibit A – Section District Map No. 569) from Industrial Park – MP to Multi-Family Very High Density Residential – R4. The City Council finds the amendment is required by good zoning practice, public necessity, convenience and welfare.

SECTION 2. Publication and Effective Date. This ordinance shall take effect 30 days following its passage, and prior to the expiration of 15 days of the passage thereof shall be published at least once in a newspaper of general circulation, published and circulated in the City of Milpitas, County of Santa Clara, thenceforth and thereafter the same shall be in full force and effect.

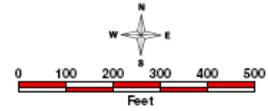
SECTION 3. Severability. In the event any section or portion of this ordinance shall be determined invalid or unconstitutional, such section or portion shall be deemed severable and all other section or portions hereof shall remain in full force and effect.

EXHIBIT A



City of Milpitas
New Zoning Designation
Sectional District Map No. 569
Exhibit B
September 2007

 R4 - Multi-Family Residential, Very High Density
 Parcel Boundary



Ordinance No. 38.774

Application No. GP2005-11, ZC2005-2, SZ2005-13, PD2007-4, MA2005-7 AND EA2005-9

Map prepared by the GIS Staff of the City of Milpitas

RESOLUTION NO. _____

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MILPITAS
APPROVING MAJOR VESTING TENTATIVE MAP MA2005-07, PLANNED UNIT
DEVELOPMENT NO. PD2007-4, AND “S” ZONE APPLICATION NO. SZ2005-13 TO
ALLOW CONSTRUCTION OF 659 RESIDENTIAL UNITS ON APPROXIMATELY 22
ACRES LOCATED AT THE SOUTHWEST CORNER OF TECHNOLOGY DRIVE &
MURPHY RANCH ROAD**

WHEREAS, the project applicant, Fairfield Residential LLC, has filed applications for a Major Vesting Tentative Map, Planned Unit Development Permit, and an “S” Zone Approval (“Applications”) for the property located at the southwest corner of Technology Drive and Murphy Ranch Road in the City of Milpitas, State of California, as further depicted in the maps contained in Exhibit A (“Property”), and

WHEREAS, on October 16, 2007 the City Council took the following actions affecting the Property:

1. Approved Resolution No. 7707 certifying the environmental impact report for the Murphy Ranch Residential project (EA2005-4).
2. Approved Resolution No. 7708 changing the General Plan land use designation of the Property from Industrial Park to Very High Density Residential (GP2005-11).
3. Introduced Ordinance No. 38.778 for Zone Change No. to rezone the Property from Industrial Park – MP to Multi-Family Very High Density Residential – R4 (ZC2005-11).

WHEREAS, the Planning Commission held a properly noticed public hearing on September 26, 2007, took public testimony, considered the Applications and recommended the City Council deny the Applications; and

WHEREAS, the City Council held a properly noticed public hearing on October 16, 2007, took public testimony, considered the Applications; and

WHEREAS, the findings and determinations contained herein constitute the independent judgment and analysis of City Council and are supported by substantial evidence in the record, which includes without limitation, the Milpitas General Plan, the recently certified EIR, the City Council meeting of October 16, 2007, including all staff reports, consultant reports, correspondence, testimony from the public, staff and the applicant, documents and minutes prepared in connection thereto; and

WHEREAS, all documents and other materials constituting the record for this matter, upon which the City’s decision and its findings are based, are located at the Planning Division of the City of Milpitas, 455 East Calaveras Blvd., Milpitas, CA 95035.

NOW, THEREFORE, BE IT RESOLVED that:

1. The Findings related to Tentative Subdivision Maps, attached hereto as Exhibit B are adopted and Major Vesting Tentative Map MA2005-07 is hereby approved.

2. The Findings related to Planned Unit Developments & "S" Zone Approvals, attached hereto as Exhibit C are adopted and Planned Unit Development No. PD2007-4 and "S" Zone Application No. SZ2005-13 are hereby approved.
3. The Conditions of Approval hereto attached as Exhibit D are approved and adopted.

PASSED AND ADOPTED this ____ day of November 2007, by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

ATTEST:

APPROVED:

Mary Lavelle, City Clerk

Jose S, Esteves, Mayor

APPROVED AS TO FORM:

Michael J. Ogaz, City Attorney

EXHIBIT A

Map of Property



City of Milpitas
General Plan Amendment
Exhibit A
September 2007

-  R4 - Multi-Family Residential, Very High Density
-  Parcel Boundary

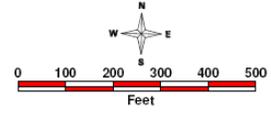


EXHIBIT B

Tentative Subdivision Map Findings:

1. The Vesting Major Tentative Map is in conformance with the General Plan as it is subdividing land into smaller parcels to accommodate a high-density housing project.
2. The Vesting Major Tentative Map is in conformance with the Zoning Ordinance through the approval of exceptions to development standards.
3. The Vesting Major Tentative Map is consistent with the State Subdivision Map Act and Subdivision Ordinance, as it is consistent with General Plan principles including;
 - a. Compact development and higher densities;
 - b. Variety of housing types;
 - c. Park-like setting;
 - d. Compliance with building intensity limits;
 - e. Promoting in-fill development in the incorporated City limits;
4. The site of the Vesting Major Tentative Map is physically suitable for the type and density of development as it incorporates improvements to accommodate the project.
5. The Vesting Major Tentative Map will not cause any damage or injury to fish and wildlife and will not cause any public health problems as the project is incorporating mitigation measures to prevent this from occurring as a result of the project.
6. As conditioned the Vesting Major Tentative Map is not conflicting with any existing easements as it will require encroachment permits prior to any work in any existing easements.

EXHIBIT C

Planned Unit Development Findings

1. The project will result in an intensity of land use no higher than and standards of open spaces at least as high as permitted or specified otherwise for such development in the General Plan, Zoning Ordinance and Subdivision Ordinance.
2. The Project will not create traffic congestion pursuant to the California Environment Quality Act (CEQA), or any impacts will be mitigated by traffic improvements, or if the impacts cannot be mitigated, necessary findings shall be made by the City pursuant to CEQA.
3. The maximum density shall be the upper density per gross acre as noted in the General Plan designation. In land zoned R3 an overall density of up to 40 units per gross acre can be approved if two additional findings regarding utilities and traffic can be made.
4. Development of the site under the provisions of the Planned Unit Development will result in a public benefit not otherwise attainable by application of the regulations of general zoning districts.
5. The Planned Unit Development is consistent with the General Plan.
6. The development will be in harmony with the character of the surrounding neighborhood and will have no adverse effects upon the adjacent or surrounding development.

“S” Zone Approval Findings

1. The layout of the site and design of the proposed buildings, structures and landscaping are compatible and aesthetically harmonious with adjacent and surrounding development.
2. The project is consistent with the Milpitas Zoning Ordinance.
3. The project is consistent with the Milpitas General Plan

EXHIBIT D

Conditions of Approval

1. PUD & “S” ZONE APPROVAL:

This approval of PUD No. 2007-4 and “S” Zone Approval No.SZ2005-13 is for a multi-family residential development for 374 apartment units, 285 townhome units, and associated site improvements in accordance with the plans reviewed and approved by the City Council on October 16, 2007, and as amended by the conditions below. Modification to the project as proposed will require a PUD & “S” Zone Amendment. (P)

2. GENERAL:

This use shall be conducted in compliance with all appropriate local, state, and federal laws and regulations, and in conformance with the approved plans. (P)

3. ENVIRONMENTAL – STORMWATER CAPACITY:

42-inch storm drain bypass line will be installed parallel to the existing 72-inch storm drain line pursuant to the City Stormdrain Master Plan to provide adequate capacity to convey stormwater runoff from the project site to the pump station.

4. ENVIRONMENTAL – STORMWATER QUALITY:

- a. Burlap bags filled with drain rock will be installed around storm drains to route sediment and other debris away from the drains.
- b. Earthmoving or other dust-producing activities would be suspended during periods of high winds.
- c. All exposed or disturbed soil surfaces would be watered at least twice daily to control dust as necessary.
- d. Stockpiles of soil or other materials that can be blown by the wind would be watered or covered.
- e. All trucks hauling soil, sand, and other loose materials would be covered and all trucks would be required to maintain at least two feet of freeboard.
- f. All paved access roads, parking areas, staging areas and residential streets adjacent to the construction sites would be swept daily (with water sweepers).
- g. Vegetation in disturbed areas would be replanted as quickly as possible.
- h. All unpaved entrances to the site would be filled with rock to knock mud from truck tires prior to entering City streets. A tire wash system may also be employed at the request of the City.
- i. A Storm Water Permit will be administered by the Regional Water Quality Control Board. Prior to construction grading for the proposed land uses, the project proponent will file a “Notice of Intent” (NOI) to comply with the General Permit and prepare a Storm Water Pollution Prevention Plan (SWPPP) which addresses measures that would be included in the project to minimize and control construction and post construction

runoff. Measures will include, but are not limited to, the aforementioned RWQCB mitigation.

5. ENVIRONMENTAL – RAPTORS / MIGRATORY BIRDS:

Construction should be scheduled between September and January to avoid the raptor and migratory bird nesting season to the extent feasible. If it is not possible to schedule demolition and construction during that period, then pre-construction surveys for nesting birds shall be completed by a qualified ornithologist to ensure that no nests will be disturbed during project implementation. This survey shall be completed no more than 14 days prior to the initiation of construction activities during the early part of the breeding season (February through April) and no more than 30 days prior to the initiation of these activities during the late part of the breeding season (May through August).

During this survey, the ornithologist will inspect all trees and other possible nesting habitats immediately adjacent to the construction areas for nests. If an active nest is found sufficiently close to work areas to be disturbed by construction, the ornithologist, in consultation with CDFG, will determine the extent of a construction-free buffer zone to be established around the nest, typically 250 feet, to ensure that raptor or migratory bird nests will not be disturbed during project construction.

6. ENVIRONMENTAL – BURROWING OWLS:

No Burrowing Owls would be evicted from burrows during the nesting season (February 1 through August 31). Eviction outside the nesting season may be permitted as a means to avoid take, pending evaluation of eviction plans and receipt of formal written approval from the CDFG authorizing the eviction.

A protected area 250 feet in radius, within which no activity will be permissible, will be maintained between project activities and nesting burrowing owls or individual resident owls. This protected area will remain in effect between February 1 and August 31, or at the CDFG discretion and based upon monitoring evidence, until any young owls are foraging independently. In the non-nesting season, a protected area 50 meters (165 feet) in radius, within which no new construction activity will be permissible, will be maintained between project activities and burrows occupied by Burrowing Owls. Any development within these protected areas would be approved beforehand by the CDFG.

7. ENVIRONMENTAL – TRAFFIC:

The southbound lanes of McCarthy Boulevard will be restriped, to the satisfaction of the City's Director of Public Works. The existing configuration is two left-turn lanes, one through lane, and one shared right/through lane. The shared right/through lane would be changed to a designated right-turn only lane, allowing the intersection to operate at LOS D in the AM Peak Hour and LOS C in the PM Peak Hour. An overlap phase for the southbound right turn movement would also be included at the McCarthy Boulevard/Tasman Drive.

8. ENVIRONMENTAL – AIR QUALITY:

Prior to issuance of occupancy permits the pump station diesel engines will be upgraded to electric engines with backup emergency generators by the applicant, or at the City's option retrofitted, to meet the ATCM 2009 requirements for diesel emissions. The City of Milpitas staff will review and approve the retrofit of the existing engines or the purchase and installation of the new engines.

9. ENVIRONMENTAL – AIR QUALITY:

The following dust control measures will be implemented during all construction phases:

- a. Water all active construction areas at least twice daily and more often during windy periods.
- b. Cover all trucks hauling soil, sand, and other loose materials or require all trucks to maintain at least two feet of freeboard.
- c. Pave, apply water three times daily, or apply (non-toxic) soil stabilizers on all unpaved access roads, parking areas and staging areas at construction sites.
- d. Sweep daily (preferably with water sweepers) all paved access roads on-site, parking areas and staging areas at construction sites.
- e. Sweep streets daily (preferably with water sweepers) if visible soil material is carried onto adjacent public streets.
- f. Hydroseed or apply non-toxic soil stabilizers to inactive construction areas.
- g. Enclose, cover, water twice daily or apply non-toxic soil binders to exposed stockpiles (dirt, sand, etc.).
- h. Limit traffic speeds on unpaved roads to 15 mph.
- i. Install sandbags or other erosion control measures to prevent silt runoff to public roadways.
- j. Replant vegetation in disturbed areas as quickly as possible.

Engineering Division

10. The issuance of building permits to implement this land use development will be suspended if necessary to stay within (1) available water supplies, or (2) the safe or allocated capacity at the San Jose/Santa Clara Water Pollution Control Plant, and will remain suspended until water and sewage capacity are available. No vested right to the issuance of a Building Permit is acquired by the approval of this land development. The foregoing provisions are a material (demand/supply) condition to this approval.

11. Prior to issuance of any building permits, the developer shall obtain approval from the City Engineer of the water, sewer, and storm drain studies for this development. These studies shall identify the development's effect on the City's present Master Plans and the impact of this development on the trunk lines. If the results of the study indicate that this development contributes to the over-capacity of the trunk line, it is anticipated that the developer will be required to mitigate the overflow or shortage by construction of a parallel line or pay a mitigation charge, if acceptable to the City Engineer.

12. At the time of final map approval, the developer shall submit a grading plan and a drainage study prepared by a registered Civil Engineer. The drainage study shall analyze the existing and ultimate conditions and facilities. The study shall be reviewed and approved by the City Engineer and the developer shall satisfy the conclusions and recommendations of the approved drainage study prior to final map approval of the first phase of development.
13. Prior to any building permit issuance, the developer shall submit an executed petition to annex the subject property into the CFD 2005-1, with respect to the property, the special taxes levied by Community Facility District (CFD 2005-1) for the purpose of maintaining the public services. The petition to annex into the CFD shall be finalized concurrently with the final map recordation or prior to any building permit issuance, whichever occurs first. The developer shall comply with all rules, regulations, policies and practices established by the State Law and/or by the City with respect to the CFD including, without limitation, requirements for notice and disclosure to future owners and/or residents.
14. Prior to final map approval, the developer shall obtain design approval and bond for all necessary public improvements along Murphy Ranch Road and the Bellew Pump Station access road, including but not limited to, the entire width of Murphy Ranch Drive frontage pavement restoration, curb, gutter, new sidewalk installation, new median installation, signage and striping, street lights, fire hydrants, bus stop, Coyote Creek slope landscaping, Bellew Pump Station Improvements, proposed public park and Hetch hetchy park improvement, Coyote Creek trail access improvements, storm drain, sewer and water services, and new 42-inch storm drain line installation along Murphy Ranch Road frontage and Technology Drive extension, as shown on the Engineering Services Exhibit "T" dated 9/20/2007. Plans for all public improvements shall be prepared on Mylar (24"x36" sheets) with City Standard Title Block and submit a digital format of the Record Drawings (AutoCAD format is preferred) upon completion of improvements. The developer shall also execute a secured public improvement agreement. The agreement shall be secured for an amount of 100% of the engineer's estimate of the construction cost for faithful performance and 100% of the engineer's estimate of the construction cost for labor & materials. The locations of public facilities such as water meters, RP backflow preventers, sewer clean outs, etc. shall be placed so access is maintained and kept clear of traffic. All improvements must be in accordance with the City of Milpitas standard and specification, and all public improvements shall be constructed to the city Engineer's satisfaction and accepted by the City prior to building occupancy permit issuance of the first production unit.
15. Prior to building occupancy permit issuance, the developer must upgrade Bellew Pump Station diesel engines to electric engines with backup emergency generators, or at the City's option retrofitted to meet the ATCM 2009 requirements for diesel emissions and to the satisfaction of the City Engineer.
16. The developer shall submit the following items with the building permit application and pay the related fees prior to building permit issuance:
 - a. Storm water connection fee of **\$364,434** based on 21.73 acres @ \$16,771 per acre. The storm water connection fee may be credited toward the construction of the 42" storm drain line along Murphy Road and Technology Drive. The water, sewer and treatment plant fee will be calculated at the time building plan check submittal.

- b. Water Service Agreement(s) for water meter(s) and detector check(s).
 - c. Sewer Needs Questionnaire and/or Industrial Waste Questionnaire.
 - d. Contact the Land Development Section of the Engineering Division at (408) 586-3329 to obtain the form(s).
17. Prior to building permit issuance, the developer shall pay its fair share cost of purchasing adequate public system sewage capacity for the development. Fees shall consist of treatment plant fees up to the Master Plan level and connection fees. Impact fees for discharges above master plan levels for sewage collection system infrastructure improvements, and regional plant capacity needs (above the master plan capacities), as determined by the City Engineer. This amount is estimated to be **\$1,159,481**, as of October 2006, to be adjusted by ENR at the time of payment. This impact fee is in addition to the City existing connection fee and treatment plant fee.
18. Prior to any building permit issuance, the developer shall provide for adequate sewage pumping capacity at the Milpitas Main Sewage Pump Station for the respective developments. The developer can fulfill this obligation by payment of **\$ 665,390** to the City for this purpose. This amount is as of October 2006, and to be adjusted by ENR at the time of payment. This impact fee is in addition to the City existing connection fee and treatment plant fee.
19. Prior to building permit issuance; the developer shall pay its fair share cost of purchasing adequate public system water for the respective developments, including costs for capacity and storage needs above master plan capacities, as determined by the City Engineer. This amount is estimated to be **\$277,749**, as of October 2006, to be adjusted by ENR at the time of payment. This impact fee is in addition to the City existing connection fee and treatment plant fee.
20. Prior to any building permit issuance, the developer shall pay a Milpitas Business Park traffic fee of **\$447,600** based on the 1997 study, and to be adjusted by ENR at the time of payment..
21. Prior to any building permit issuance, the developer shall pay a Montague Expressway Traffic Impact fee of **\$82,173**.
22. Prior to building permit issuance, the developer must pay all applicable development fees, including but not limited to, connection fees (water, sewer and storm), treatment plant fee, plan check and inspection deposit, and 2.5% permit automation fee.
23. Prior to any building permit issuance, the developer shall submit a tentative tract map for review and approval, and record the final map.
24. The tentative map and all final maps shall designate all common lots and easements as lettered lots or lettered easements.
25. Show on the tentative map how the site will drain. Drainage facilities outletting sump conditions shall be designed to convey the flows and protect all buildings.

26. Prior to final map approval, the developer shall establish necessary homeowner association(s) for both condominium lots. The homeowner association(s) shall be responsible for the maintenance of the landscaping, walls, private street lights, common area and private streets and shall have assessment power. This information shall be clearly included in the Conditions, Covenants, and Restrictions (CC&R) and recorded documents. The CC&R document shall be submitted for review and approval by the City Engineer.
27. Prior to any building permit issuance, , the developer shall obtain and record a reciprocal maintenance agreement with the adjacent property owners on the North for the proposed ingress/egress, Emergency Vehicle Access (EVA), parking and public trail access in accordance with California Government code 66462.5. The reciprocal agreement shall provide for the use of lands and maintenance of all private facilities including but not limited to access, EVA, drainage, lighting, landscaping, and other common area facilities. Applicant shall pay costs of acquisition of off-site real property interests in accordance with California Government Code 66462.5.
28. Prior to recordation of any final map, the developer shall submit to the City a digital format of the final map (AutoCAD format). All final maps shall be tied to the North America Datum of 1983 (NAD 83), California Coordinate of 1983, zone 3.
29. The developer shall dedicate on the final map necessary public service utility easements, street easements and easements for water and sanitary sewer purposes.
30. In accordance with Milpitas Municipal Code XI-1-7.02-2, the developer shall underground all existing wires and remove the related poles within the proposed subdivision, with the exception of transmission lines supported by metal poles carrying voltages of 37.5KV or more do not have to be undergrounded. All proposed utilities within the subdivision shall also be undergrounded. Show all existing utilities within and bordering the proposed subdivision, and clearly identify the existing PG&E wire towers and state the wire voltage.
31. The developer shall not obstruct the noted sight distance areas as indicated on the City standard drawing #405. Overall cumulative height of the grading, landscaping & signs as determined by sight distance shall not exceed 2 feet when measured from street elevation.
32. All existing public utilities shall be protected in place and if necessary relocated as approved by the City Engineer. No permanent structure is permitted within City easements and no trees or deep rooted shrub are permitted within City utility easements, where the easement is located within landscape areas.
33. Prior to the final map approval, the developer shall dedicate adequate right of way for pedestrian purposes crossing the driveways.
34. Prior to any work within public right of way or City easement, the developer shall obtain an encroachment permit from City of Milpitas Engineering Division.
35. If necessary, the developer shall obtain required industrial wastewater discharge approvals from San Jose/Santa Clara Water Pollution Control Plant (WPCP) by calling WPCP at (408) 942-3233.

36. Multistory buildings as proposed require water supply pressures above that which the city can normally supply. Additional evaluations by the applicant are required to assure proper water supply (potable or fire services). The developer shall submit an engineering report detailing how adequate water supply pressures will be maintained. Contact the Utility Engineer at 586-3345 for further information.
37. Prior to occupancy permit issuance, the developer shall construct solid waste enclosures to house the necessary solid waste bins. The enclosure shall be designed per the Development Guidelines for Solid Waste Services, and enclosure drains must discharge to sanitary sewer line. City review & approval of the enclosures are required prior to construction of the trash enclosures.
38. Per Chapter 200, Solid Waste Management, V-200-3.10, *General Requirement*, applicant / property owner or HOA shall not keep or accumulate, or permit to be kept or accumulated, any solid waste of any kind and is responsible for proper keeping, accumulating and delivery of solid waste. In addition, according to V-200-3.20 *Owner Responsible for Solid Waste, Recyclables, and Yard Waste*, applicant / property owner shall subscribe to and pay for solid waste services rendered. Prior to occupancy permit issuance (start of operation), the developer shall submit evidence to the City that a minimum level of refuse service has been secured using a Service Agreement with Allied Waste Services (formally BFI) for commercial services to maintain an adequate level of service for trash and recycling collection. After the applicant has started its business, the developer shall contact Allied Waste Services commercial representative to review the adequacy of the solid waste level of services. If services are determined to be inadequate, the developer shall increase the service to the level determined by the evaluation. For general information, contact BFI at (408) 432-1234.
39. Per Chapter 200, Title V of Milpitas Municipal Code (Ord. No. 48.7) solid waste enclosures shall be designed to limit the accidental discharge of any material to the storm drain system. The storm drain inlets shall be located away from the trash enclosures (a minimum of 25 feet). This is intended to prevent the discharge of pollutants from entering the storm drain system, and help with compliance with the City's existing National Pollution Discharge Elimination System (NPDES) Municipal permit.
40. The developer shall comply with Regional Water Quality Control Board's C.3 requirements and implement the following:
 - a. At the time of building permit plan check submittal, the developer shall submit a "final" Stormwater Control Plan and Report. Site grading, drainage, landscaping and building plans shall be consistent with the approved Stormwater Control Plan. The Plan and Report shall be prepared by a licensed Civil Engineer and certified that measures specified in the report meet the C.3 requirements of the Regional Water Quality Control Board (RWQCB) Order, and shall be implemented as part of the site improvements.
 - b. Prior to building permit issuance, the developer shall submit an Operation and Maintenance (O&M) Plan for the long-term operation and maintenance of C-3 treatment facilities.

- c. Prior to Final occupancy, the developer shall execute and record an O&M Agreement with the City for the operation, maintenance and annual inspection of the C.3 treatment facilities.
41. Prior to building, site improvement or landscape permit issuance, the building permit application shall be consistent with the developer's approved Stormwater Control Plan and approved special conditions, and shall include drawings and specifications necessary to implement all measures described in the approved Plan. As may be required by the City's Building, Planning or Engineering Divisions, drawings submitted with the permit application (including structural, mechanical, architectural, grading, drainage, site, landscape and other drawings) shall show the details and methods of construction for site design features, measures to limit directly connected impervious area, pervious pavements, self-retaining areas, treatment BMPs, permanent source control BMPs, and other features that control stormwater flow and potential stormwater pollutants. Any changes to the approved Stormwater Control Plan shall require Site & Architectural ("S" Zone) Amendment application review.
42. Prior to issuance of Certificate of Occupancy, the developer shall submit a Stormwater Control Operation and Maintenance (O&M) Plan, acceptable to the City, describing operation and maintenance procedures needed to insure that treatment BMPs and other stormwater control measures continue to work as intended and do not create a nuisance (including vector control). The treatment BMPs shall be maintained for the life of the project. The stormwater control operation and maintenance plan shall include the applicant's signed statement accepting responsibility for maintenance until the responsibility is legally transferred.
43. The U.S. Environmental Protection Agency (EPA) has empowered the San Francisco Bay Regional Water Quality Control Board (RWQCB) to administer the National Pollution Elimination Discharge System (NPDES) permit. The NPDES permit requires all dischargers to eliminate as much as possible pollutants entering our receiving waters. Construction activities which disturb 1 acres or greater are viewed as a source of pollution, and the RWQCB requires a Notice of Intent (NOI) be filed, along with obtaining an NPDES Construction Permit prior to the start of construction. A Storm Water Pollution Prevention Plan (SWPPP) and a site monitoring plan must also be developed by the developer, and approved by the City prior to permit issuance for site clearance or grading. Contact the RWQCB for questions regarding your specific requirements at (800) 794-2482. For general information, contact the City of Milpitas at (408) 586-3329.
44. Prior to any Building permit issuance, the developer shall process and obtain approval of a joint use agreement between the City and Santa Clara Valley Water District (SCVWD) for the proposed improvements and their maintenance within the SCVWD right-of-way to the satisfaction of City Engineer.
45. Prior to any building permit issuance, the developer shall submit construction plan to San Francisco Public Utility Commission (SFPUC) for review and approval, and obtain necessary encroachment permits for the proposed work.

46. Prior to start of any work along or within Santa Clara Valley water District (SCVWD) right of way, the developer shall submit construction plans to SCVWD for review and approval, and obtain necessary encroachment permits for the proposed work.
47. In accordance with Chapter 5, Title VIII (Ord. 238) of Milpitas Municipal Code, for new and/or rehabilitated landscaping 2500 square feet or larger the developer shall:
- a. Provide separate water meters for domestic water service & irrigation service. Developer is also encouraged to provide separate domestic meters for each tenant.
 - b. Comply with all requirements of the City of Milpitas Water Efficient Ordinance (Ord No 238). Two sets of landscape documentation package shall be submitted by the developer or the landscape architect to the Building Division with the building permit plan check package. Approval from the Land Development Section of the Engineering Division is required prior to building permit issuance, and submittal of the Certificate of Substantial Completion is required prior to final occupancy inspection.
 - c. Contact the Land Development Section of the Engineering Division at (408) 586-3329 for information on the submittal requirements and approval process.
48. Per Chapter 6, Title VIII of Milpitas Municipal Code (Ord. No. 240), the landscape irrigation system must be designed to meet the City's recycled water guidelines and connect to recycled water system. The developer is encouraged to retrofit the entire landscaped area for recycled water connection. If the site is not properly retrofitted for recycled water at this time, the entire site will be required to retrofit when recycled water becomes available. Contact the Land Development Section of the Engineering Division at (408) 586-3329 for design standards to be employed. To meet the recycle water guideline the developer shall:
- A. Design the landscape irrigation for recycled water use. Use of recycled water applies to all existing rehabilitated and/or new landscape adjacent to existing or future recycled water distribution lines (except for rehabilitated landscape less than 2500 square feet along the future alignment).
 - B. Design the irrigation system in conformance to the South Bay Water Recycling Guidelines and City of Milpitas Supplemental Guidelines. Prior to building permit issuance the City will submit the plans to the Department of Health Services (DOHS) for approval; this approval requires additional processing time. The owner is responsible for all costs for designing and installing site improvements, connecting to the recycled water main, and processing of City and Department of Health Services approvals. Contact the Land Development Section of the Engineering Division at (408) 586-3329 to obtain copies of design guidelines and standards.
 - C. Protect outdoor eating areas from overspray or wind drift of irrigation water to minimize public contact with recycled water. Recycled water shall not be used for washing eating areas, walkways, pavements, and any other uncontrolled access areas.
49. It is the responsibility of the developer to obtain any necessary encroachment permits from affected agencies and private parties, including but not limited to, Pacific Gas and Electric, SBC, Comcast, Santa Clara Valley Water District, Santa Clara Valley Transportation Agency, City and County of San Francisco, and City of Milpitas Engineering Division. Copies of any approvals or permits must be submitted to the City of Milpitas Engineering Division.

50. Per Milpitas Municipal Code Chapter 2, Title X (Ord. No. 201), the developer may be required to obtain a permit for removal of any existing tree(s). Contact the Street Landscaping Section at (408) 586-2601 to obtain the requirements and forms.
51. The site is located in Local Improvement District #9R and 12R. Developer must file amended assessment diagrams and assessment allocations concurrent with the parcel map recordation.
52. Prior to building permit issuance, the developer shall form a Landscaping and Lighting Maintenance Assessment District (LMD) on the subject property, to fund the maintenance of Coyote Creek Slope landscaping and pay for the annual lease cost of Hetch Hetchy Park, if any. The applicant will be required to pay for all operational & maintenance costs until such time as the City receives revenues from the proposed District.
53. The developer shall call Underground Service Alert (U.S.A.) at (800) 642-2444, 48 hrs prior to construction for location of utilities.
54. Prior to start of any construction, the developer shall submit a construction schedule and monitoring plan for City Engineer review and approval. The construction schedule and monitoring plan shall include, but not be limited to, construction staging area, parking area for the construction workers, personnel parking, temporary construction fencing, construction information signage and establish a neighborhood hotline to record and respond to neighborhood construction related concerns. The developer shall coordinate their construction activities with other construction activities in the vicinity of this project. The developer's contractor is also required to submit updated monthly construction schedules to the City Engineer for the purpose of monitoring construction activities and work progress.
55. The Flood Insurance Rate Map (FIRM) issued by the Federal Emergency Management Agency (FEMA) under the National Flood Insurance Program shows this site to be in Flood Zone "X".
56. The developer shall obtain information from the US Postal Services regarding required mailboxes. Structures to protect mailboxes may require Building, Engineering and Planning Divisions review.
57. Make changes as noted on Engineering Services Exhibit "T"(dated 9/20/2007) and submit a revised tentative map to the Planning Division for review and approval.

Planning & Neighborhood Services

58. PARK IN-LIEU FEE: Prior to building permit issuance of each phase of the project, the applicant shall pay a park-in-lieu fee in accordance with the applicable sections of the Milpitas Municipal Code and State Subdivision Map Act. The cost of the improvements to the public park areas will be credited against the park in-lieu fee. (P)
59. PARK IMPROVEMENTS: The final map shall reflect the dedication of 1.1 acres of public park land to the City of Milpitas. The public park improvements, including those on the

Hetch-Hetchy parcel, shall be accepted by the City prior to building permit finals or occupancy of any units within either the last 50% of the town-home units built or final occupancy of the apartment building which ever occurs first. (P)

60. PJ ACCOUNT: If at the time of application for *building permit*, there is a past due project job account balance owed to the City for recovery of review fees, review of permits will not be initiated until the balance is paid in full. (P)
61. PJ ACCOUNT: If at the time of application for *certificate of occupancy*, there is a project job account balance due to the City for recover of review fees, review of permits will not be initiated until the balance is paid in full. (P)
62. ARCHITECTURE: Prior to building permit issuance additional building elevation styles for the townhome buildings shall be submitted to the Planning Division for review and approval. (P)
63. PAVERS & ACCENT TILES: Prior to building permit issuance, the applicant shall submit details of the decorative paving material to the Planning Division for review and approval. (P)
64. NOISE: Prior to building permit issuance, a detailed noise analysis will be required to determine the measures necessary to keep the interior noise levels below 45 dB Ldn. The analysis shall include, noise sources between residential units as well as between mechanical/utility rooms. (P)
65. LIGHTING: Prior to building permit issuance, the applicant shall submit details and elevations of all site lighting fixtures to the Planning Division for review and approval. (P)
66. SIGNAGE: Prior to approval of any signage for the multi-family development, proper applications, depending on signage type will need to be submitted to the Planning Division. (P)
67. LANDSCAPE: Prior to building permit issuance a revised landscaping plan shall be approved by the Planning Division showing a minimum of 25 percent usable open space over the existing site area exclusive of public park areas.
68. LANDSCAPE: All planter areas (including containerized planters) shall be serviced by a sprinkler or drip system. (P)
69. LANDSCAPE: All required landscaping, as approved on the final landscape plan, shall be replaced and continuously maintained as necessary to provide a permanent, attractive and effective appearance. (P)
70. LANDSCAPE: Prior to certificate of occupancy permit issuance, all required landscaping shall be planted in place. (P)
71. LANDSCAPE: All landscape planters adjacent to vehicle parking areas or travel lanes shall be contained by a full depth (6" above AC to bottom of structural section of adjacent paving)

concrete curb. Where landscape planters abut a public street, a 24-inch deep water barrier shall be installed behind the curb. (P)

72. AFFORDABLE HOUSING: Prior to the issuance of any permit, the applicant shall provide documentation to the approval of the City Attorney that 132 affordable housing units (20% of total number of units: 659) will be available at a housing cost affordable to Very Low, Low and Moderate income households. (P)

73. AFFORDABLE HOUSING: The applicant shall provide the following information as it relates to the number of affordable housing units, types of units (studio, one, two and three bedrooms) and the income levels of the proposed affordable housing units as illustrated below. (P)

APARTMENTS

	Very Low	Low	Moderate	TOTALS
Studio	1	1	1	3
1 bedroom	9	13	17	39
2 bedroom	9	14	18	41
3 bedroom	1	2	2	5
Total	20	30	38	88

TOWNHOUSES

	Very Low	Low	Moderate	TOTALS
1 bedroom	0	3	12	15
2 bedroom	0	2	13	15
3 bedroom	0	2	12	14
Total	0	7	37	44

74. AFFORDABLE HOUSING: Prior to occupancy, the applicant shall provide to the City Housing Division for review and approval, a dispersment plan exhibit illustrating the location of the affordable housing units within the development. The affordable housing units shall be dispersed equally throughout the development and shall contain the same architectural features, design and amenities as the fair market rate units in the development. (P)

75. AFFORDABLE HOUSING: Income eligibility for the required number of affordable units shall be determined pursuant to the California Health and Safety Code Sections 50079.5, 50093 and 50105, which provide that the very low limits established by the U.S. Department of Housing and Urban Development (HUD) are the state limits for that income category. (P)

76. AFFORDABLE HOUSING: The applicant and the City of Milpitas shall enter into Restriction Agreements that outline the provisions for maintaining the long-term affordability of the required affordable ownership and rental units. The Restriction Agreements shall be approved to form by the Milpitas City Attorney’s Office, executed by the City Manager and recorded with the County of Santa Clara. (P)

77. AFFORDABLE HOUSING: The Restriction Agreements shall require that the long-term affordability of the rental and ownership housing units shall remain in effect for fifty-five (55) years. Any change to this requirement is subject to review and approval by the Milpitas City Council.
78. AFFORDABLE HOUSING: The applicant shall work with the Housing Division staff in establishing and determining the waiting list of eligible residents that are qualified for the project. (P)
79. AFFORDABLE HOUSING: The established affordable ownership and rents shall be pursuant to income eligibility provided by the California Health and Safety Code Sections 50079.5, 50093 and 50105 which provide the "very low" limits established by the U.S. Department of Housing and Urban Development (HUD) are the state limits for those income categories and State of California Redevelopment Agency Law. The final affordable ownership and rents established for the affordable units shall not exceed the maximum allowable sale price and rents for very low, low and moderate-income households as defined in the above code sections. Said sale price and rents shall be approved for consistency with the definitions by the Housing Division staff. (P)
80. MECHANICAL EQUIPMENT: All mechanical equipment, ground transformers and meters shall be located and screened to minimize visual impacts. (P)
81. ROOFTOP EQUIPMENT: Rooftop mechanical equipment shall be concealed from street level views through roof design that is architecturally integrated with the building, such as equipment wells and parapets. (P)

Fire Department

82. Provide plans and specifications for a Community Warning System for the review and approval of the Fire Marshall prior to issuance of any Building Permit for the project. The Community Warning System shall be installed, operational and accepted by the Fire Marshall prior to the occupancy of any residential units in the project. (F)

**Recording requested by and when
recorded mail to:**

Redevelopment Agency of the City of Milpitas
455 East Calaveras
Milpitas, CA 95035
Attention: Executive Director

EXEMPT FROM RECORDING FEES PER
GOVERNMENT CODE §§6103, 27383

Space above this line for Recorder's use.

AFFORDABLE HOUSING REGULATORY AGREEMENT

AND

DECLARATION OF RESTRICTIVE COVENANTS

by and between

**THE REDEVELOPMENT AGENCY OF THE CITY OF MILPITAS
a public body, corporate and politic**

and

**FF MURPHY ROAD LLC
a California limited liability company**

THIS AFFORDABLE HOUSING REGULATORY AGREEMENT AND DECLARATION OF RESTRICTIVE COVENANTS (this "**Agreement**") is entered into effective as of _____, 2007 (the "**Effective Date**") by and between the Redevelopment Agency of the City of Milpitas, a public body, corporate and politic (the "**Agency**") and FF Murphy Road LLC, a California limited liability company ("**Developer**"). Developer and Agency are hereinafter collectively referred to as the "**Parties.**"

RECITALS

A. Pursuant to authority granted under Community Redevelopment Law (California Health and Safety Code Section 33000 *et seq.*) ("**CRL**"), the Agency has responsibility to implement the redevelopment plan adopted for the Milpitas Redevelopment Project Area No. 1 (the "**Project Area**") by the City Council of the City of Milpitas, California (the "**City**") by Ordinance No. 192 on September 21, 1976, and subsequently amended and restated on June 17, 2003 by Ordinance No. 192.14 (as so amended and restated, and subsequently further amended, the "**Redevelopment Plan**").

B. Developer has purchased or has the contractual right to purchase certain real property known as APN 086-01-041 located in the Project Area at the intersection of Murphy Ranch Road and Technology Drive in the City of Milpitas, California and more particularly described in Exhibit A attached hereto (the "**Property**").

C. Developer intends to construct on the Property a two hundred and eighty-five (285) unit residential condominium townhome project on the Property (the "**Project**").

D. Developer has agreed to sell no fewer than forty-four (44) units (the "**Restricted Units**") in the Project at prices affordable to low- and moderate-income households.

E. The Parties have agreed to enter into and record this Agreement in order to satisfy the conditions described in the foregoing Recitals. The purpose of this Agreement is to regulate and restrict the sale price of the Restricted Units and the eligibility criteria for prospective homebuyers consistent with the applicable provisions of Community Redevelopment Law (Health and Safety Code Section 33000 *et. seq.*) ("**CRL**").

F. The Parties intend the covenants set forth in this Agreement to run with the land and to be binding upon all parties having or acquiring any right, title or interest in the Property or any part thereof, their heirs, successors and assigns.

NOW THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties declare, covenant and agree

by and for themselves, administrators and assigns, and all persons claiming under or through them, that the Property shall be held, transferred, encumbered, hypothecated, used, sold conveyed, improved, leased, and occupied subject to the covenants, conditions and restrictions hereinafter set forth, and further agree as follows.

1. **Definitions.** The following terms shall have the meanings set forth below whenever such terms are used in this Agreement and the Exhibits attached hereto. Additional terms are defined in the Recitals and text of this Agreement.

1.1 **"Affordable Housing Cost"** shall have the meaning ascribed to such term in California Health and Safety Code Section 50052.5 or successor provision and the regulations promulgated pursuant thereto. Pursuant to the foregoing, as of the Effective Date Affordable Housing Cost means:

(a) for Moderate-Income Eligible Buyers whose household Gross Income is less than or equal to 110 percent of Area Median Income adjusted for household size, a Housing Cost that is not less than 28 percent of the Gross Income of the household and which does not exceed the product of 35 percent times 110 percent of the Area Median Income, adjusted for household size appropriate for the unit,

(b) for Moderate-Income Eligible Buyers whose household Gross Income exceeds 110 percent of Area Median Income adjusted for household size, a Housing Cost that does not exceed the product of 35 percent of the Gross Income of the household, and

(c) for Low-Income Eligible Buyers, a Housing Cost that does not exceed the product of 30 percent times 70 percent of Area Median Income adjusted for household size appropriate for the unit.

Pursuant to California Health and Safety Code Section 50052.5(h), the phrase "adjusted for household size appropriate to the unit" shall mean a household of one person for a studio unit, two persons for a one-bedroom unit, three persons for a two-bedroom unit, four persons for a three-bedroom unit, and five persons for a four-bedroom unit.

1.2 **"Area Median Income"** or **"AMI"** means the area median income for Santa Clara County, California, adjusted for household size, published periodically by the California Department of Housing and Community Development ("**HCD**") in Section 6932 of Title 25 of the California Code of Regulations or successor provision published pursuant to California Health and Safety Code Section 50093(c). If HCD ceases to make such determination, Area Median Income shall be the median income applicable to Santa Clara County, with adjustments for household size, as determined from time to time by the U.S. Department of Housing and Urban Development ("**HUD**") pursuant to the United States Housing Act of 1937 as

amended, or such other method of median income calculation applicable to the City of Milpitas that HUD may hereafter adopt in connection with such Act.

1.3 “**Eligible Buyer**” means a prospective purchaser of a Restricted Unit who has been pre-qualified by the Agency or its designee and who satisfies all of the following requirements:

(a) Gross Income for the prospective purchaser’s household does not exceed Low-Income or Moderate-Income, as applicable, and has not exceeded such amount for the full calendar year immediately preceding the date of purchase.

(b) The prospective purchaser certifies that he or she intends to occupy the Restricted Unit as his or her principal residence.

(c) The prospective purchaser does not own any other residential real property at the time of the purchase.

(d) The prospective purchaser meets all other applicable eligibility requirements of the Agency in effect at the time of the purchase.

1.4 “**Gross Income**” shall have the meaning ascribed to such term in Section 6914 of the Regulations or any successor thereto.

1.5 “**Housing Cost**” shall have the meaning ascribed to such term in Section 6920 of the Regulations or any successor thereto.

1.6 “**Low Income**” shall mean an annual household Gross Income that is greater than fifty percent (50%) of Area Median Income, but not greater than eighty percent (80%) of Area Median Income, adjusted for household size.

1.7 “**Maximum Initial Sale Price**” means the maximum initial price for a Restricted Unit as described in Sections 3 and 3.1.

1.8 “**Moderate-Income**” means an annual household Gross Income of not greater than 120% of the Area Median Income, adjusted for household size.

1.9 “**Regulations**” means Title 25 of the California Code of Regulations.

1.10 “**Restricted Unit**” means a residential unit in the Project which is reserved for sale to an Eligible Buyer at a price that will result in an Affordable Housing Cost in accordance with and as set forth in Sections 3 and 3.1.

2. Marketing; Qualification of Eligible Buyers. Developer shall market the Restricted Units to Eligible Buyers in compliance with all applicable fair housing laws and no later than concurrently with the marketing of the remainder of the units in the Project. In

Agency’s discretion, Agency shall pre-qualify Eligible Buyers or shall delegate such responsibility to another entity or to Developer. Developer shall provide to the Agency proof that prospective purchasers of the Restricted Units qualify as Eligible Buyers at such time and in such form as Agency may reasonably require.

3. Sale of Restricted Units. Developer shall sell the Restricted Units in accordance with all of the following terms and conditions:

(i) The Restricted Units shall be sold only to Eligible Buyers who have been pre-qualified by Agency or its designee at a price not in excess of the Maximum Initial Sale Price.

(ii) Thirty-seven (37) of the Restricted Units shall be sold at a price not in excess of the Maximum Initial Sale Price to Eligible Buyers whose household Gross Income does not exceed Moderate-Income.

(iii) Seven (7) of the Restricted Units shall be sold at a price not in excess of the Maximum Initial Sale Price to Eligible Buyers whose household Gross Income does not exceed Low-Income.

(iv) The Restricted Units shall be dispersed throughout the Project in the locations shown on the Location Plan approved by the Agency’s Executive Director and attached to this Agreement as Exhibit B.

(v) The Restricted Units shall be of the same general design as the other units in the Project and shall be comparable to such units in size, amenities and quality of construction.

(vi) The Restricted Units shall be of the following size:

	Low-Income Units	Moderate-Income Units	Total
1-Bedroom	3	12	15
2-Bedroom	2	13	15
3-Bedroom	2	12	14
Total	7	37	44

(vii) In connection with the sale of each Restricted Unit, Developer shall require the purchaser to execute a Resale Restriction Agreement and Option to Purchase (“**Resale Agreement**”) in a form provided by Agency and shall cause such

Resale Agreement to be recorded in the Official Records of Santa Clara County concurrently with the recordation of the grant deed conveying title to the Restricted Unit. The Resale Agreement shall provide that in accordance with the CRL, the Restricted Unit may only be sold to Eligible Households at an affordable price as specified in the Resale Agreement, and will further provide that the Agency shall have a right of first offer to purchase the Restricted Unit and an option to purchase such unit upon the occurrence of specified triggering events. Agency may, in Agency's discretion, require the execution, delivery and recordation of additional documents in connection with the sale of the Restricted Units, including without limitation disclosure documents and a performance deed of trust ("**Agency Deed of Trust**") securing the homebuyer's obligations under the Resale Agreement.

3.1 Maximum Initial Sale Price. Developer shall sell the Restricted Units to Eligible Buyers at a price that is not in excess of the Maximum Initial Sale Price as determined by the Agency based upon the requirements of the then-current Regulations and California Community Redevelopment Law (Health and Safety Code Section 33000 *et seq.*). The Parties acknowledge that the Maximum Initial Sale Price is intended to enable Eligible Buyers to purchase the Restricted Units at a price that will result in an Affordable Housing Cost for such Eligible Buyers, taking into account the following conditions:

(i) Area Median Income for Eligible Buyers shall be determined at the time the Eligible Buyer is pre-qualified for purchase in accordance with Section 2 hereof;

(ii) Maximum Initial Sale Price shall be determined based on an assumed market rate down payment not to exceed three percent (3%); however, the actual down payment provided by the purchasers may be greater or less than this amount.

(iii) the interest rate used to determine the Maximum Initial Sale Price shall be the prevailing market interest rate for a 30-year fixed rate mortgage at the time the Eligible Buyer is pre-qualified.

3.2 Compliance Monitoring. Prior to the close of escrow for the initial sale of each Restricted Unit, Developer shall forward to the City evidence of the purchaser's status as an Eligible Buyer, copies of the buyer's and seller's settlement statements, and executed copies of all closing documents, including the Resale Agreement and such other documents as Agency may require.

4. Maintenance of Property. Developer shall maintain the improvements and landscaping on the Property in accordance with the Milpitas Municipal Code, and in a manner consistent with community standards so as to maintain the value of the Property. The Developer shall comply with any and all covenants and agreements established by any Declaration of Covenants, Conditions, and Restrictions affecting the

Property, and shall comply with all applicable federal, state and local laws affecting the Property. Notwithstanding the foregoing, Developer's obligations established by this Section 4 may be assumed by a homeowner's association comprised of the owners of the residential condominiums in the Project, and upon such association's assumption of such obligations, Developer shall be released therefrom except to the extent that Developer remains obligated pursuant to the terms of any such declaration or homeowner's association charter and bylaws or other governing documents.

5. Enforcement. The Agency and the City are deemed to be the beneficiaries of this Agreement and the covenants herein, both for and in their own right and for the purpose of protecting the interests of the community and other parties, public or private, for whose benefit this Agreement and the covenants set forth herein have been provided. If any such covenants are breached, the Agency and the City shall have the right to exercise all rights and remedies at law or in equity, expressly including the remedy of specific performance, and to maintain any actions or suits at law or in equity or other proper proceedings to enforce the curing of such breaches. Except as otherwise expressly stated in this Agreement, the rights and remedies of the parties hereunder are cumulative.

6. Default and Remedies.

6.1 Events of Default. The occurrence of any one or more of the following events shall constitute an event of default hereunder ("**Event of Default**"):

(a) Developer's failure to maintain insurance on the Property and the Project as required hereunder, and the failure of Developer to cure such default within ten (10) business days.

(b) Subject to Developer's right to contest the following charges, Developer's failure to pay taxes or assessments due on the Property or the Project or failure to pay any other charge that may result in a lien on the Property or the Project, and Developer's failure to cure such default within ten (10) business days.

(c) Developer's default in the performance of any term, provision or covenant under this Agreement, and unless such provision specifies a shorter cure period for such default, the continuation of such default for ten (10) business days in the event of a monetary default or thirty (30) days in the event of a non-monetary default following the date upon which Agency shall have given written notice of the default to Developer, or if the nature of any such non-monetary default is such that it cannot be cured within thirty (30) days, Developer's failure to commence to cure the default within thirty (30) days and thereafter prosecute the curing of such default with due diligence and in good faith, but in no event longer than sixty (60) days from receipt of the notice of default.

6.2 Remedies. If within the applicable cure period, Developer fails to cure a default or fails to commence to cure and diligently pursue completion of a cure, as applicable, or if a cure is not possible, Agency may bring an action for equitable relief seeking the specific performance of the terms and conditions of this Agreement, and/or enjoining, abating, or preventing any violation of such terms and conditions, and/or seeking declaratory relief; or exercise any rights and remedies available to Agency under applicable law or in equity.

6.3 No Waiver. No failure or delay by the Agency in the assertion of any of its rights and remedies as to any default shall operate as a waiver of any default or of any such rights or remedies.

6.4 Limitation on Damages. In no event shall damages be awarded against City or Agency upon an event of default or upon termination of this Agreement.

6.5 Mortgagee Right to Cure Default.

(a) This Agreement shall be recorded in the Official Records of Santa Clara County and shall be superior and senior to any lien placed upon the Property, or any portion thereof, including the lien for any loan, 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 the terms and conditions contained in this Agreement shall be binding upon and effective against any person or entity, including any lender, deed of trust beneficiary, or mortgagee ("**Mortgagee**") who acquires title to the Property, or any portion thereof, by foreclosure, trustee's sale, deed in lieu of foreclosure, or otherwise.

(b) If Agency receives notice from a Mortgagee requesting a copy of any notice of default given Developer hereunder and specifying the address for service thereof, then Agency shall deliver to such Mortgagee, concurrently with service thereon to Developer, any notice given to Developer with respect to any claim by Agency that Developer has committed a default hereunder. 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 default set forth in the Agency's notice. Acting in the discretion of its Executive Director, Agency may extend the cure periods specified in Section 6 for up to an additional sixty (60) days upon request of a Mortgagee.

7. Covenants to Run with the Land. Developer hereby subjects the Property to the covenants, conditions and restrictions set forth in this Regulatory Agreement. The Parties hereby declare their express intent that all such covenants, conditions and restrictions shall be deemed covenants running with the land and shall pass to and be binding upon the Developer's successors in title to the Property. All covenants without regard to technical classification or designation shall be binding for the benefit of the Agency and the City, and such covenants shall run in favor of the Agency for the entire term of this Regulatory Agreement. Each and every contract, deed or other instrument

hereafter executed applicable to or conveying the Property or any portion thereof shall conclusively be held to have been executed, delivered and accepted subject to such covenants, conditions and restrictions, regardless of whether such covenants, conditions and restrictions are set forth in such contract, deed or other instrument.

8. Nondiscrimination.

8.1 Nondiscrimination. There shall be no discrimination against or segregation of any person, or group of persons, on account of any basis listed in subdivision (a) or (d) of Section 12955 of the Government Code, as those bases are defined in Sections 12926, 12926.1, subdivision (m) and paragraph (1) of subdivision (p) of Section 12955, and Section 12955.2 of the Government Code, in the sale, lease, sublease, transfer, use, occupancy, tenure or enjoyment of the Property or the Project, or any part thereof, nor shall Developer, or any party or person claiming under or through Developer, establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, subtenants, sublessees or vendees of the Property, or any part thereof.

8.2 Anti-Discrimination Clauses in Agreements. Developer and its successors and assigns shall refrain from restricting the rental, sale, or lease of any portion of the Property or the Project to any person on account of any basis listed in subdivision (a) or (d) of Section 12955 of the Government Code, as those bases are defined in Sections 12926, 12926.1, subdivision (m) and paragraph (1) of subdivision (p) of Section 12955, and Section 12955.2 of the Government Code. All such deeds, leases or contracts shall contain or be subject to substantially the following nondiscrimination or nonsegregation clauses:

8.2.1 In deeds: "The grantee herein covenants by and for itself, its heirs, executors, administrators, and assigns, and all persons claiming under or through it, that there shall be no discrimination against or segregation of any person or group of persons on account of any basis listed in subdivision (a) or (d) of Section 12955 of the Government Code, as those bases are defined in Sections 12926, 12926.1, subdivision (m) and paragraph (1) of subdivision (p) of Section 12955, and Section 12955.2 of the Government Code, in the sale, lease, sublease, transfer, use, occupancy, tenure, or enjoyment of the land herein conveyed, nor shall the grantee himself, or any persons claiming under or through him, establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use, or occupancy of tenants, lessees, subtenants, sublessees, or vendees in the land herein conveyed. The foregoing covenants shall run with the land.

8.2.2 In leases: "The lessee herein covenants by and for the lessee and lessee's heirs, personal representatives and assigns, and all persons claiming under the lessee or through the lessee, that this lease is made subject to the condition that there

shall be no discrimination against or segregation of any person or of a group of persons on account of any basis listed in subdivision (a) or (d) of Section 12955 of the Government Code, as those bases are defined in Sections 12926, 12926.1, subdivision (m) and paragraph (1) of subdivision (p) of Section 12955, and Section 12955.2 of the Government Code, in the leasing, subleasing, transferring, use, occupancy, tenure or enjoyment of the land herein leased nor shall the lessee or any person claiming under or through the lessee establish or permit any such practice or practices of discrimination of segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, sublessees, subtenants, or vendees in the land herein leased.”

8.2.3 In contracts: “There shall be no discrimination against or segregation of any persons or group of persons on account of any basis listed in subdivision (a) or (d) of Section 12955 of the Government Code, as those bases are defined in Sections 12926, 12926.1, subdivision (m) and paragraph (1) of subdivision (p) of Section 12955, and Section 12955.2 of the Government Code, in the sale, lease, transfer, use, occupancy, tenure, or enjoyment of land, nor shall the transferee itself, or any person claiming under or through it, establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, subtenants, sublessees, or vendees of land.”

9. Term; Release of Property from Agreement.

(a) Subject to paragraph (b) below, the term of this Agreement shall commence upon the Effective Date, and shall, without regard to technical classification or designation, shall run with the land and be binding on Developer and its successors and assigns for the benefit of the Agency and the City. The covenants contained in Sections 9.1 and 9.2 shall remain in effect in perpetuity. All other covenants contained in this Agreement shall remain in effect for the longest feasible time, but not less than forty-five (45) years.

(b) Notwithstanding the foregoing paragraph, this Agreement shall be terminated and the lien hereof shall be extinguished and released from title to the Property upon the occurrence of all the following: (i) the issuance of final certificates of occupancy for all of the Restricted Units, (ii) the sale of all of the Restricted Units to Eligible Buyers, and (iii) the recordation of a Resale Agreement and Agency Deed of Trust for all Restricted Units. Provided that conditions (i) through (iii) above have been satisfied with regards to an entire building with the Project, then that specific building will be released from this Agreement.

10. Insurance and Indemnity.

10.1 Indemnity. Developer shall indemnify, defend (with counsel approved by Agency) and hold Agency, the City, and their respective elected and appointed officers,

officials, employees, agents, and representatives (collectively, the “**Indemnitees**”) harmless from and against all liability, loss, cost, expense (including without limitation attorneys’ fees and costs of litigation), claim, demand, action, suit, judicial or administrative proceeding, judgment, penalty, deficiency, fine, order, and damage (all of the foregoing collectively “**Claims**”) arising directly or indirectly, in whole or in part, as a result of or in connection with Developer’s development, sale or ownership of the Restricted Units and/or the Project, or Developer’s performance or nonperformance under this Agreement. Developer’s indemnification obligations under this Section 10.1 shall not extend to Claims resulting solely from the gross negligence or willful misconduct of Indemnitees. The provisions of this Section 10.1 shall survive the expiration or earlier termination of this Agreement and the release of the Property or any part thereof from the burdens of this Agreement. It is further agreed that Agency and City do not and shall not waive any rights against Developer that they may have by reason of this indemnity and hold harmless agreement because of the acceptance by Agency, or the deposit with Agency by Developer, of any of the insurance policies described in this Agreement.

10.2 Insurance. For so long as Developer maintains an interest in the Property or the Project, Developer shall maintain at Developer’s expense, comprehensive general liability insurance and property damage insurance with such coverage and limits as may be reasonably requested by Agency and City from time to time, but in no event less than the sum of Two Million Dollars (\$2,000,000) per occurrence combined single limit. Such policies shall be issued by insurers licensed to issue such policies in California and having a rating of A-VII or better in Best’s Insurance Guide, shall be primary coverage not contributing with and not in excess of any coverage that Agency or City may carry, and shall name the Indemnitees (defined in Section 10.1) as additional insureds. Upon Agency request, Developer shall provide Agency with such proof of insurance as Agency shall reasonably request.

11. Miscellaneous.

11.1 Notices. Except as otherwise specified in this Agreement, all notices to be sent pursuant to this Agreement shall be made in writing, and sent to the Parties at their respective addresses specified below or to such other address as a Party may designate by written notice delivered in accordance with this Section. All such notices shall be sent by:

(i) personal delivery, in which case notice shall be deemed delivered upon receipt;

(ii) certified or registered mail, return receipt requested, in which case notice shall be deemed delivered two (2) business days after deposit, postage prepaid in the United States mail;

(iii) nationally recognized overnight courier, in which case notice shall be deemed delivered one (1) day after deposit with such courier; or

(iv) facsimile transmission, in which case notice shall be deemed delivered on transmittal, provided that a transmission report is generated reflecting the accurate transmission thereof. Any notice given by facsimile shall be considered to have been received on the next business day if it is received after 5:00 p.m. recipient's time or on a nonbusiness day.

Agency: Milpitas Redevelopment Agency
455 East Calaveras Boulevard
Milpitas, CA 95035
Attn: Executive Director
Facsimile: (408) 586-3069

Developer: FF Murphy Road LLC
c/o Capital Markets
5510 Morehouse Drive, Suite 200
San Diego, CA 92121
Attn: _____
Fax: _____

11.2 Attorneys' Fees. In the event that Agency, City or Developer brings an action by reason of the breach of any condition, covenant, representation or warranty contained herein, or otherwise arising out of this Agreement, the prevailing party in such action shall be entitled to recover from the other reasonable attorneys' fees and costs. Attorneys' fees shall include attorney's fees on any appeal, and in addition, a party entitled to attorneys' fees shall be entitled to all other reasonable costs for investigating such action, including the conducting of discovery.

11.3 Waivers; Modification. No waiver of any breach of any covenant or provision of this Agreement shall be deemed a waiver of any other covenant or provision hereof, and no waiver shall be valid unless in writing and executed by the waiving party. An extension of time for performance of any obligation or act shall not be deemed an extension of the time for performance of any other obligation or act, and no extension shall be valid unless in writing and executed by the waiving party. This Agreement may be amended or modified only by a written instrument executed by the Parties and duly recorded in the Official Records of Santa Clara County.

11.4 Severability. If any provision of this Agreement is held by a court of competent jurisdiction to be invalid or unenforceable, the remainder of this Agreement shall continue in full force and effect.

11.5 Captions; Construction. The section headings and captions used herein are solely for convenience and shall not be used to interpret this Agreement. The Parties acknowledge that this Agreement is the product of negotiation and compromise on the part of both Parties, and the Parties agree, that since both Parties have participated in the negotiation and drafting of this Agreement, this Agreement shall not be construed as if prepared by one of the Parties, but rather according to its fair meaning as a whole, as if both Parties had prepared it.

11.6 Action or Approval. Whenever action and/or approval by Agency is required under this Agreement, Agency's Executive Director or his or her designee may act on and/or approve such matter unless specifically provided otherwise, or unless the Executive Director determines in his or her discretion that such action or approval requires referral to Agency's Board for consideration.

11.7 Entire Agreement. This Agreement, including Exhibits A and B attached hereto and incorporated herein by this reference contains the entire agreement of the Parties with respect to the subject matter hereof, and supersedes all prior written or oral agreements, understandings, representations or statements with respect to the subject matter hereof.

11.8 Binding on Successors. This Agreement shall be binding upon and inure to the benefit of the Parties and their respective successors and assigns. Each reference in this Agreement to a specifically named Party shall be deemed to apply to any successor or assign of such Party who has acquired an interest in the Property.

11.9 Due Authorization. Developer hereby represents and warrants that all actions necessary on the part of Developer to authorize the execution of this Agreement and to undertake the actions contemplated hereby have been undertaken and the persons executing this Agreement on behalf of Developer have been duly authorized to do so.

11.10 Parties Not Co-Venturers. Nothing in this Agreement is intended to or shall establish the Parties as partners, co-venturers, or principal and agent with one another.

11.11 Counterparts. This Agreement may be executed in multiple counterparts, each of which shall be an original and all of which together shall constitute one instrument.

11.12 Further Assurances. The Parties agree to execute such instruments and to undertake such actions, as may be necessary to effectuate the intent of this Agreement.

11.13 Governing Law; Venue. This Agreement shall be governed by and construed in accordance with the laws of the State of California without regard to

principles of conflicts of laws. Any action to enforce or interpret this Agreement shall be filed in the Superior Court of Santa Clara County, California or in the Federal District Court for the Northern District of California.

11.14 Time is of the Essence. In all matters under this Agreement, the Parties agree that time is of the essence.

11.15 Future Enforcement by City. The Parties hereby agree that should the Agency cease to exist as an entity at any time during the term of this Agreement, the City shall have the right to enforce all of the terms and conditions herein, unless the Agency has previously specified another entity to enforce this Agreement.

SIGNATURES ON FOLLOWING PAGE.

IN WITNESS WHEREOF, the Agency and Developer have executed this Regulatory Agreement and Declaration of Restrictive Covenants as of the date first written above.

AGENCY

REDEVELOPMENT AGENCY OF THE CITY OF MILPITAS

By:
Its: Executive Director

ATTEST:

Agency Secretary

APPROVED AS TO FORM:

Agency Counsel

DEVELOPER

FF MURPHY ROAD LLC
a California limited liability company

By: _____

Its: _____

SIGNATURES MUST BE NOTARIZED.

STATE OF CALIFORNIA)
)
COUNTY OF SANTA CLARA)

On _____, 20__ before me, _____ the undersigned, personally appeared _____

() personally known to me
() 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.

Signature _____

STATE OF CALIFORNIA)
)
COUNTY OF SANTA CLARA)

On _____, 20__ before me, _____ the undersigned, personally appeared _____

() personally known to me
() 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.

Signature _____

DRAFT 10/29/07

Exhibit A

PROPERTY

(Attach legal description.)

DRAFT 10/29/07

Exhibit B

LOCATION PLAN

(Attach map or depicting location of Restricted Units.)

**Recording requested by and
when recorded mail to:**
Redevelopment Agency of the
City of Milpitas
455 East Calaveras
Milpitas, CA 95035
Attention: Executive Director

EXEMPT FROM RECORDING FEES PER
GOVERNMENT CODE §§6103, 27383

Space above this line for Recorder's use.

**AFFORDABLE HOUSING REGULATORY AGREEMENT
AND
DECLARATION OF RESTRICTIVE COVENANTS**

by and between

**REDEVELOPMENT AGENCY OF THE CITY OF MILPITAS
a public body, corporate and politic**

and

**FAIRFIELD MURPHY ROAD LLC
a California limited liability company**

This Affordable Housing Regulatory Agreement and Declaration of Restrictive Covenants (this "**Agreement**") is entered into effective as of _____, 2007 ("**Effective Date**") by and between the Redevelopment Agency of the City of Milpitas, a public body, corporate and politic (the "**Agency**") and Fairfield Murphy Road LLC, a California limited liability company ("**Owner**"). Agency and Owner are hereinafter collectively referred to as the "**Parties**."

RECITALS

A. Pursuant to authority granted under Community Redevelopment Law (California Health and Safety Code Section 33000 *et seq.*) ("**CRL**"), the Agency has responsibility to implement the redevelopment plan adopted for the Milpitas Redevelopment Project Area No. 1 (the "**Project Area**") by the City Council of the City of Milpitas, California (the "**City**") by Ordinance No. 192 on September 21, 1976, and subsequently amended and restated on June 17, 2003 by Ordinance No. 192.14 (as so amended and restated, and subsequently further amended, the "**Redevelopment Plan**").

B. Owner has purchased or has the contractual right to purchase certain real property known as APN 086-01-042 located in the Project Area at the intersection of Murphy Ranch Road and Technology Drive in the City of Milpitas, California and more particularly described in Exhibit A attached hereto (the "**Property**").

C. Owner intends to construct, own and operate on the Property a three hundred seventy-four (374) unit multifamily housing development (the "**Project**") in which, pursuant to this Agreement, eighty-eight (88) units (the "**Restricted Units**") will be restricted for occupancy by very low-, low-, and moderate-income households at affordable rent for a period of not less than 55 years.

D. Pursuant to Health and Safety Code Section 33413(b)(2)(A)(i), specified percentages of all new and substantially rehabilitated dwelling units developed in redevelopment project areas in the City must be available at affordable housing cost to persons and families of low- or moderate-income and to very low-income households, and such requirements must be set forth in recorded covenants running with the land, enforceable by the City or the Agency. This Agreement is intended to implement this requirement of law, and to cause the Restricted Units to be eligible for redevelopment housing production credit pursuant to Section 33413(b)(2)(A)(i).

E. The Parties have agreed to enter into and record this Agreement in order to satisfy the conditions described in the foregoing Recitals. The purpose of this Agreement is to regulate and restrict the occupancy and rents of the Project's Restricted Units for the benefit of the Project occupants. The Parties intend the covenants set forth in this Agreement to run with the land and to be binding upon Owner and Owner's successors and assigns for the full term of this Agreement.

NOW THEREFORE, in consideration of the foregoing, and other valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereby agree as follows.

1. Definitions. The following terms have the meanings set forth in this Section wherever used in this Agreement or the attached exhibits.

"Area Median Income" or "AMI" means the area median income for Santa Clara County, California, adjusted for household size, determined periodically by the California Department of Housing and Community Development ("**HCD**") as published in Section 6932 of Title 25 of the California Code of Regulations or successor provision published pursuant to California Health and Safety Code Section 50093(c). If HCD ceases to make such determination, Area Median Income shall be the median income applicable to Santa Clara County, with adjustments for household size, as determined from time to time by the U.S. Department of Housing and Urban Development ("**HUD**") pursuant to the United States Housing Act of 1937 as amended, or such other method of median income calculation applicable to the City of Milpitas that HUD may hereafter adopt in connection with such Act.

"Eligible Household" means a household for which gross household income upon initial occupancy does not exceed the maximum income level for a Restricted Unit as specified in Subsection 2.1 and Exhibit B.

"Low-Income" means an annual gross household gross income of greater than fifty percent (50%) of Area Median Income, but not greater than eighty percent (80%) of Area Median Income, adjusted for household size.

"Moderate-Income" means an annual household gross income of not greater than 120% of the Area Median Income, adjusted for household size.

"Qualifying Rent" means a monthly rent that does not exceed one-twelfth (1/12th) the following, less a utility allowance and such other adjustments as required pursuant to California Community Redevelopment Law (California Health and Safety Code Section 33000 *et seq.*):

For Very Low-Income Households: 30% times 50% of Area Median Income, adjusted for family size appropriate for the unit.

For Low-Income Households: 30% times 60% of Area Median Income, adjusted for family size appropriate for the unit.

For Moderate-Income Households: 30% times 110% of Area Median Income, adjusted for family size appropriate for the unit.

"Adjusted for family size appropriate for the unit" means the following:

Studio units - one person

One bedroom – two persons

Two bedroom – three persons

Three bedroom – four persons

Four bedroom – five persons

“Regulations” means Title 25 of the California Code of Regulations.

"Restricted Unit" means a dwelling unit that is reserved for occupancy at a Qualifying Rent by a Very Low-Income, Low-Income or Moderate-Income Household in accordance with and as set forth in Sections 2.1 and 2.2 and Exhibit B.

"Very Low-Income" means an annual household gross income of not greater than fifty percent (50%) of Area Median Income, adjusted for household size.

2. Use and Affordability Restrictions. Owner hereby covenants and agrees, for itself and its successors and assigns, that the Property shall be used solely for the construction and operation of a 374-unit multifamily rental housing development in compliance with the development approvals granted by the City of Milpitas, and the requirements set forth herein. Owner represents and warrants that it has not entered into any agreement that would restrict or compromise its ability to comply with the occupancy and affordability restrictions set forth in this Agreement, and Owner covenants that it shall not enter into any agreement that is inconsistent with such restrictions without the express written consent of Agency. Notwithstanding the foregoing or anything to the contrary contained herein, if the terms of financing for the Project require greater affordability restrictions than those imposed hereby, the requirements of such other financing shall prevail for the term thereof.

2.1 Affordability Requirements. For a term of fifty-five (55) years commencing upon the date of issuance of a final certificate of occupancy for the Project, eighty-eight (88) of the dwelling units in the Project shall be both Rent-Restricted (as defined below) and occupied (or if vacant, available for occupancy) by Eligible Households whose income does not exceed Very Low-, Low- or Moderate-Income in accordance with Exhibit B attached hereto and incorporated herein by this reference. A dwelling unit shall qualify as **“Rent Restricted”** if the gross rent charged for such unit does not exceed the Qualifying Rent for the applicable household income category as adjusted for family size appropriate for the unit (as defined in Section 1 above).

2.2 Rents for Restricted Units. Rents for Restricted Units shall be limited to Qualifying Rents. Notwithstanding the foregoing, no tenant qualifying for a Restricted Unit shall be denied continued occupancy of a unit in the Project because, after admission, such tenant's income increases to exceed the qualifying limit for such Restricted Unit. A household which at initial occupancy qualifies as an Eligible

Household shall be treated as continuing to be an Eligible Household of the same income category as initially established so long as the household's income does not exceed 140% of the applicable income limit. In the event the household income of an Eligible Household that qualified as Very Low-, Low-, or Moderate-Income at initial occupancy exceeds the applicable income limit for a unit, that unit will continue to be considered as satisfying the applicable income limit if the unit remains Rent-Restricted.

In the event that recertification of tenant income indicates that the number of Restricted Units actually occupied by Eligible Households falls below the number required as specified in Section 2.1 and Exhibit B, Owner shall rectify the condition by renting the next available unit(s) in the Project to Eligible Household(s) until the requirements of this Agreement are satisfied.

2.3 Unit Sizes, Design and Location. The Restricted Units shall consist of three (3) studio units, thirty-nine (39) one-bedroom units, forty-one (41) two-bedroom units and five (5) three-bedroom units allocated among affordability categories as set forth in Exhibit B. In renting Restricted Units, Owner shall give first preference to Eligible Households in which at least one member lives or works in the City of Milpitas, second preference to Eligible Households in which at least one member is the parent of a person who lives or works in the City of Milpitas, and third preference to Eligible Households in which at least one member lives or works in the County of Santa Clara, unless compliance with the foregoing criteria is prohibited by law or by state or federal sources of financing for the Project.

2.4 Reserved.

2.5 No Condominium Conversion. Owner shall not convert the Project to condominium or cooperative ownership or sell condominium or cooperative rights to the Project during the term of this Agreement.

2.6 Non-Discrimination; Compliance with Fair Housing Laws.

2.6.1 Fair Housing. Owner shall comply with state and federal fair housing laws in the marketing and rental of the units in the Project. Owner shall accept as tenants, on the same basis as all other prospective tenants, persons who are recipients of federal certificates or vouchers for rent subsidies pursuant to the existing Section 8 program or any successor thereto.

2.6.2 Non-Discrimination. Owner covenants for itself and its successors and assigns that there shall be no discrimination against or segregation of any person or group of persons on account of any basis listed in subdivision (a) or (d) of Section 12955 of the Government Code, as those bases are defined in Sections 12926, 12926.1, subdivision (m) and paragraph (1) of subdivision (p) of Section 12955, and Section 12955.2 of the Government Code in the sale, lease, sublease, transfer, use, occupancy, tenure or enjoyment of the Project or the Property, nor shall Owner or any person claiming under or through Owner establish or permit any such practice or

practices of discrimination or segregation with reference to the selection, location, number, use, occupancy of tenants, lessees, subtenants, sublessees or vendees in the Project. The foregoing covenants shall run with the land. All deeds, leases or contracts made or entered into by Owner its successors or assigns, as to any portion of the Property or the Project shall contain or be subject to substantially the following nondiscrimination and nonsegregation language:

(a) In deeds: "The grantee herein covenants by and for itself, its heirs, executors, administrators, and assigns, and all persons claiming under or through it, that there shall be no discrimination against or segregation of any person or group of persons on account of any basis listed in subdivision (a) or (d) of Section 12955 of the Government Code, as those bases are defined in Sections 12926, 12926.1, subdivision (m) and paragraph (1) of subdivision (p) of Section 12955, and Section 12955.2 of the Government Code, in the sale, lease, sublease, transfer, use, occupancy, tenure, or enjoyment of the land herein conveyed, nor shall the grantee, or any persons claiming under or through the grantee, establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use, or occupancy of tenants, lessees, subtenants, sublessees, or vendees in the land herein conveyed. The foregoing covenants shall run with the land.

(b) In leases: "The lessee herein covenants by and for the lessee and lessee's heirs, personal representatives and assigns, and all persons claiming under the lessee or through the lessee, that this lease is made subject to the condition that there shall be no discrimination against or segregation of any person or of a group of persons on account of any basis listed in subdivision (a) or (d) of Section 12955 of the Government Code, as those bases are defined in Sections 12926, 12926.1, subdivision (m) and paragraph (1) of subdivision (p) of Section 12955, and Section 12955.2 of the Government Code, in the leasing, subleasing, transferring, use, occupancy, tenure or enjoyment of the land herein leased nor shall the lessee or any person claiming under or through the lessee establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, sublessees, subtenants, or vendees in the land herein leased."

(c) In contracts: "There shall be no discrimination against or segregation of any persons or group of persons on account of any basis listed in subdivision (a) or (d) of Section 12955 of the Government Code, as those bases are defined in Sections 12926, 12926.1, subdivision (m) and paragraph (1) of subdivision (p) of Section 12955, and Section 12955.2 of the Government Code, in the sale, lease, transfer, use, occupancy, tenure, or enjoyment of land, nor shall the transferee itself, or any person claiming under or through it, establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, subtenants, sublessees, or vendees of land."

3. Reporting Requirements.

3.1. Tenant Certification. Owner or Owner's authorized agent shall obtain from each household prior to initial occupancy of each Restricted Unit, and on every anniversary thereafter, a written certificate stating total gross household income in such format and with such supporting documentation as Agency may reasonably require. Owner shall retain such certificates for not less than three (3) years, and upon Agency's request, shall provide copies of such certificates to Agency and make the originals available for Agency inspection.

3.2 Annual Report; Inspections. Owner shall submit an annual report ("**Annual Report**") to the Agency in form satisfactory to Agency, together with a certification that the Project is in compliance with the requirements of this Agreement. The Annual Report shall, at a minimum, include the following information for each dwelling unit in the Project: (i) unit number; (ii) number of bedrooms; (iii) current rent and other charges; (iv) dates of any vacancies during the previous year; (v) number of people residing in the unit; (vi) total gross household income of residents; and (vii) documentation of source of household income.

Upon Agency's request, Owner shall include with the Annual Report, an income recertification for each household, documentation verifying tenant eligibility, and such additional information as Agency may reasonably request from time to time in order to demonstrate compliance with this Agreement. The Annual Report shall conform to the format requested by Agency; provided however, during such time that the Project is subject to a regulatory agreement restricting occupancy and/or rents pursuant to requirements imposed in connection with the use of federal low-income housing tax credits or tax-exempt financing, Owner may satisfy the requirements of this Section by providing Agency with a copy of compliance reports required in connection with such financing.

Owner shall permit representatives of Agency to enter and inspect the Property and the Project during reasonable business hours in order to monitor compliance with this Agreement upon 24-hours advance notice of such visit to Owner or to Owner's management agent.

4. Term of Agreement.

4.1 Term of Restrictions. This Agreement shall remain in effect through the 55th anniversary of the issuance of the final certificate of occupancy for the Project.

4.2 Effectiveness Succeeds Conveyance of Property and Repayment of Loan. This Agreement shall remain effective and fully binding for the full term hereof regardless of (i) any sale, assignment, transfer, or conveyance of the Property or the Project or any part thereof or interest therein, (ii) any payment, prepayment or extinguishment of the Loan or Note, or (iii) any reconveyance of the Deed of Trust, unless this Agreement is terminated earlier by Agency in a recorded writing.

4.3 Reconveyance. Upon the termination of this Agreement, the Parties agree to execute and record appropriate instruments to release and discharge this

Agreement; provided, however, the execution and recordation of such instruments shall not be necessary or a prerequisite to the termination of this Agreement upon the expiration of the term specified in Section 4.1.

5. Binding Upon Successors; Covenants to Run with the Land. Owner hereby subjects its interest in the Property and the Project to the covenants and restrictions set forth in this Agreement. The Agency and Owner hereby declare their express intent that the covenants and restrictions set forth herein shall be deemed covenants running with the land and shall be binding upon and inure to the benefit of the heirs, administrators, executors, successors in interest, transferees, and assigns of Owner and Agency, regardless of any sale, assignment, conveyance or transfer of the Property, the Project or any part thereof or interest therein. Any successor-in-interest to Owner, including without limitation any purchaser, transferee or lessee of the Property or the Project (other than the tenants of the individual dwelling units within the Project) shall be subject to all of the duties and obligations imposed hereby for the full term of this Agreement. Each and every contract, deed, ground lease or other instrument affecting or conveying the Property or the Project or any part thereof, shall conclusively be held to have been executed, delivered and accepted subject to the covenants, restrictions, duties and obligations set forth herein, regardless of whether such covenants, restrictions, duties and obligations are set forth in such contract, deed, ground lease or other instrument. If any such contract, deed, ground lease or other instrument has been executed prior to the date hereof, Owner hereby covenants to obtain and deliver to Agency an instrument in recordable form signed by the parties to such contract, deed, ground lease or other instrument pursuant to which such parties acknowledge and accept this Agreement and agree to be bound hereby.

Owner agrees for itself and for its successors that in the event that a court of competent jurisdiction determines that the covenants herein do not run with the land, such covenants shall be enforced as equitable servitudes against the Property and the Project in favor of Agency.

6. Property Management; Repair and Maintenance; Marketing.

6.1 Management Responsibilities. Owner shall be responsible for all management functions with respect to the Property and the Project, including without limitation the selection of tenants, certification and recertification of household income and eligibility, evictions, collection of rents and deposits, maintenance, landscaping, routine and extraordinary repairs, replacement of capital items, and security. Agency shall have no responsibility for management or maintenance of the Property or the Project.

6.2 Management Entity. Agency shall have the right to review and approve the qualifications of the management entity proposed by Owner for the Project. The contracting of management services to a management entity shall not relieve Owner of its primary responsibility for proper performance of management duties.

6.3 Repair, Maintenance and Security. Throughout the term of this Agreement, Owner shall at its own expense, maintain the Property and the Project in good physical condition, in good repair, and in decent, safe, sanitary, habitable and tenantable living conditions in conformity with all applicable state, federal, and local laws, ordinances, codes, and regulations. Without limiting the foregoing, Owner agrees to maintain the Project and the Property (including without limitation, the residential units, common areas, landscaping, driveways, parking garage and walkways) in a condition free of all waste, nuisance, debris, unmaintained landscaping, graffiti, disrepair, abandoned vehicles/appliances, and illegal activity, and shall take all reasonable steps to prevent the same from occurring on the Property or at the Project. Owner shall prevent and/or rectify any physical deterioration of the Property and the Project and shall make all repairs, renewals and replacements necessary to keep the Property and the improvements located thereon in good condition and repair. Owner shall provide adequate security services for occupants of the Project.

6.3.1 Agency's Right to Perform Maintenance. In the event that Owner breaches any of the covenants contained in Section 6.3, and such default continues for a period of ten (10) days after written notice from Agency (with respect to graffiti, debris, and waste material) or thirty (30) days after written notice from Agency (with respect to landscaping, building improvements and general maintenance), then Agency, in addition to any other remedy it may have under this Agreement or at law or in equity, shall have the right, but not the obligation, to enter upon the Property and perform all acts and work necessary to protect, maintain, and preserve the improvements and the landscaped areas on the Property. All costs expended by Agency in connection with the foregoing, shall constitute an indebtedness secured by the Deed of Trust, and shall be paid by Owner to Agency upon demand. All such sums remaining unpaid thirty (30) days following delivery of Agency's invoice therefor shall bear interest at the rate of 10% per annum.

6.4 Marketing and Management Plan. Not later than 180 days following issuance of building permits for the Project, Owner shall submit for Agency review and approval, a plan for marketing and managing the Property ("**Marketing and Management Plan**"). The Marketing and Management Plan shall address in detail how Owner plans to market the Restricted Units to prospective Eligible Households in accordance with fair housing laws and this Agreement, Owner's tenant selection criteria, and how Owner plans to certify the eligibility of Eligible Households. The Plan shall also describe the management team and shall address how the Owner and the management entity plan to manage and maintain the Property and the Project. The Plan shall include the proposed management agreement and the form of rental agreement that Owner proposes to enter into with Project tenants. Owner shall abide by the terms of the Marketing and Management Plan in marketing, managing, and maintaining the Property and the Project, and throughout the term of this Agreement, shall submit proposed modifications to Agency for its review and approval.

6.5 Approval of Amendments. If Agency has not responded to any submission of the Management and Marketing Plan, the proposed management entity,

or a proposed amendment or change to any of the foregoing within 30 days following Agency's receipt of such plan, proposal or amendment, the plan, proposal or amendment shall be deemed approved by Agency.

6.6 Fees, Taxes, and Other Levies. Owner shall be responsible for payment of all fees, assessments, taxes, charges, liens and levies, including without limitation possessory interest taxes, if applicable, imposed by any public entity, authority or utility company with respect to the Property or the Project, and shall pay such charges prior to delinquency. However, Owner shall not be required to pay any such charge so long as (a) Owner is contesting such charge in good faith and by appropriate proceedings, (b) Owner maintains reserves adequate to pay any contested liabilities, and (c) on final determination of the proceeding or contest, Owner immediately pays or discharges any decision or judgment rendered against it, together with all costs, charges and interest.

6.7 Insurance Coverage. Prior to issuance of building permits for the Project, and continuing throughout the term of this Agreement Owner shall comply with the insurance requirements set forth in Exhibit C, and shall, at Owner's expense, maintain in full force and effect insurance coverage as specified in Exhibit C; provided however, during such time that lenders or low-income housing tax credit investors providing financing for the Project impose insurance requirements that are inconsistent with the requirements set forth in Exhibit C, Owner may satisfy the requirements of this Section by meeting the requirements of such lenders or investors. Notwithstanding the foregoing, throughout the term hereof, Owner shall comply with the provisions of Exhibit C pertaining to (i) provision to Agency of proof of insurance for the Project, (ii) naming of Agency and the City of Milpitas as additional insureds, and (iii) provision to Agency of notice of cancellation or reduction in coverage.

6.8 Property Damage or Destruction. If any part of the Project is damaged or destroyed, Owner shall repair or restore the same, consistent with the occupancy and rent restriction requirements set forth in this Agreement. Such work shall be commenced within 120 days after the damage or loss occurs and shall be completed within one year thereafter, provided that insurance proceeds are available to be applied to such repairs or restoration within such period and the repair or restoration is financially feasible. During such time that lenders or low-income housing tax credit investors providing financing for the Project impose requirements that differ from the requirements of this Section the requirements of such lenders and investors shall prevail.

7. Recordation; No Subordination. This Agreement shall be recorded in the Official Records of Santa Clara County. Owner hereby represents, warrants and covenants that with the exception of easements of record, absent the written consent of Agency, this Agreement shall not be subordinated in priority to any lien (other than those pertaining to taxes or assessments), encumbrance, or other interest in the Property or the Project. If at the time this Agreement is recorded, any interest, lien, or encumbrance has been recorded against the Project in position superior to this Agreement, upon the request of Agency, Owner hereby covenants and agrees to promptly undertake all action

necessary to clear such matter from title or to subordinate such interest to this Agreement consistent with the intent of and in accordance with this Section 7, and to provide such evidence thereof as Agency may reasonably request.

8. Transfer and Encumbrance.

8.1 Restrictions on Transfer and Encumbrance. During the term of this Agreement, except as permitted under this Agreement, Owner shall not directly or indirectly, voluntarily, involuntarily or by operation of law make or attempt any total or partial sale, transfer, conveyance, assignment or lease (collectively, “**Transfer**”) of the whole or any part of the Property, the Project, or the Improvements, without the prior written consent of the Agency.

8.2 Permitted Transfers. Notwithstanding any contrary provision hereof, the prohibitions on Transfer set forth herein shall not be deemed to prevent: (i) the granting of temporary easements or permits to facilitate development of the Property; (ii) the dedication of any property required pursuant to City entitlements, if any; (iii) the lease of individual dwelling units to tenants for occupancy as their principal residence in accordance with this Agreement; or (iv) assignments creating security interests for the purpose of financing the acquisition, construction or permanent financing of the Project or the Property, or Transfers directly resulting from the foreclosure of, or granting of a deed in lieu of foreclosure of, such a security interest.

In addition, Agency shall not withhold its consent to the sale, transfer or other disposition of the Project, in whole or in part, provided that (1) the Project is and shall continue to be operated in compliance with this Agreement; (2) the transferee expressly assumes all obligations of Owner imposed by this Agreement; (3) the transferee executes all documents reasonably requested by the Agency with respect to the assumption of the Owner’s obligations under this Agreement, and upon Agency’s request, delivers to the Agency an opinion of its counsel to the effect that such document and this Agreement are valid, binding and enforceable obligations of such transferee; and (4) either (A) the transferee has at least three years’ experience in the ownership, operation and management of low-income rental housing projects of similar size to that of the Project, without any record of material violations of nondiscrimination provisions or other state or federal laws or regulations applicable to such projects, or (B) the transferee agrees to retain a property management firm with the experience and record described in subclause (A).

Consent to any proposed Transfer may be given by the Agency’s Executive Director unless the Executive Director, in his or her discretion, refers the matter of approval to the Agency’s governing board. If a proposed Transfer has not been approved by Agency in writing within thirty (30) days following Agency’s receipt of written request by Owner, it shall be deemed rejected.

8.3 Encumbrances. Owner agrees to use best efforts to ensure that any deed of trust secured by the Project for the benefit of a lender other than Agency (“**Third-**

Party Lender") shall contain each of the following provisions: (i) Third-Party Lender shall use its best efforts to provide to Agency a copy of any notice of default issued to Owner concurrently with provision of such notice to Owner (provided however, the failure to do so shall not impair such Third-Party Lender's rights and remedies); (ii) Agency shall have the reasonable right, but not the obligation, to cure any default by Owner within the same period of time provided to Owner for such cure extended by an additional 60 days; (iii) provided that Agency has cured any default under Third-Party Lender's deed of trust and other loan documents, Agency shall have the right to foreclose Agency's Deed of Trust and take title to the Project without acceleration of Third-Party Lender's debt; and (iv) Agency shall have the right to transfer the Project without acceleration of Third-Party Lender's debt to a nonprofit corporation or other entity which shall own and operate the Project as an affordable rental housing Project, subject to the prior written consent of the Third-Party Lender. Owner agrees to provide to Agency a copy of any notice of default Owner receives from any Third-Party Lender within three (3) business days following Owner's receipt thereof.

8.4 Mortgagee Protection. No violation of any provision contained herein shall defeat or render invalid the lien of any mortgage or deed of trust made in good faith and for value upon all or any portion of the Project or the Property, and the purchaser at any trustee's sale or foreclosure sale shall not be liable for any violation of any provision hereof occurring prior to the acquisition of title by such purchaser. Such purchaser shall be bound by and subject to this Agreement from and after such trustee's sale or foreclosure sale. Promptly upon determining that a violation of this Agreement has occurred, Agency shall give written notice to the holders of record of any mortgages or deeds of trust encumbering the Project or the Property that such violation has occurred.

9. Default and Remedies.

9.1 Events of Default. The occurrence of any one or more of the following events shall constitute an event of default hereunder ("**Event of Default**"):

- (a) The occurrence of a Transfer in violation of Section 8 hereof;
- (b) Owner's failure to maintain insurance on the Property and the Project as required hereunder, and the failure of Owner to cure such default within 10 days.
- (c) Subject to Owner's right to contest the following charges, Owner's failure to pay taxes or assessments due on the Property or the Project or failure to pay any other charge that may result in a lien on the Property or the Project, and Owner's failure to cure such default within 10 days.
- (d) Owner's default in the performance of any term, provision or covenant under this Agreement (other than an obligation enumerated in this Subsection 9.1), and unless such provision specifies a shorter cure period for such default, the continuation of such default for ten (10) days in the event of a monetary default or thirty (30) days in the event of a non-monetary default following the date upon which Agency

shall have given written notice of the default to Owner, or if the nature of any such non-monetary default is such that it cannot be cured within 30 days, Owner's failure to commence to cure the default within thirty (30) days and thereafter prosecute the curing of such default with due diligence and in good faith, but in no event longer than 60 days from receipt of the notice of default.

Owner's investors and lenders shall have the right to cure any default of Owner hereunder upon the same terms and conditions afforded to Owner. Provided that Agency has been given written notice of the address for delivery of notices to such investors and lenders, Agency shall provide any notice of default hereunder to such parties concurrently with the provision of such notice to Owner, and as to such parties, the cure periods specified herein shall commence upon the date of delivery of such notice in accordance with Subsection 11.3.

9.2 Remedies. If within the applicable cure period, Owner fails to cure a default or fails to commence to cure and diligently pursue completion of a cure, as applicable, or if a cure is not possible, Agency may proceed with any of the following remedies:

- (a) Bring an action for equitable relief seeking the specific performance of the terms and conditions of this Agreement, and/or enjoining, abating, or preventing any violation of such terms and conditions, and/or seeking declaratory relief;
- (b) For violations of obligations with respect to rents for Restricted Units, impose as liquidated damages a charge in an amount equal to the actual amount collected in excess of the Qualifying Rent;
- (c) Pursue any other remedy allowed at law or in equity.

Each of the remedies provided herein is cumulative and not exclusive. The Agency may exercise from time to time any rights and remedies available to it under applicable law or in equity, in addition to, and not in lieu of, any rights and remedies expressly provided in this Agreement.

10. Indemnity. Owner shall indemnify, defend (with counsel approved by Agency) and hold Agency, the City, and their respective elected and appointed officers, officials, employees, agents, and representatives (collectively, the "**Indemnitees**") harmless from and against all liability, loss, cost, expense (including without limitation attorneys' fees and costs of litigation), claim, demand, action, suit, judicial or administrative proceeding, judgment, penalty, deficiency, fine, order, and damage (all of the foregoing collectively "**Claims**") arising directly or indirectly, in whole or in part, as a result of or in connection with (i) Owner's development or management of the Property and the Project, or (ii) Owner's failure to perform any obligation as and when required by this Agreement. Owner's indemnification obligations under this Section 10 shall not extend to Claims resulting solely from the gross negligence or willful misconduct of Indemnitees. The provisions of this Section 10 shall survive the expiration or earlier termination of this Agreement. It is further agreed that Agency does not and shall not

waive any rights against Owner that it may have by reason of this indemnity and hold harmless agreement because of the acceptance by Agency, or the deposit with Agency by Owner, of any of the insurance policies described in this Agreement.

11. Miscellaneous.

11.1 Amendments. This Agreement may be amended or modified only by a written instrument signed by both Parties.

11.2 No Waiver. Any waiver by Agency of any term or provision of this Agreement must be in writing. No waiver shall be implied from any delay or failure by Agency to take action on any breach or default hereunder or to pursue any remedy allowed under this Agreement or applicable law. No failure or delay by Agency at any time to require strict performance by Owner of any provision of this Agreement or to exercise any election contained herein or any right, power or remedy hereunder shall be construed as a waiver of any other provision or any succeeding breach of the same or any other provision hereof or a relinquishment for the future of such election.

11.3 Notices. Except as otherwise specified herein, all notices to be sent pursuant to this Agreement shall be made in writing, and sent to the Parties at their respective addresses specified below or to such other address as a Party may designate by written notice delivered to the other parties in accordance with this Section. All such notices shall be sent by:

(i) personal delivery, in which case notice is effective upon delivery;

(ii) certified or registered mail, return receipt requested, in which case notice shall be deemed delivered upon receipt if delivery is confirmed by a return receipt;

(iii) nationally recognized overnight courier, with charges prepaid or charged to the sender's account, in which case notice is effective on delivery if delivery is confirmed by the delivery service;

(iv) facsimile transmission, in which case notice shall be deemed delivered upon transmittal, provided that (a) a duplicate copy of the notice is promptly delivered by first-class or certified mail or by overnight delivery, or (b) a transmission report is generated reflecting the accurate transmission thereof. Any notice given by facsimile shall be considered to have been received on the next business day if it is received after 5:00 p.m. recipient's time or on a nonbusiness day.

Agency: Redevelopment Agency of the City of Milpitas
455 East Calaveras
Milpitas, CA 95035
Attention: Executive Director

Owner: Fairfield Murphy Road LLC

c/o Capital Markets
5510 Morehouse Drive, Suite 200
San Diego, CA 92121
Attn: _____
Fax: _____

11.4 Further Assurances. The Parties shall execute, acknowledge and deliver to the other such other documents and instruments, and take such other actions, as either shall reasonably request as may be necessary to carry out the intent of this Agreement.

11.5 Parties Not Co-Venturers. Nothing in this Agreement is intended to or shall establish the Parties as partners, co-venturers, or principal and agent with one another.

11.6 Action by the Agency. Except as may be otherwise specifically provided herein, whenever any approval, notice, direction, consent or request by the Agency is required or permitted under this Agreement, such action shall be in writing, and such action may be given, made or taken by the Agency Executive Director or by any person who shall have been designated by the Agency Executive Director, without further approval by the governing board of the Agency.

11.7 Non-Liability of Agency and Agency Officials, Employees and Agents. No member, official, employee or agent of the Agency or the City of Milpitas shall be personally liable to Owner or any successor in interest, in the event of any default or breach by the Agency, or for any amount of money which may become due to Owner or its successor or for any obligation of Agency under this Agreement.

11.8 Headings; Construction. The headings of the sections and paragraphs of this Agreement are for convenience only and shall not be used to interpret this Agreement. The language of this Agreement shall be construed as a whole according to its fair meaning and not strictly for or against any Party.

11.9 Time is of the Essence. Time is of the essence in the performance of this Agreement.

11.10 Governing Law. This Agreement shall be construed in accordance with the laws of the State of California without regard to principles of conflicts of law.

11.11 Attorneys' Fees and Costs. If any legal or administrative action is brought to interpret or enforce the terms of this Agreement, the prevailing party shall be entitled to recover all reasonable attorneys' fees and costs incurred in such action.

11.12 Severability. If any provision of this Agreement is held invalid, illegal, or unenforceable by a court of competent jurisdiction, the validity, legality, and enforceability of the remaining provisions shall not be affected or impaired thereby.

11.13 Entire Agreement; Exhibits. This Agreement, together with the Agency Documents contains the entire agreement of Parties with respect to the subject matter hereof, and supersedes all prior oral or written agreements between the Parties with respect thereto. The exhibits attached hereto are incorporated herein by this reference.

11.14 Counterparts. This Agreement may be executed in multiple counterparts, each of which shall be an original and all of which together shall constitute one agreement.

SIGNATURES ON FOLLOWING PAGE.

IN WITNESS WHEREOF, the Parties have executed this Affordable Housing Regulatory Agreement and Declaration of Restrictive Covenants as of the date first written above.

**FAIRFIELD MURPHY ROAD LLC,
a California limited liability company**

By: _____

Its: _____

REDEVELOPMENT AGENCY OF THE CITY OF MILPITAS

By: _____
Thomas C. Williams, Executive Director

ATTEST:

By: _____
Mary Lavelle, Agency Secretary

APPROVED AS TO FORM:

By: _____
Agency Counsel

SIGNATURES MUST BE NOTARIZED.

DRAFT 10/29/07

Exhibit A

PROPERTY

(Attach legal description.)

Exhibit B

Number of Units by Unit Size and Eligible Income Levels

	Very Low	Low	Moderate	Total
Studio	1	1	1	3
1-Bedroom	9	13	17	39
2-Bedroom	9	14	18	41
3-Bedroom	1	2	2	5
Total	20	30	38	88

Exhibit C

INSURANCE REQUIREMENTS

Prior to issuance of building permits for the Project and throughout the term of this Agreement, Owner shall obtain and maintain, at Owner's expense, the following policies of insurance.

A. Property Insurance. Insurance for the risks of direct physical loss, with minimum coverage being the perils insured under the standard Causes of Loss - Special form (ISO Form CP 10 30) or its equivalent, covering all improvements, all fixtures, equipment and personal property, located on or in, or constituting a part of, the Property ("**Improvements**"), in an amount equal to one hundred percent (100%) of the full replacement cost of all such property. The insurance shall (a) cover explosion of steam and pressure boilers and similar apparatus, if any, located on the Property, and (b) cover floods if the Property is in a Special Hazard Area, as determined by the Federal Emergency Management Agency or as shown on a National Flood Insurance Program flood map. The insurance required hereunder shall be in amounts sufficient to prevent Owner from becoming a co-insurer under the terms of the applicable policies, with not more than a Ten Thousand Dollars (\$10,000) deductible (or such higher deductible approved by the Agency, which approval shall not be unreasonably withheld) from the loss payable for any casualty. The policies of insurance carried in accordance with this Paragraph A shall contain a "replacement cost endorsement" and an "increased cost of construction endorsement."

B. Liability Insurance. Commercial general liability insurance on an "occurrence basis" covering all claims with respect to injury or damage to persons or property occurring on, in or about the Property and the Improvements. The limits of liability under this Paragraph B shall be not less than Two Million Dollars (\$2,000,000) combined single limit per occurrence, with a deductible no greater than Ten Thousand Dollars (\$10,000) or such higher deductible as may be approved by Agency, which approval shall not be unreasonably withheld.

The insurance shall also include coverage for:

- (i) liability for bodily injury or property damage arising out of the use, by or on behalf of Owner, of any owned, non-owned, leased or hired automotive equipment in the conduct of any and all operations conducted in connection with the Project or the Property;
- (ii) premises and operations including, without limitation, bodily injury, personal injury, death or property damage occurring upon, in or about the Property or the Improvements on any elevators or any escalators therein and on, in or about the adjoining sidewalks, streets and passageways;

- (iii) broad form property damage liability;
- (iv) additional insured and primary insured endorsements protecting the Agency, the City of Milpitas and their respective elected and appointed officials, officers, employees and agents;
- (v) personal injury endorsement.

C. Worker's Compensation Insurance. Worker's compensation insurance, in the amount required under then applicable state law, covering Owner's employees, if any, at work in or upon the Property or engaged in services or operations in connection with the Project or the Property. Owner shall require that any contract entered into by Owner with regard to work to be undertaken on the Property include a contractual undertaking by the contractor to provide worker's compensation insurance for its employees in compliance with applicable state law.

D. Course of Construction Insurance. Course of construction insurance in the same amount as required in Paragraph A above for property insurance, covering all construction activities on the Property.

E. General Insurance Provisions. All policies of insurance provided for in this Exhibit shall be provided under valid and enforceable policies, in such forms and amounts as hereinbefore specified, issued by insurers licensed to do business in the State of California (or approved to do business in California and listed on the California Department of Insurance list of Eligible Surplus Lines Insurers or successor listing) and having a rating of A-VII or better in Best Insurance Guide or, if Best Insurance Guide is no longer in existence, a comparable rating from a comparable rating service. Prior to the issuance of building permits for the Project, and thereafter, not less than thirty (30) days prior to the expiration date of each policy furnished pursuant to this Exhibit C, Owner shall deliver to Agency certificates evidencing the insurance required to be carried by Owner under this Exhibit C. If requested by Agency, Owner shall deliver within ten (10) days following such request, certified, complete copies of the insurance policies required hereunder. Insurance policies to be provided hereunder shall meet the following requirements:

(a) Each policy of insurance obtained pursuant to this Agreement, other than worker's compensation insurance, shall contain endorsements which provide (i) a waiver by the insurer of the right of subrogation against Agency, the City of Milpitas, Owner or any tenant of the Project for negligence of any such person, (ii) a statement that the insurance shall not be invalidated should any insured waive in writing prior to the loss any or all right of recovery against any party for loss accruing to the property described in the insurance policy, and (iii) a provision that no act or omission of Owner which would otherwise result in forfeiture or reduction of the insurance therein provided shall affect or limit the obligation of the insurance company to pay the amount of any loss sustained.

(b) By endorsements, Agency and the City of Milpitas, and their respective elected and appointed officials, officers, employees and agents shall be named as additional insured under the liability insurance required to be maintained by Owner hereunder. Agency shall be named as loss payee on the property insurance policies required to be maintained hereunder.

(c) Each policy required hereunder shall include a Notice of Cancellation or Change in Coverage Endorsement which shall provide that such policy shall not be cancelled or materially changed without at least thirty (30) days' prior written notice by registered or certified mail to Agency.

(d) All insurance policies shall provide that there shall be no exclusion from coverage for cross liability among the listed insureds.

(e) Any certificate of insurance applicable to course of construction insurance to be maintained shall be deposited with Agency prior to commencement of construction of any Improvements.

(f) Each policy shall contain an endorsement that provides that the insurance applies separately to each insured that is seeking coverage or against whom a claim is made, except with respect to the limits of liability.

(g) Each policy shall be written as a primary policy not contributing with and not in excess of coverage that Agency may carry.

(h) Each policy shall expressly provide that Agency shall not be required to give notice of accidents or claims and that Agency shall have no liability for premiums.

F. Blanket Policies. Any insurance provided for in this Exhibit C may be placed by a policy or policies of blanket insurance; provided, however, that such policy or policies provide that the amount of the total insurance allocated to the Property and the Project shall be such as to furnish protection the equivalent of separate policies in the amounts herein required, and provided further that in all other respects any such policy or policies shall comply with the other provisions of this Agreement.

G. Waiver of Subrogation. To the extent permitted by law and the policies of insurance required to be maintained hereunder, and without affecting such insurance coverage, Agency and Owner each waive any right to recover against the other (a) damages for injury or death of persons, (b) damage to property, (c) damage to the Property or the Improvements or any part thereof, or (d) claims arising by reason of any of the foregoing, to the extent that such damages and/or claims are covered (and only to the extent of such coverage) by insurance actually carried by either Agency or Owner. This provision is intended to restrict each party (as permitted by law) to recover against insurance carriers to the extent of such coverage, and waive fully, and for the benefit of each, any rights and/or claims which might give rise to a right of subrogation in any insurance carrier.

H. Compliance with Policy Requirements. Owner shall observe and comply with the requirements of all policies of public liability, fire and other policies of insurance at any time in force with respect to the Property, and Owner shall so perform and satisfy the requirements of the companies writing such policies that at all times companies of good standing shall be willing to write or to continue such insurance.

STATE OF CALIFORNIA)
)
COUNTY OF SANTA CLARA)

On _____, 20____ before me, _____ the undersigned, personally appeared _____

() personally known to me
() 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.

Signature _____

FINAL
ENVIRONMENTAL IMPACT REPORT

**Murphy Ranch
Residential Project**

City of Milpitas

September 2007

PREFACE

This document, together with the DEIR, constitutes the Final Environmental Impact Report (FEIR) for the Murphy Ranch Residential Project. The DEIR was circulated to affected public agencies and interested parties for a 45-day review period from June 18 to August 2, 2007. This volume consists of comments received by the Lead Agency on the DEIR during the public review period, responses to those comments, and revisions to the text of the DEIR.

In conformance with the CEQA Guidelines, the FEIR provides objective information regarding the environmental consequences of the proposed project. The FEIR also examines mitigation measures and alternatives to the project intended to reduce or eliminate significant environmental impacts. The FEIR is used by the City and other Responsible Agencies in making decisions regarding the project. The CEQA Guidelines require that, while the information in the FEIR does not control the agency's ultimate discretion on the project, the agency must respond to each significant effect identified in the DEIR by making written findings for each of those significant effects. According to the State Public Resources Code (Section 21081), no public agency shall approve or carry out a project for which an environmental impact report has been certified which identifies one or more significant effects on the environment that would occur if the project is approved or carried out unless both of the following occur:

- (a) The public agency makes one or more of the following findings with respect to each significant effect:
 - (1) Changes or alterations have been required in, or incorporated into, the project which will mitigate or avoid the significant effect on the environment.
 - (2) Those changes or alterations are within the responsibility and jurisdiction of another public agency and have been, or can and should be, adopted by that other agency.
 - (3) Specific economic, legal, social, technological, or other considerations, including considerations for the provision of employment opportunities of highly trained workers, make infeasible the mitigation measures or alternatives identified in the environmental impact report.
- (b) With respect to significant effects which were subject to a finding under paragraph (3) of subdivision (a), the public agency finds that specific overriding economic, legal, social, technological, or other benefits of the project outweigh the significant effects on the environment.

In accordance with City policy, the FEIR will be made available to the public for ten days prior to certification of the Environmental Impact Report.

**MURPHY RANCH RESIDENTIAL PROJECT
FINAL EIR**

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**I. LIST OF AGENCIES AND ORGANIZATIONS TO WHOM THE DRAFT EIR
WAS SENT**

Federal/State Agencies

- A. United States Army Corps of Engineers
- B. California Department of Fish and Game
- C. California Department of Toxic Substances Control
- D. California Department of Transportation
- E. California Department of Water Resources
- F. California Office of Planning and Research
- G. State Water Resources Control Board
- H. Air Resources Board

Regional Agencies

- I. Association of Bay Area Governments
- J. Bay Area Air Quality Management District
- K. Metropolitan Transportation Commission
- L. Regional Water Quality Control Board
- M. Santa Clara County Planning Department
- N. Santa Clara County Open Space District
- O. Santa Clara County Roads and Airports
- P. Santa Clara Valley Transportation Authority
- Q. Santa Clara Valley Water District

Local Agencies

- R. City of Santa Clara
- S. City of San José
- T. City of Fremont
- U. San José/Santa Clara Water Pollution Control Plant
- V. San Francisco Water Department

Organizations

- W. Environmental Resource Center, San José State University
- X. Milpitas Chamber of Commerce

Businesses and Individuals

- Y. Adams, Broadwell, Joseph, & Cardozo
- Z. Pacific, Gas & Electric

II. LIST OF COMMENTS LETTERS RECEIVED ON THE DRAFT EIR

State Agencies

- | | | |
|----|---|---------------|
| A. | Department of Toxic Substances Control | July 13, 2007 |
| B. | California Department of Transportation | July 31, 2007 |

Regional Agencies

- | | | |
|----|---|----------------|
| C. | California Regional Water Quality Control Board | July 26, 2007 |
| D. | Santa Clara Valley Water District | August 2, 2007 |

III. REVISIONS TO THE TEXT OF THE DRAFT EIR

No text revisions are proposed as part of this FEIR.

IV. RESPONSES TO COMMENTS RECEIVED ON THE DRAFT EIR

The following section includes all the comments on the DEIR that were received by the City in letters, emails, and phone calls during the advertised 45-day review period. The comments are organized under headings containing the source of the comment and the date submitted. The specific comments have been excerpted from the letters and are presented as "Comment" with the response directly following. Each of the letters submitted to the City of Milpitas is also contained in its entirety in Section V of this document.

CEQA Guidelines Section 15086 requires that a local lead agency consult with and request comments on the Draft EIR prepared for a project of this type from responsible agencies (government agencies that must approve or permit some aspect of the project), trustee agencies for resources affected by the project, adjacent cities and counties, and transportation planning agencies. Section I of this document lists all of the recipients of the DEIR.

The four comment letters below are from public agencies. The CEQA Guidelines require that:

A responsible agency or other public agency shall only make substantive comments regarding those activities involved in the project that are within an area of expertise of the agency or which are required to be carried out or approved by the responsible agency. Those comments shall be supported by specific documentation. [§15086(c)]

Regarding mitigation measures identified by commenting public agencies, the CEQA Guidelines state that:

Prior to the close of the public review period, a responsible agency or trustee agency which has identified what the agency considers to be significant environmental effects shall advise the lead agency of those effects. As to those effects relevant to its decisions, if any, on the project, the responsible or trustee agency shall either submit to the lead agency complete and detailed performance objectives for mitigation measures addressing those effects or refer the lead agency to appropriate, readily available guidelines or reference documents concerning mitigation measures. If the responsible or trustee agency is not aware of mitigation measures that address identified effects, the responsible or trustee agency shall so state. [§15086(d)]

None of the comment letters received from public agencies includes any performance objectives for mitigation measures.

A. RESPONSE TO COMMENTS FROM DEPARTMENT OF TOXIC SUBSTANCES CONTROL, JULY 13, 2007

Comment A1: Thank for the opportunity to comment on the Draft Environmental Impact Report (EIR) for the Murphy Ranch Residential Project (Project) SCH# 2007022106. The Project involved construction of up to 285 single-family dwelling units and 374 apartments on an approximately 22-acre property in the City of Milpitas.

As you may be aware, the California Department of Toxic Substances Control (DTSC) oversees the cleanup of sites where hazardous substances have been released pursuant to the California Health and Safety Code, Division 20, Chapter 6.8. As a Responsible Agency, DTSC is submitting comments to ensure that the environmental documentation prepared for this project under the California Environmental Quality Act (CEQA) adequately addresses activities pertaining to releases of hazardous substances.

Appendix E of the Draft EIR include environmental assessment reports which determined that the site was historically used for agricultural purposes (on the basis of aerial photography). Testing for pesticides was recommended however it does not appear that was completed.

For each parcel included in the Project, DTSC strongly recommends an investigation into each property's current and historic uses, and site assessments should be completed to determine whether hazardous substances need to be addressed. Where concerns are identified, sampling should be conducted to determine whether there is an issue that will need to be addressed in the CEQA compliance document.

If hazardous substances are expected to be encountered, they will need to be addressed as part of this project. For example, if hazardous substances are expected to be encountered, the CEQA compliance document should include: (1) an assessment of air impacts and health impacts associated with the excavation activities; (2) identification of any applicable local standards which may be exceeded by the excavation activities, including dust levels and noise; (3) transportation impacts from the removal or remedial activities; and (4) risk of public upset should be there an accident at the Site.

Response A1: While the project site was not used as agricultural land for a significant period of time, the City recognizes that residual pesticides are a common issue in Santa Clara County. As a condition of approval, the City will require soil testing prior to issuance of grading permits. If pesticide contaminated soil is found above established Environmental Screening Thresholds for residential development, the City will require excavation and disposal of contaminated soil in accordance with applicable state and federal standards.



Department of Toxic Substances Control

Maureen F. Gorsen, Director
700 Heinz Avenue
Berkeley, California 94710-2721



Arnold Schwarzenegg
Governor

Linda S. Adams
Secretary for
Environmental Protection

July 13, 2007

Mr. Geoff I. Bradley
Department of Planning and Neighborhood Services
City of Milpitas
455 E. Calaveras Boulevard
Milpitas, California 95035

RECEIVED

JUL 16 2007

STATE CLEARING HOUSE

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8/8/
e

Dear Mr. Bradley:

Thank you for the opportunity to comment on the Draft Environmental Impact Report (EIR) for the Murphy Ranch Residential Project (Project) SCH# 2007022106. The Project involves construction of up to 285 single-family dwelling units and 374 apartments on an approximately 22-acre property in the City of Milpitas.

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Appendix E of the Draft EIR includes environmental assessment reports which determined that the site was historically used for agricultural purposes (on the basis of aerial photography). Testing for pesticides was recommended however it does not appear that was completed.

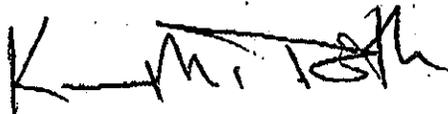
For each parcel included in the Project, DTSC strongly recommends an investigation into each property's current and historical uses, and site assessments should be completed to determine whether hazardous substances need to be addressed. Where concerns are identified, sampling should be conducted to determine whether there is an issue that will need to be addressed in the CEQA compliance document.

Mr. Geoff I. Bradley
July 13, 2007
Page 2

If hazardous substances are expected to be encountered, they will need to be addressed as part of this project. For example, if hazardous substances are expected to be encountered, the CEQA compliance document should include: (1) an assessment of air impacts and health impacts associated with the excavation activities; (2) identification of any applicable local standards which may be exceeded by the excavation activities, including dust levels and noise; (3) transportation impacts from the removal or remedial activities; and (4) risk of public upset should be there an accident at the Site.

If you have any questions or would like to schedule a meeting, please contact Tom Price of my staff at (510) 540-3811. Thank you in advance for your cooperation in this matter.

Sincerely,



Karen M. Toth P.E., Unit Chief
Northern California
Coastal Cleanup Operations Branch

cc: Governor's Office of Planning and Research
State Clearinghouse
P. O. Box 3044
Sacramento, CA 95812-3044

Guenther Moskat
CEQA Tracking Center
Department of Toxic Substances Control
P.O. Box 806
Sacramento, California 95812-0806

B. RESPONSE TO COMMENTS FROM CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD, JULY 26, 2007

Comment B1: Water Board staff has reviewed the Draft Environmental Impact Report (DEIR) for the proposed Murphy Ranch Project, located at the southwest corner of Technology Drive and Murphy Ranch Road in Milpitas. The project will consist of two parts: Murphy Ranch South with 285 single-family attached townhouses on 14.15 acres and Murphy Ranch North with 374 apartments on 7.58 acres. The project includes a clubhouse, pool, and five-story parking garage with roof level parking.

The project will create approximately 15.45 acres of impervious surfaces on an undeveloped 22 acre parcel of land; therefore, the project is subject to the New and Redevelopment Requirements (provisions C.3.) in Milpitas's municipal stormwater permit. Provision C.3. requires that new and redevelopment projects treat stormwater runoff to remove pollutants to the maximum extent practicable (MEP).

The Murphy Ranch Project proposes to install vegetated swales to treat some of the stormwater runoff (Drainage Areas F-H) and hydrodynamic devices (CDS Model PMSU20) to treat the rest of the runoff from the site (Drainage Areas A-E). Oil/water separators will be installed to treat runoff from the parking garage.

We have the following concerns:

I. Although hydrodynamic devices are good at removing coarse pollutants/sediment such as trash and debris, they do not remove the fine sediments, metals, soluble pollutants, or total petroleum hydrocarbons. As such, Water Board staff considers hydrodynamic separators installed alone (i.e., not enhanced with replaceable filters nor installed as part of a treatment train) inadequate for meeting the MEP criteria. Therefore, the proposed treatment measures do not meet the requirements of Provision C.3. The stormwater control plan for this project must be revised to provide stormwater treatment measures that meet MEP.

Response B1: The hydrodynamic devices proposed as part of the stormwater treatment plan will be CDS units or another comparable unit and will contain replaceable media filter cartridges. As stated on Page 33 of the DEIR, these systems will be monitored regularly by the City of Milpitas through the City's Operation & Management agreement for maintenance and performance of post-construction treatment measures. The O&M agreement will ensure that the proposed systems will remain operational and meet the requirements of Provision C.3 of the NPDES permit.

Comment B2: 2. It is unclear from the DEIR whether stormwater runoff from the parking garage (interior and exterior levels) will flow to the storm or sanitary sewer. In accordance with State and federal regulations, any discharge from the interior levels of the garage must flow to the sanitary sewer. Additionally, we recommend that the one exterior level of the parking garage also be connected to the sanitary sewer since the rest of the garage will be connected anyway. The stormwater control plan for this project must be revised to reflect the proper connection of the parking garage to the sanitary sewer.

Response B2: All levels of the parking structure will be treated by an oil-grease separator which will be connected to the sanitary sewer system as required by State and federal regulations.

Shannon George

From: Geoff Bradley [geoff@mplanninggroup.com]
Sent: Tuesday, July 31, 2007 11:19 AM
To: Sue Ma
Cc: Shannon George
Subject: Re: Concerns Regarding Murphy Ranch Residential Project @ Technology Dr & Murphy Ranch Rd

Thank you for your comments Sue. I am forwarding these to the environmental consultant that is preparing the EIR.

Thanks,
Geoff I. Bradley
metropolitan planning group, inc.
400 west evelyn avenue
sunnyvale california 94086

p 408 730 4106
f 408 730 5186
c 408 603 0072

www.mplanninggroup.com

----- Original Message -----

From: Sue Ma <SMa@waterboards.ca.gov>
To: bkaderi@ci.milpitas.ca.gov; gbradley@ci.milpitas.ca.gov; geoff@mplanninggroup.com
Cc: kphalen@ci.milpitas.ca.gov; mnickel@ci.milpitas.ca.gov; puppal@ci.milpitas.ca.gov; Brian Wines <BWines@waterboards.ca.gov>; Dale Bowyer <DBowyer@waterboards.ca.gov>
Sent: Thursday, July 26, 2007 11:29:24 AM
Subject: Concerns Regarding Murphy Ranch Residential Project @ Technology Dr & Murphy Ranch Rd

Hi Geoff,

Water Board staff has reviewed the Draft Environmental Impact Report (DEIR) for the proposed Murphy Ranch Project, located at the southwest corner of Technology Drive and Murphy Ranch Road in Milpitas. The project will consist of two parts: Murphy Ranch South with 285 single-family attached townhomes on 14.15 acres and Murphy Ranch North with 374 apartments on 7.58 acres. The project includes a clubhouse, pool, and five-story parking garage with roof level parking.

The project will create approximately 15.45 acres of impervious surfaces on an undeveloped 22 acre parcel of land; therefore, the project is subject to the New and Redevelopment Requirements (Provision C.3.) in Milpitas's municipal stormwater permit. Provision C.3. requires that new and redevelopment projects treat stormwater runoff to remove pollutants to the maximum extent practicable (MEP).

The Murphy Ranch Project proposes to install vegetated swales to treat some of the stormwater runoff (Drainage Areas F-H) and hydrodynamic devices (CDS Model PMSU20) to treat the rest of the runoff

from the site (Drainage Areas A-E). Oil/water separators will be installed to treat runoff from the parking garage.

We have the following concerns:

1. Although hydrodynamic devices are good at removing coarse pollutants/sediment such as trash and debris, they do not remove the fine sediments, metals, soluble pollutants, or total petroleum hydrocarbons. As such, Water Board staff considers hydrodynamic separators installed alone (i.e., not enhanced with replaceable filters nor installed as part of a treatment train) inadequate for meeting the MEP criteria. Therefore, the proposed treatment measures do not meet the requirements of Provision C.3. The stormwater control plan for this project must be revised to provide stormwater treatment measures that meet MEP.
2. It is unclear from the DEIR whether stormwater runoff from the parking garage (interior and exterior levels) will flow to the storm or sanitary sewer. In accordance with State and federal regulations, any discharge from the interior levels of the garage must flow to the sanitary sewer. Additionally, we recommend that the one exterior level of the parking garage also be connected to the sanitary sewer since the rest of garage will be connected anyway. The stormwater control plan for this project must be revised to reflect the proper connection of the parking garage to the sanitary sewer.

Please call or email me if you have any questions.

Sue Ma
Water Resources Control Engineer
1515 Clay Street, Suite 1400
Oakland, CA 94612
510-622-2386
FAX 510-622-2460
SMa@waterboards.ca.gov

**C. RESPONSE TO COMMENTS FROM CALIFORNIA DEPARTMENT OF
TRANSPORTATION, JULY 31, 2007**

Comment C1: The department was unable to complete the review of the environmental document as the traffic output sheets and results were not included in the Transportation Impact Analysis. Please submit these for our review and comment.

Response C1: The requested information has been sent to the California Department of Transportation for review.

DEPARTMENT OF TRANSPORTATION

111 GRAND AVENUE
P. O. BOX 23660
OAKLAND, CA 94623-0660
PHONE (510) 286-5505
FAX (510) 236-5559
TTY (800) 735-2929



*Flex your power!
Be energy efficient!*

July 31, 2007

SCL237158
SCL-237-7.99
SCH2007022106

Mr. Geoff I. Bradley
City of Milpitas
4567 E. Calaveras Boulevard
Milpitas, CA 95035

Dear Mr. Bradley:

Murphy Ranch Residential Project -- Draft Environmental Impact Report (DEIR)

Thank you for including the California Department of Transportation (Department) in the environmental review process for the proposed project. The following comments are based on our review of the DEIR.

Highway Operations

The Department is unable to complete the review of the environmental document as the traffic output sheets and results were not included in the Transportation Impact Analysis. Please submit these for our review and comment.

Should you have any questions regarding this letter, please call José L. Olveda of my staff at (510) 286-55353.

Sincerely,

A handwritten signature in black ink that reads "Timothy C. Sable".

TIMOTHY C. SABLE
District Branch Chief
IGR/CEQA

c: Scott Morgan (State Clearinghouse)

D. RESPONSE TO COMMENTS FROM SANTA CLARA VALLEY WATER DISTRICT, AUGUST 2, 2007

Comment D1: The Santa Clara Valley Water District (District) has reviewed the DEIR for the subject project, received on June 19, 2007.

District comments remain the same as in our comment letter dated May 29, 2007, enclosed.

The DEIR does not discuss the proposed ramp to access the levee top. If this proposal is still valid, it should be included in the DEIR and the District should be identified as a responsible agency under CEQA so that this document can be relied on for the District's discretionary action to permit this ramp on District property.

Response D1: An access ramp to the top of the adjacent levee is not proposed as part of the Murphy Ranch housing project.

Comment D2: A permit from the Army Corp of Engineers (Corps) will be required for any work on the levee.

Response D2: The project, as proposed, would not include or result in any work on the levee.

Comment D3: In addition, the document should address cumulative impacts on wildlife as a result of the project and others in the region, more specifically the cumulative loss of raptor foraging areas and cumulative loss of burrowing owls foraging and potential nesting sites.

Response D3: As stated on Page 38 of the DEIR, the project site is only one of several sites in the project area that is available to raptors for foraging. No other foraging sites within the project area are currently slated for development and no modifications to the riparian corridor are proposed. As such, there is no cumulative loss of foraging land for raptors in the project area.

Five other projects were identified as reasonably foreseeable development projects (see Page 98, Table 20 of the DEIR) which, combined with the proposed project, may have the potential for cumulative impacts. Of the five project sites identified, only one site (South Main/Abel) was undeveloped and had any potential for on-site foraging by raptors. The South Main/Abel site is not, however, within close proximity to the project site, has only one tree on-site and no other vegetation, and is not in close proximity to any local waterway with raptor nesting habitat. As such, the development of this site, in combination with the proposed project site, would not result in a cumulative loss of raptor foraging habitat.

As stated on Page 39 of the DEIR, the loss of Burrowing Owl habitat on the project site was previously mitigated by the purchase of 26 mitigation credits at the Agua Fria Conservation Bank in Merced County through a mitigation agreement with the California Department of Fish and Game (Mitigation Agreement CDFG #1802-2001-011-3). With the implementation of this mitigation agreement, the project site was no longer considered Burrowing Owl habitat within Santa Clara County. Therefore, development of the project site will not result in a cumulative loss of Burrowing Owl habitat.

Comment D4: A reconnaissance survey for burrowing owls is not sufficient to “determine if burrowing owls occupy the project site.” In order to determine if burrowing owls occupy the site, the protocol for burrowing owl surveys is provided by the California Department of Fish and Game (CDFG) in the CDFG Staff Report on Burrowing Owl Mitigation, October 1995. The DEIR calls for one survey 14 days prior to construction. The District requests and recommends that the project site be surveyed in accordance with the CDFG protocol to determine the status of burrowing owls on the site.

Response D4: No Burrowing Owls have been documented on the project site since 2001. In addition, the site is disked regularly and it is unlikely that owls would take up residence on the site. While it is highly unlikely that owls would occupy the site under the existing conditions, there is a small chance that owls could occupy the site. Therefore, the DEIR identified the loss of individual owls as a significant impact. To avoid the loss of individual owls, pre-construction surveys will be completed in accordance with CDFG protocols to identify any owls on-site. If owls are found, they will be evicted (if construction occurs outside the breeding season) or a protection area will be established around any active nest (if construction occurs within the breeding season) in accordance with CDFG requirements. This is standard mitigation approved by the CDFG to address the loss of individual owls and will reduce the impact to individual owls to a less than significant level.

Comment D5: Section 4.11.2.2, Water Impacts, page 89 notes that the project would result in a net shortfall of 169 acre feet per year from current use to the proposed project, and that the City of Milpitas (City) and the District have determined that there is sufficient water supply available. According to Appendix J, the Water Supply Assessment (WSA) for the project, District staff commented on the draft WSA that the WSA assumed that the shortfall of 169 acre-feet per year would be supplied by the District, although there were no funds secured to meet this shortfall. The Final WSA notes the concerns of the District, but notes that as the primary water wholesaler to the County, the District is committed to ensure that the water supply is reliable to meet current and future demands. The City also notes that funding must be secured to meet the demands for long-term water supply for the project. It is not clear from the WSA that the City and the District have adequately determined that there will be sufficient water supply for the proposed project.

Response D5: The conclusion of the WSA (Page 9 of Appendix J) for the proposed project states the following:

“This evaluation is based on projections from the City of Milpitas 2005 Urban Water Management Plan, City of Milpitas 2002 Water Master Plan and the Santa Clara Valley Water District’s 2005 Urban Water Management Plan. Based upon evaluation results, the staff of the Utility Engineering Section of the City of Milpitas has determined that there is sufficient waster supply to provide service to the Murphy Ranch Residential development project.”

Based on the above statement, the City concluded that there will be sufficient water supply for the proposed project.

The draft WSA was reviewed by the SCVWD for accuracy and all comments on the draft assessment were incorporated into the final WSA approved by the City of Milpitas

Planning Commission on March 26, 2006. Because the SCVWD reviewed the draft document and all comments were incorporated, the final WSA appears to represent the expert opinions of both the City of Milpitas and the SCVWD.

Comment D6: A Phase I prepared in 2000 by LawGibb Group is noted on page 7 of the Phase I prepared by PES Environmental, Inc. (PES) under Appendix E. The 2000 Phase I noted that the presence of a marshy area in the northwest portion of the site near some pumping equipment. The site visit conducted by PES did not confirm a marshy area during the summer, but PES recommended further investigation to determine if the marshy area was seasonal. A seasonal marshy area could adversely impact storm water drainage from the site. If additional investigation was conducted at the site, it was not included in the DEIR.

Response D6: It is not specifically stated in the Phase I report or in the SCVWD comment letter how the marsh area could adversely impact storm water drainage from the site. The proposed site plan on Page 7 of the DEIR shows the northwest corner of the project site to be developed with a 20-foot fire lane and other hardscape. In addition, the project site will be constructed in accordance with design-level geotechnical investigations that will need to be approved by the City prior to issuance of building permits. As such, any drainage issues in the northwest corner of the site will be sufficiently alleviated through the development review process and the design of the proposed project.

Comment D7: The DEIR should be revised to identify and mitigate hydromodification impacts. A Hydromodification Management Plan (HMP) must be implemented in compliance with the Santa Clara Valley Urban Runoff Pollution Prevention Program's (SCVURPPP) National Pollutant Discharge Elimination System (NPDES) permit, including the October 2001 RWQCB Order 01-119 amending the Program's C.3 permit provisions regarding new development and redevelopment requirements. In particular, per C.3 provisions the project shall be required to treat its stormwater and shall not increase stormwater runoff rates or duration when such increases will result in an increased potential for erosion or other adverse impacts to beneficial uses.

Comment D7: As discussed on Page 33 and in Appendix B of the DEIR, the project has proposed a Stormwater Treatment Plan to comply with the City of Milpitas Stormwater C.3. requirements and the SWRCB NPDES permit. The treatment plan includes 1) landscape infiltration areas which not only allow percolation of stormwater (thereby reducing the amount of water entering the storm drainage system), but filter out pollutants and slow the flow of water; 2) landscape swales which also filter out pollutants and slow the flow of water; 3) mechanical stormwater treatment systems (to be installed in the on-site stormwater drainage lines) that filter out pollutants and slow the flow of water; and 4) oil-grease separators in the parking structure. With all of these treatment systems in place, the City believes that the project will comply with the SCVURPPP NPDES permit.

Copy of Letter D

File: 22210
Coyote Creek

August 2, 2007

Mr. Geoff Bradley
City of Milpitas
455 E. Calaveras Blvd.
Milpitas, CA 95035

Subject: Draft Environmental Impact Report (DEIR) for Murphy Ranch Residential Project

Dear Mr. Bradley:

The Santa Clara Valley Water District (District) has reviewed the DEIR for the subject project, received on June 19, 2007.

District comments remain the same as in our comment letter dated May 29, 2007, enclosed.

The DEIR does not discuss the proposed ramp to access the levee top. If this proposal is still valid, it should be included in the DEIR and the District should be identified as a responsible agency under CEQA so that this document can be relied on for the District's discretionary action to permit this ramp on District property.

A permit from the Army Corps of Engineers (Corps) will be required for any work on the levee.

In addition, the document should address cumulative impacts on wildlife as a result of the project and others in the region, more specifically the cumulative loss of raptor foraging areas and cumulative loss of burrowing owls foraging and potential nesting sites.

A reconnaissance survey for burrowing owls is not sufficient to "determine if burrowing owls occupy the project site." In order to determine if burrowing owls occupy a site, the protocol for burrowing owl surveys is provided by the California Department of Fish and Game (CDFG) in the CDFG Staff Report on Burrowing Owl Mitigation, October 1995. The DEIR calls for one survey 14 days prior to construction. The District requests and recommends that the project site be surveyed in accordance with the CDFG protocol to determine the status of burrowing owls on the site.

Section 4.11.2.2, Water Impacts, page 89 notes that the project would result in a net shortfall of 169 acre feet per year from current use to the proposed project, and that the City of Milpitas (City) and the District have determined that there is sufficient water supply available. According to Appendix J, the Water Supply Assessment (WSA) for the project, District staff commented on the draft WSA that the WSA assumed that the shortfall of 169 acre-feet per year

Mr. Geoff Bradley
Page 2
July 31, 2007

would be supplied by the District, although there were no funds secured to meet this shortfall. The final WSA notes the concerns of the District, but notes that as the primary water wholesaler to the County, the District is committed to ensure that the water supply is reliable to meet current and future demands. The City also notes that funding must be secured to meet the demands for long-term water supply for the project. It is not clear from the WSA that the City and the District have adequately determined that there will be sufficient water supply for the proposed project.

A Phase I prepared in 2000 by LawGibb Group is noted on page 7 of the Phase I prepared by PES Environmental, Inc. (PES) under Appendix E. The 2000 Phase I noted that the presence of a marshy area in the northwest portion of the site near some pumping equipment. The site visit conducted by PES did not confirm a marshy area during the summer, but PES recommended further investigation to determine if the marshy area was seasonal. A seasonal marshy area could adversely impact storm water drainage from the site. If additional investigation was conducted at the site, it was not included in the DEIR.

The DEIR should be revised to identify and mitigate hydromodification impacts. A Hydromodification Management Plan (HMP) must be implemented in compliance with the Santa Clara Valley Urban Runoff Pollution Prevention Program's (SCVURPPP) National Pollutant Discharge Elimination System (NPDES) permit, including the October 2001 RWQCB Order 01-119 amending the Program's C.3 permit provisions regarding new development and redevelopment requirements. In particular, per C.3 provisions the project shall be required to treat its stormwater and shall not increase stormwater runoff rates or durations when such increases will result in an increased potential for erosion or other adverse impacts to beneficial uses.

Please address the aforementioned issues, and reference File No. 22210 on further correspondence regarding the project.

Should you have any questions, please give me a call at (408) 265-2607, extension 2494 or email me at THipol@valleywater.org.

Sincerely,



Theodore Hipol
Assistant Engineer
Community Projects Review Unit

Enclosures: Letter Dated May 29, 2007

cc: S. Tippets, T. Hipol, N. Merrill, J. Castillo, E. Fostersmith, H. Barrientos, R. Narsim, L. Spahr, M. Klemencic, S. Katric, D. Duran, File (2)

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T. Hipol

5750 ALMADEN EXPWY
SAN JOSE, CA 95118-3686
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AN EQUAL OPPORTUNITY EMPLOYER

File: 22210
Coyote Creek

May 29, 2007

Ms. Kristine Lowe
City of Milpitas
455 E. Calaveras Blvd.
Milpitas, CA 95035-5411

Subject: Site Development Plans for Murphy Ranch in Milpitas

Dear Ms. Lowe:

The Santa Clara Valley Water District (District) has reviewed the site plans for the subject project.

At the southwest corner of the site, a proposed trail access along a ramp is shown connecting to the existing trail on the District's Coyote Creek levee. We will need to see details for the construction of this access before any approval of work upon District lands. We suggest that a preliminary design be prepared for this ramp to ascertain if the ramp can be constructed in the footprint shown. Additional fill is needed on the levee slope to support the ramp. No portion of the ramp or stair foundation may cross the plane of the existing levee slope. We have found that additional land outside the District's property is typically needed to accommodate the fill for this type of ramp. A geotechnical analysis of the impacts of the fill on the levee will be required.

After the District has reviewed plans for the proposed ramp, we will refer them to the Army Corps of Engineers for review. Additional time of approximately 4 weeks should be considered in project time lines for this review.

We are also interested in reviewing the overall plan for the trail system with respect to similar trail connections from developments to the levee trail. The number of ramp structures needs to be minimized and should be placed in accordance with a master plan for the trail.

Please also identify the entity responsible for maintenance of this proposed access ramp.

For developed portions of the site, storm water runoff should be collected and distributed to the city's storm drain system. The preliminary grading and drainage plans show proposed drainage to an existing outfall at the Bellew Pump Station located adjacent to the northwest corner of the site. Please verify if the drainage from the site was included in the design flow of the Bellew pump station. Plans show the adjacent access roads will be sloped toward the levee toe and that storm drains will be installed along this toe. To minimize potential risk to the levee

ENCLOSURE

ENCLOSURE

Ms. Kristine Lowe
Page 2
May 29, 2007

associated with drainage features at the toe, we urge placement of the storm drain catch points on the east side of the road and sloping of the road toward the east.

To prevent pollutants from construction activity, including sediments, from reaching Coyote Creek, please follow the Santa Clara Urban Runoff Pollution Prevention Program's recommended Best Management Practices for construction activities, as contained in "Blueprint for a Clean Bay," and the "California Storm Water Best Management Practice Handbook for Construction."

Postconstruction water quality mitigation needs to be implemented. The design of the project area should incorporate water quality mitigation measures such as those found in the "Start at the Source-Design Guidance Manual for Stormwater Quality Protection," prepared for the Bay Area Stormwater Management Agencies Association.

For sites greater than one acre, the developer must file a Notice of Intent to comply with the State's National Pollutant Discharge Elimination System General Permit for Storm Water Discharges Associated with Construction Activity with the State Water Resources Control Board.

Regarding the landscape conceptual drawings, comments are as follows:

General Comments

The District installed, maintains and monitors acres of young riparian habitat mitigation on Coyote Creek both upstream and downstream of the project site as mandated by state and federal resource agencies. Selection of the project landscape palette should be done with extra sensitivity such that no deleterious impacts to the existing or newly planted riparian forest result.

The District collaborated with Ima Design this year on a project in Milpitas where the District provided pertinent landscape guidance documents excerpted from the 'Guidelines and Standards for Land Use Near Streams'. These same design concepts should be incorporated into the Murphy Ranch project. For specific plant questions, please consult Chapter 4, Design Guides 1-5, at minimum, and feel free to contact Linda Spahr at 408-265-2607, extensio 2752.

website:

http://www.valleywater.org/Water/Watersheds_streams_and_floods/Taking_care_of_streams/Guidelines_&_standards/Guidelines_&_Standards.shtm

Specific Comments

Sheet L-003, L-100, and L-101:

These sheets show proposed shrubs and trees located adjacent to the existing levee.

In accordance with the District's levee practice, which adheres to the U.S. Army Corps of Engineers' (Corps) 'Guidelines for Landscape Planting and Vegetation Management at Floodwalls, Levees, and Embankment Dams', plantings other than grass should be located away from the toe of the levee and should not be located within the "vegetation and root-free zone". This vegetation free zone is indicated as 15 feet wide.

Sheet L-103:

To prevent light impingement into the riparian forest, permittee should confirm that light from the project will not adversely enter the riparian corridor at night.

Sheets L-100 and L-200. Landscape Concept Plan for Town Homes [L-100] and Apartments [L-200]:

Local Native-

Heritage *Platanus racemosa*, CA sycamore, exists just inside the levee adjacent to the project. To protect the integrity of the local genotype, any CA sycamore used on the project should be local natives, i.e. must be grown from seed collected on Coyote Creek from as close to the project site as possible and at approximately the same elevation. This requires 1 year lead time to grow out a 1-gallon container tree. There are no 24-inch box local CA sycamores available from commercial nurseries. Since they are quick growers, it may take only 3-4 yrs to grow out a 24-inch box specimen from seed. Seed is not produced every year, however. Alternatively, substitution with a drought-tolerant, non-invasive species which will not cross-pollinate the local riparian natives and which is commercially available may be easier. Please propose a substitute if you choose.

Invasive Plants-

- Koeleria* is known to be vectored by birds and to self-sow in the wild. We recommend a substitute.
- Celtis reticulata* and *Wisteria sinensis* have a potential to be invasive. We recommend a substitute.

Ecologically Incompatible Plants-

Two types of native oaks exist along Coyote Creek near the project site. Oaks readily hybridize between species, so we recommend not introducing the non-native red oak into the area. It is desirable to prevent the acorns from being vectored by birds across the levee where they can become an invasive tree in the riparian forest. We recommend a substitute.

District records show two wells on the site. In accordance with the District Ordinance 90-1, the owner should show any existing well(s) on the plans. The well(s) should be properly maintained or destroyed in accordance with the District's standards. Property owners or their representatives should call the Wells and Water Production Unit at (408) 265-2607, extension 2660, for more information regarding well permits and registration or destruction of any wells.

Ms. Kristine Lowe
Page 4
May 29, 2007

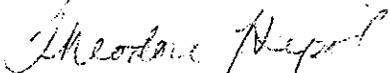
In accordance with District Ordinance 06-1, revised plans for construction on District property should be sent to us for review and issuance of a permit

Please submit two sets of revised plans (one large set, one reduced set), when available, for our review and issuance of a permit.

Please reference File No. 22210 on further correspondence regarding the project.

Should you have any questions, please give me a call at (408) 265-2607, extension 2494 or email me at THipol@valleywater.org.

Sincerely,



Theodore Hipol
Assistant Engineer
Community Projects Review Unit

cc: Mr. Jason Neri
Carlson, Barbee & Gibson, Inc.
6111 Bollinger Canyon Road, Suite 150
San Ramon, CA 94583

S. Tippets, T. Hipol, L. Spahr, S. Katric, J. Castillo, M. Klemencic, D. Duran, File (2)

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